

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

**TRANSCRIPT OF THE MEETING
Committee on National Patrimony and Economic Reforms
Monday, 05 December 2005**

CALL TO ORDER

At 12:00 noon, the Chairman of the Committee, Vicente T. Paterno, called the meeting to order.

CHAIRMAN PATERNO.

Can we begin the meeting? The Chair is open to a proposal that we dispense with the roll call.

ROLL CALL

COMMISSIONER ESPINA.

I move that we dispense with the roll call.

CHAIRMAN PATERNO.

Is there a second?

COMMISSIONER GONZALEZ

Second.

CHAIRMAN PATERNO.

Is there any objection? None? The roll call is dispensed with. May we now proceed immediately to reviewing the draft or the redraft of the Committee's amendments?

DRAFT OF COMMITTEE AMENDMENTS

COMMISSIONER APOSTOL.

Mr. Chair, I have a proposal. We approve this draft now, submit this tomorrow on plenary, anyway it's still Committee of the Whole. We will debate during the Committee of the Whole. Because what will happen today is we will go over it, amend it then again, it will be subject to amendment and discussions tomorrow. So why not approve it now and then have this submitted on plenary and as committee as a whole for tomorrow? And then you'll defend your work.

CHAIRMAN PATERNO.

But I understand there are some minor amendments. We might as well dispose with those para hindi na magsalita pa doon. I-include na natin.

COMMISSIONER BONDOC.

Mr. Chairman.

CHAIRMAN PATERNO.

Commissioner Bondoc.

COMMISSIONER BONDOC.

If we will proceed already, just a correction sa page 2.

CHAIRMAN PATERNO.
Ah, you're talking about the...

COMMISSIONER BONDOC.
The report.

CHAIRMAN PATERNO.
That is the proposed report, which will of course change when the draft is amended by...

COMMISSIONER BONDOC.
Mine is not an amendment, Mr. Chairman, it's a correction. Page 2, item 6, line 2. The word "industrial" should be "residential."

CHAIRMAN PATERNO.
Yes, you are right.

COMMISSIONER BONDOC:
Private lands as residential, commercial...industrial, commercial, and residential.

CHAIRMAN PATERNO.
Correct, correct. Typo error.

So, may we begin with the first article, the first section here. I thought we should amend this Declaration of Principles with respect to Section 19, because Section 19 talks about an independent national economy effectively controlled by Filipinos. So instead of that, we would say, "shall develop a self-reliant, productive economy that will best serve the interests of the Filipino people."

COMMISSIONER ESPINA.
I move to adopt the proposed correction.

COMMISSIONER PEÑA
Second.

CHAIRMAN PATERNO.
Seconded. Any objections? Hear none.

COMMISSIONER ORTEGA
Unanimously approved.

CHAIRMAN PATERNO
Unanimously approved. Article XII, Section 1. Please note the legend. The words in italics on the second column are those which were deleted by the Committee, but which we are proposing to restore.

COMMISSIONER ESPINA
Which one?

CHAIRMAN PATERNO.
The italics, the words in italics in the second column. If you look at the succeeding pages, there are italics. Those are text that the Committee deleted but which I am proposing we restore. I do

not think there is any change really in the substance of the article by doing so. And the underlined are those which are deletions from the Committee draft or from the 1987 text. Then, the bold ones are the insertions in the Committee draft. So with that ano, can we go to Section 1? “The course of the national economy are more equitable distribution of opportunities, income and wealth, and expanding productivity as the key to raising the quality of life for all, especially the underprivileged.” Page 1, Section 1 of Article XII.

Any objections? Hear none. Go on to Section 2.

COMMISSIONER PEÑA
Mr. Chairman, on Section 2?

CHAIRMAN PATERNO.
In Section 2, the Chair is proposing the restoration of that sentence about, “The State may directly undertake...” That’s because the agreements referred to in the second, in the following sentence, really refers to those activities, “co-production, joint venture, production-sharing agreements.”

COMMISSIONER PEÑA
Mr. Chairman, on the...

CHAIRMAN PATERNO
Another thing we proposed there is to include conservation of the environment as one of the conditions.

COMMISSIONER PEÑA
Mr. Chairman.

CHAIRMAN PATERNO
Commissioner Peña.

COMMISSIONER PEÑA
Do you really want to put the 25 years or to leave it to Parliament or other bodies to determine the years? Just a suggestion on the floor.

CHAIRMAN PATERNO.
So you’re proposing to just remove the period, no?

COMMISSIONER PEÑA
Yes, Sir. Just to...

CHAIRMAN PATERNO
Anyway, it’s Congress that will determine.

COMMISSIONER PEÑA
Correct, so we don’t restrict anyone at some point.

CHAIRMAN PATERNO
Okay. Section 2, 2nd paragraph.

COMMISSIONER FERNANDEZ
Mr. Chairman.

COMMISSIONER APOSTOL
It will be, "Such agreement includes conservation..."

COMMISSIONER BENGZON
Hindi, "and under such terms and conditions, including conservation."

COMMISSIONER APOSTOL
Sige.

(Commissioner Bengzon speaks off mic.)

CHAIRMAN PATERNO
So alisin na lang natin 'yong "25 years renewable," no. So it will read, "Such agreements..."

(Commissioner Bengzon and Commissioner Espina speak off mic.)

COMMISSIONER BENGZON
Anyway, Congress will do it.

(Commissioner Espina speaks off mic.)

CHAIRMAN PATERNO
Mayro'n namang ano eh. It's provided that, it should be provided by law, the terms and conditions.

COMMISSIONER BENGZON
But this is the, I'm sorry, Mr. Chairman. But this is the Regalian Theory. Nobody could own the natural resources. It's really owned by the state. It's only the exploration, development and utilization. So I think, Mr. Chairman, I think, if I may, you want...?

CHAIRMAN PATERNO
Yes, please.

COMMISSIONER BENGZON
If I may read it, it will now state, "The state may directly undertake such activities or it may enter into co-production, joint venture or production-sharing agreements and under such terms and conditions, including conservation of the environment, as may be provided by law."

CHAIRMAN PATERNO
Okay.

COMMISSIONER FERNANDEZ
Mr. Chairman, mine is only a concern as regards to environmental safety for the very reason that recently, there was a development in our country of which there seems to be an approval for the logging of a certain area of DENR, which was given solely as the responsibility of DENR. Would it be wise to put it in the Constitution that the province or the LGU concerned should also become a partner and, rather be also responsible in the giving of rights to this mining firm. Anyway, as mentioned, it is the state who owns everything. But the only concern we are trying

to bring up is also the shared responsibility and to voice out the concern of the people in the local government or in the province.

CHAIRMAN PATERNO

So how do you propose to...?

COMMISSIONER FERNANDEZ

That's why mine is only a concern on how we can inject that, that the province or the LGU should also be part of this kind of ah...

CHAIRMAN PATERNO

Isn't that part of congressional responsibility?

COMMISSIONER FERNANDEZ

Anyway, it's a part, I'm just concerned because it's generic here that it shall be the state and my only concern is that the state, in its present position, will have a sole agency that is granting this particular license, franchise, that might be of detriment to the local government as is the experience right now, which is widely discussed in our country. That's the only concern, Mr. Chairman.

CHAIRMAN PATERNO

You are saying perhaps that you want this, you want the co-production, joint venture, production-sharing agreements to be determined also as to implementing agency?

COMMISSIONER FERNANDEZ

Actually, my only concern right now is that, whether it shall be the, in the presidential form of which it is one agency handling the licensing or the franchising, through of course the blessing of Congress. But right now, in terms of logging, it is I think, DENR. Now, it's also the same thing. It's natural resources. It's generic; this one is generic. For mining, it will be the same, the granting...

COMMISSIONER ORTEGA *(off mic)*

Concurrence, concurrence of the local government unit.

COMMISSIONER BONDOC

Mr. Chairman.

CHAIRMAN PATERNO

Commissioner Bondoc, first.

COMMISSIONER BONDOC

Isn't there already a law providing for consultations with the affected constituents and approval by the local governments for these permits and licenses and franchises to be granted?

COMMISSIONER BENGZON *(off mic)*

DENR ang gumawa nung order...

CHAIRMAN PATERNO

It seems that the concern is already covered by legislation. DENR...

(Commissioners speak off mic.)

COMMISSIONER CATAN
Mr. Chairman, just ah...

CHAIRMAN PATERNO
Commissioner Catalan.

COMMISSIONER CATAN
Mr. Chairman, just a short note on this. I come from a province, particularly Palinpenon, Valencia, where the geothermal is. And people there cannot anymore use the water, the Okoy River, because it is really already polluted. While there are laws maybe giving some kind of incentives or compensation, but most of these incentives go to the town of Valencia in the form of free electricity of P400 a month. So that concern of ah, the environment is really something because it could have been easy to put some water treatment of the acidic water that comes out and into the rivers. But whether that can be, I believe there is already legislation. But the problem is the reinforcement, or maybe not enough. Probably what was raised, a statement to that effect, a general statement as a policy that really the environment in that area concerned shall really be protected.

COMMISSIONER APOSTOL
Mr. Chairman, I dispute that statement. The water there is okay, treated well. In fact, it is being used for irrigation and some used for bathing. Everyday, there are people there, the NGO, the DENR, including the ADC who keeps on examining the water. So there is no such thing as acidic or what.

COMMISSIONER CATAN
Mr. Chairman, my house is just very near the Okoy River and the people there used to have, we call it ulang, and also even kangkong. No more, it's not there anymore because of the water that is really affected.

CHAIRMAN PATERNO
Perhaps this is a matter extraneous to the topic that we're discussing.

COMMISSIONER CATAN
Yes, I believe so but something, it is really happening so something to look into. There are two people there involved, one is the pino, the other one is the NPC, National Power Corporation. While it maybe just implementation of the law, if there is any, but that is really what is happening in our province.

CHAIRMAN PATERNO
Yeah, but it would seem that the phrase, "conservation of the environment, "covers that amply. Okay, so with your permission...

COMMISSIONER CATAN
Yes, Mr. Chairman, I just bring that note.

CHAIRMAN PATERNO
Okay, may we now proceed to...

COMMISSIONER APOSTOL
That's why, Mr. Chairman, I am disputing it because I was the Chairman and President before of that corporation.

(Laughter)

CHAIRMAN PATERNO

I understand, I understand that. Let's go on.

COMMISSIONER APOSTOL

We have all the, PNOC, NDC, the one that actually extracts the geothermal.

CHAIRMAN PATERNO

Okay, let's move on. Let's move on. Are there any other observations on the rest of that section?

COMMISSIONER APOSTOL

Mr. Chair, this provision, "Congress may by law allow small scale utilization," I think we should remove this.

COMMISSIONER ESPINA *(off mic)*

It's discriminatory.

CHAIRMAN PATERNO

Not necessary, no.

COMMISSIONER APOSTOL

Not necessary. In fact, there is now a legislation.

CHAIRMAN PATERNO.

Okay, remove. I mean, delete. Delete that line, that sentence about small scale utilization.

COMMISSIONER APOSTOL

The other one, Mr. Chairman, "Congress may reserve their use and enjoyment exclusively to Filipinos." This is what businessmen are trying to fight. Ito, to remove this eh. So I move that we remove this one also.

CHAIRMAN PATERNO

Okay, any objections? I just wanted to raise this because there were statements during the consultation about fishermen, etc. So I wanted the Committee to consider that.

COMMISSIONER VARELA

Covered by legislation.

CHAIRMAN PATERNO

Yes. This "agreements with foreign-owned corporations," why did we delete that?

COMMISSIONER BENGZON

No, Mr. Chairman, because this would be rendered, in effect, it would be rendered void by allowing a 100% foreign-owned, a 100% foreign-owned company or corporation to explore, develop and utilize our natural resources. This was only put, this particular provision actually, was put in because in the earlier provision it was really a 60-40 but then during that time, the ConCon delegates also then realized that they want to be protectionist but at the same time, they also want to invite some foreign investors. So they devised this FTAA. This is what you

call the FTAA. But then, our mining law actually, since we're not going to a charter change yet, went on and expanded what the FTAA can do but then it was struck down as unconstitutional on the first round. And now, it's constitutional again with the very, very flimsy excuse of being economically viable, which is not in the Constitution. So what we're doing right now, since we're liberalizing and lifting the requirements, there is no need for this, Mr. Chairman.

COMMISSIONER APOSTOL

Mr. Chair, just a little correction. All words, "president," we should enclose in parenthesis also, "prime minister." We might change the system of government, I mean, the form of government. *(Laughter)* If we become parliamentary, this is useless. If you become a Prime Minister, you do not have to notify the Parliament.

COMMISSIONER BENGZON

Oh sure, they have to.

COMMISSIONER APOSTOL

Because they are the ones who decide eh.

COMMISSIONER BENGZON

Because they really notify?

COMMISSIONER APOSTOL

No, I don't know why they have to notify.

CHAIRMAN PATERNO

There are a lot of people who question the benefits that the country gets from these contracts. If it is not reported, then the presumption is that maybe there was something...

COMMISSIONER ORTEGA

Hanky panky.

CHAIRMAN PATERNO

Hanky panky, that maybe they did not want to report the terms of the contract.

COMMISSIONER BENGZON

Unless, Mr. Chairman, the parliamentary system has a built-in reporting system, then we don't have to...for everything. Yes, yes. Not just for this one. Then you don't need to do this; if you do this, it's superfluous. I don't know. Chit, guide us on this. There is. So, by virtue of the fact that it's a parliamentary system, automatic they have to report.

COMMISSIONER ORTEGA *(off mic)*

So there's no need for this system.

CHAIRMAN PATERNO

You think so?

(Commissioners talk off mic.)

COMMISSIONER APOSTOL

There is an administrative order, as of today, that you have to report it. I mean, contracts entered into on mines, the bigger scale mining has to be reported to the President because the one entering into the contract is the alter-ego of the President, the Secretary of...

CHAIRMAN PATERNO

Or we can say, "The Congress shall be notified," instead of specifying who will notify. "The Congress shall be notified of every contract"

COMMISSIONER BENGZON

The Parliament.

COMMISSIONER ORTEGA (*off mic*)

Congress, or the Parliament, as the case maybe.

CHAIRMAN PATERNO

Oh, gano'n na lang?

COMMISSIONER BENGZON (*off mic*)

If you really want to enter this, there's no harm in putting it there.

COMMISSIONER BONDOC

Hindi, pero, Mr. Chairman, sorry. If there is already a built-in mechanism for that as stated by the Commissioner who is the foremost advocate of the parliamentary form, magiging redundant po. We're trying to avoid that, a verbose constitution eh.

COMMISSIONER PEDROSA

It's really the problem. Because we haven't decided on the form of government, we are going to the minute details of things that may never occur in the final analysis.

COMMISSIONER BONDOC

Yeah, but can we ask, Commissioner Pedrosa, if there is such a provision, can we hear how it is worded? For the Prime Minister and the Cabinet to report on their activities to Parliament.

COMMISSIONER PEDROSA

Can I do that? But let me go back to my, my ano...

COMMISSIONER ORTEGA

May I just say, for whatever it is worth, one big difference between the presidential and the parliamentary is in the parliamentary form, they have the Question Hour. Every week 'yan, may Question Hour.

COMMISSIONER PEDROSA

Not only that. The Civil Service is mandated to report everything that happens in the majority government so that the minority, the shadow government, is able to take on when the government is changed. So it's a continuing thing. There is no such thing as a contract that happens only in one term. It's a continuing...

CHAIRMAN PATERNO

Let me be the devil's advocate. If we should have a parliamentary system with a very strong President and it's the President that will enter into such contracts, we do not cover that contingency anymore.

COMMISSIONER PEDROSA

From my own, for me, I can do some research work and come up with it.

CHAIRMAN PATERNO (*off mic*)

Well, we don't have time to research.

COMMISSIONER PEDROSA

'Yon na nga eh. No, no, it's easy. I will just get the exact wording of how the reporting is made in the Parliament.

CHAIRMAN PATERNO

Commissioner Peña.

COMMISSIONER PEÑA

Mr. Chairman.

COMMISSIONER ESPINA

Mr. Chairman.

COMMISSIONER PEÑA

Mr. Chairman, as I read it, even in the parliamentary form of government, I don't think there's a problem in referring it to Parliament, so I think the question really is comparing the terms thereof, similar contracts and other developing, becomes a little tedious so maybe that's the one that should be reviewed. But in any form, I think a one-liner of how to report it is of a discussionable issue.

COMMISSIONER ESPINA

If we adopt the transitory government, which will retain the President in her present position and exercising the same powers, the removal of this section will directly be contradictory to the provision. So I don't know how the Committee will resolve this. Maybe also in the transitory provision, it can be provided.

COMMISSIONER APOSTOL (*off mic*)

We remove this. Put this in the transitory provision.

COMMISSIONER BONDOC

Mr. Chairman. Mr. Chairman.

COMMISSIONER ESPINA

Yeah, that's what I mean. Perhaps a provision in the transitory provision that during transition, this will apply.

COMMISSIONER BENGZON

Maybe what we can do, Mr. Chairman, is move on and hold this in abeyance and we discuss this in plenary by which time, we will have a clearer mind about form of government and transitory provision.

CHAIRMAN PATERNO *(off mic)*
What is the sense of the Committee? Okay?

COMMISSIONER ESPINA
Maybe, maybe. I have no objection to that but I notice every time we are about to make some consensus, we throw it to the plenary. We might have a plenary which is so overburdened. Maybe what we can do as a compromise to this suggestion of Commissioner Bondoc is have a consensus na 'yon and then, let the plenary know that we already had a consensus on this, so that it will just be whether they agree or not.

CHAIRMAN PATERNO
Is our problem the question of who will report? If so, we can just say that Congress shall be notified. Whoever will enter into the contract, let him notify Congress.

COMMISSIONER ESPINA
Okay, that's good. That's what I mean. If we have a consensus on that...

CHAIRMAN PATERNO
Yeah, shall be notified of every...Okay.

COMMISSIONER APOSTOL
In accordance with the provision, Mr. Chair, and then remove the rest, "comparing it with the terms of other country."

CHAIRMAN PATERNO
Hindi na kailangan 'yon? So wala na 'yong, "comparing the terms thereof." Okay, "within 30 days from its execution." Okay, Section 3. There's no change in the first paragraph. The second paragraph.

COMMISSIONER APOSTOL
Why don't we just classify the second paragraph?

CHAIRMAN PATERNO
Yeah, alisin na lang 'yong period?

COMMISSIONER APOSTOL
Oo.

COMMISSIONER PEÑA
The period of, the numbers again.

CHAIRMAN PATERNO
No more numbers. Wala na 'yong, for a period not exceeding so many years. How about citizens of the Philippines may acquire...

COMMISSIONER PEÑA
Again, numbers.

CHAIRMAN PATERNO
You don't want the numbers? "Not more than 12 hectares."

COMMISSIONER APOSTOL

Yeah, but why put there, "Citizens of the Philippines may acquire..." That is one of his rights as citizen of the Philippines.

COMMISSIONER BENGZON (*off mic*)

No, as differentiated from the corporations of Filipino. But if the corporation is not Filipino, you cannot own these right now.

COMMISSIONER FERNANDEZ

Mr. Chairman.

COMMISSIONER APOSTOL

So, whether citizens of the Philippines or corporations owned and controlled by Filipinos, you can.

COMMISSIONER BENGZON

No, this is only for lands of the public domain, that's what I meant.

COMMISSIONER FERNANDEZ

Mr. Chairman, may I just point out one issue that is actually of concern of the country, of the entire Republic of the Philippines. This particular provision is actually being used by all Filipinos, corporations, for the acquisition of foreshore lands, acquisition of beaches that could be developed to international resorts or local resorts. And I do not see why our beaches suddenly become agricultural lands because they plant coconut trees. This is happening in the entire country. All foreshore lands are already occupied by private individuals granted to them by a certain national agency because it has been classified as agricultural land. So I do believe that it should be in the Constitution that these foreshore lands should also have their classification because as of the moment, all foreshore lands have been deemed agricultural. This is a reality. Even the congressman and the former president of NPC and now the most illustrious Floor Leader knows this. That's the only concern, Mr. Chairman, how we are supposed to settle this and address this problem, where foreshore lands are considered agricultural.

COMMISSIONER APOSTOL

These foreshore lands, Mr. Chair, if I may be able to say something, they're sometimes made into fish ponds, and if they become fish ponds, they become agricultural land. So the beaches actually are still under the classification of lands of public domain. It cannot be classified by citizens, or it cannot be converted into agricultural land. But unfortunately, once a contract is entered into for the development of fish land, the foreshore land is included. So, I think, the law should take care of this. Commissioner Fernandez is correct there. The DENR is the one doing this whole thing.

COMMISSIONER FERNANDEZ

Because in our city, most of the foreshore lands have already been occupied by private citizens because they planted one coconut and it has been considered agricultural because they developed it already. So you could apply for several hectares not only in Pangasinan but also in other parts of Ilocos and even in the Visayas, and I do not understand why instead the country benefiting or the public benefiting from such property because of the provision of not being very specific as regards to foreshore land, then certain agencies are using this particular provision for the transfer of ownership to private individuals.

CHAIRMAN PATERNO

What you are proposing is to introduce another classification?

COMMISSIONER FERNANDEZ

To simply state that foreshore lands shall not be considered as agricultural.

COMMISSIONER PEÑA

Mr. Chairman, or adding the line, "as defined by law," where Parliament again defines agricultural lands and it where it will be a better area where this can be discussed with the local government officials.

COMMISSIONER CATAN

Mr. Chairman.

COMMISSIONER APOSTOL

Mr. Chair, that proposal is found in the last section eh.

COMMISSIONER CATAN

Mr. Chairman.

COMMISSIONER APOSTOL

We can just amend the last section, "Congress may determine by law." Then that's it.

(Commissioners talk off mic.)

COMMISSIONER APOSTOL

Amend this a little. We have to amend also, classification.

COMMISSIONER CATAN

Mr. Chairman.

CHAIRMAN PATERNO

Commissioner Catan.

COMMISSIONER CATAN

I am an agricultural graduate. The point raised up by Commissioner Fernandez is really very logical. But the problem is, coconut, among many other plants, likes very much salty water. As a matter of fact, I have a very good concept paper that we can really increase the productivity of coconut along offshore lands by just irrigating them with seawater. It is really very hard to say that they are not agricultural because they can respond. They are really growing; this coconut really grows on foreshore lands. So this is the dilemma, Mr. Chairman, that I'd like to bring up as an agriculturist.

CHAIRMAN PATERNO

That can be covered by the definition in the legislation of what is foreshore. My understanding is that foreshore is generally defined as being a certain number of meters from the sea, from the shore.

COMMISSIONER BENGZON

Sir, I think, if I may be allowed to speak?

CHAIRMAN PATERNO
Commissioner Bengzon.

COMMISSIONER BENGZON

I think it's more of the implementation of the law rather than the law and those who really want to proceed and pursue the law, 'cause I know the things that happen in the same way in the land registration. They can just put in agricultural when it's not really but some people just don't want to pursue it. But I guess we don't have any business taking that up in the constitution because that's really amply provided for in the laws, in the specific laws. The question really is implementation which is not really within our realm anymore.

COMMISSIONER FERNANDEZ

Mr. Chairman, I would like to submit to the proposal of the good commissioner as regards to it and probably the constitution should have a stricter sense in the accountability of public officers.

CHAIRMAN PATERNO

We could also note that in our report that something...

COMMISSIONER FERNANDEZ

And also I'd like to ah...

COMMISSIONER APOSTOL

I have a proposal, Mr. Chair, since taking into account the last paragraph, "The requirements of conservation, ecology and development subject to the requirements of agricultural reform, the Congress may by law determine the kind and size of lands of public domains which may be acquired, developed or leased under conditions..."

CHAIRMAN PATERNO (*off mic*)

...and size?

COMMISSIONER APOSTOL

No, it should be kind.

CHAIRMAN PATERNO

Would that answer your...? I hope that answers your concern.

COMMISSIONER FERNANDEZ

Ah, yes, Mr. Chairman. I'd also like to make the Body aware that some agencies could even convert national parks into fish ponds with the approval of everyone, that's why, as mentioned by Commissioner Bengzon, it's a matter of accountability. That's why my concern shall be addressed in another form and not necessary in the Patrimony issue.

CHAIRMAN PATERNO

Thank you. May I clarify from the Committee, did we agree that the last paragraph of that second section, or second paragraph of Section 3 with respect to, "Citizens of the Philippines may acquire not more..." Tanggalin na rin natin 'yon? Alis na 'yon? Okay. Okay, we move on to Section 4? Well, I don't think we have questions on Section 4. We just want Congress, rather than the President, to be the one to do this. Section 5. Retain, no problem.

COMMISSIONER ESPINA

Wait a minute, Mr. Chairman, Section 4, "The President shall as soon as possible determine..."? So it is the President, not Congress.

CHAIRMAN PATERNO

Yes, the concern of the local government units is Congress is taking too long to make this definition. They do not pass the required laws.

COMMISSIONER ESPINA

I would like to maintain the provision by law as far as the parks and forest lands are concerned.

CHAIRMAN PATERNO

Masyado raw mabagal ang Congress eh. The problem happens that a lot of lands which were formerly identified as forest are now kalbo and they want the, the local governments want this reclassified as agricultural so that they can use it for developmental purposes.

(Commissioner Espina speaks off mic.)

CHAIRMAN PATERNO

Well, we can say, alisin na lang natin 'yong national parks. "The President shall as soon as possible determine the specific limits of forest lands."

COMMISSIONER APOSTOL

And then the next sentence there, "shall be conserved..." This one is also useless eh.

CHAIRMAN PATERNO

Alisin na rin 'yong national parks.

COMMISSIONER APOSTOL

Alisin na rin 'yon, "Congress shall provide for...to prohibit logging."

CHAIRMAN PATERNO

We can even remove that.

COMMISSIONER APOSTOL.

Let the President take care. Actually, under the present law, logging in endangered forest and watershed is prohibited.

CHAIRMAN PATERNO

Is already prohibited. Okay, Section 5, we have no problem with that. The committee agreed to retain it. Section 6, I'd like to propose that we retain Section 6 so that the authority of the state will continue to be upheld by the constitution. You know, the free market people don't like this. But it's perhaps useful to retain that authority of the state there. So instead of duty, we just maintain the authority of the state. Commissioner Varela.

COMMISSIONER VARELA

Covered by other provisions, Mr. Chairman? There is a need to focus on this.

CHAIRMAN PATERNO

On?

COMMISSIONER VARELA

Yeah, to focus on this. I think this can be deleted as well.

COMMISSIONER APOSTOL

This one is a general provision. That's just a policy, without an enabling law

COMMISSIONER VARELA

This is already covered by other provisions.

CHAIRMAN PATERNO

You want it deleted. We continue to delete it. The Chair abides by the sense of the Committee. Are there, are there any objections to deleting this? I just wanted to bring it up. No objections? So we delete Section 6 in its entirety. Okay. Yes?

COMMISSIONER GONZALEZ

Mr. Chair, if you look at your rational, on the third column, it states very clearly that to assert the state's authority to intervene whenever private sector abuses its market power no, needed reminder to free market enthusiast. I would say that, I think, we should retain it. Because there is this, while I am also private enterprise, but I feel that some kind of a protection should be there. I agree with your original article. Commissioner Catan.

COMMISSIONER CATAN

I also agree with our Commissioner Gonzalez that a statement, a policy statement, after all this is constitution and to guide our legislators in the future to make this policy reality by legislation. But I think we should, it's a very good justification. This is your work, your Committee's work. The use of property based on social function and who can debate on that. And all economic agencies contribute to the common good. Who can debate on that? It's a very good statement, policy, and after all, good governance is interpreting and implementing good policies. And this can be a very good guide which should be, being a constitution.

COMMISSIONER GONZALEZ *(off mic)*

Mr. Chair, I move that we retain...

CHAIRMAN PATERNO

Okay.

COMMISSIONER CATAN

I second.

CHAIRMAN PATERNO

Any objections? Well, can we have a vote now? Who will vote to retain this provision? In Section 6, yes. *(The Chair counts the votes.)* Who wants deletion? Abstain? It's carried. So we retain it.

COMMISSIONER LAUS

Ah, Mr. Chairman.

CHAIRMAN PATERNO

Commissioner Laus.

COMMISSIONER LAUS

Yeah, can I go back to Section 5 because I recall a very strong suggestion coming from the Cordillera people and this has something to do with the statement, "subject to the provisions of this constitution on national development policies and programs." They want it straight to the point like, "The state shall protect the rights of indigenous peoples..." without being subjected to anything. They want a very, clearer protection or whatever. And they don't want to be subjected to, I don't know the legal implication or whatever this, "subject to," implies if we take it out.

CHAIRMAN PATERNO

So your proposal, Commissioner Laus, is to remove "subject to."

COMMISSIONER LAUS

Yes, the IPs are very strong about it and if this has no other implication, I would like to propose that the statement will be, "The state shall protect the rights of the indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being."

CHAIRMAN PATERNO

Are there any objections to the proposal? I hear none so let's carry that out. So alis 'yong, "subject to the provisions," that whole phrase. "Shall protect the rights of..." Okay. Carried. Section 7. Section 7 was proposed to be deleted. But I felt that this was the proper place and that was the proposal of the 1999 Preparatory Commission, that this was the proper place to introduce the classification of industrial, commercial and residential lands into the constitution, because as you remember the Supreme Court decided many years ago that all land, all private land, was originally agricultural. And so, the Supreme Court decision was all lands, in effect, are subject to the citizenship requirements of ownership. Here, we have the opportunity to clarify that we are referring only to private, agricultural lands which are not classified as industrial, commercial or residential. This is where we introduce the idea that agricultural lands shall only be those which have not been classified. We're talking of Section 7, yes.

COMMISSIONER BENGZON (*off mic*)

Classified for...?

CHAIRMAN PATERNO

Yeah. If they are classified as industrial, commercial or residential, then they may be conveyed to foreign ownership, except that to answer the... This may be a controversial one but I thought I should bring it up for discussion by the Committee. The idea is that Congress should somehow be able to declare certain industries or businesses as subject to an ownership, citizenship restriction. It might be argued by others that absent a condition like this, the Constitution is saying that all kinds of activities should be opened to foreign...

COMMISSIONER BENGZON.

Congress shall define the condition?

CHAIRMAN PATERNO.

We're still talking of Section 8. The concern of a lot of people is that pag binuksan na sa foreign investor, baka wala nang matirang Filipino-owned na lupa because the foreigners have so much more money than we have. We put in that safeguard to make it clear that Congress still can function on the conditions for ownership of foreign land, of these kinds of land.

COMMISSIONER PEÑA.

I have no question on the policy. It's just that possibly we can remove the 60% of majority, just the numbers. I have some problems with the numbers.

COMMISSIONER FERNANDEZ.

Mr. Chairman, I do agree with Commissioner Peña. Section 10 po, it shall be 5%, 8%.

(Commissioners speak simultaneously.)

CHAIRMAN PATERNO

Let's proceed to Section 9. The idea here that let us reserve Congress the right to say that some industries should not be foreign, for example, production of munitions, etc.

COMMISSIONER CATAN.

Another observation, and I go along with you, Mr. Chairman, I cannot understand why, let us say, for instance, Indonesia, where they are very strict about ownership of their land, and yet so many foreigners go not only on natural resource but also on other businesses. And I believe, Mr. Chairman, that is in the matter of negotiation. And also, this is just for the sake of example, about oil exploration, or it can be geothermal exploration, what they do is they spend in the exploration. And once it is already very good, then they can just say, "You can own 30% of the business. Ours is 70%." But it can be covered by negotiation. So I think your view of having Congress to be the one to tackle this will be okay.

COMMISSIONER BENGZON.

I agree but just like what Commissioner Peña said, I would like to take the 60-40. If we allow them anyway, let's allow them, and let's regulate by law. Because this is exactly what happened to our mining laws, our exploration, development, utilization. It took a long time because we were pegged with the numbers. We couldn't change our law unless we change our Charter. Pero in fact, pinilit na lang 'yong mining law nga eh. The rationale given by the Supreme Court is that we have to give the executive a leeway. It's not really good. If you're a pure constitutionalist, you say, "Where did they get that kind of decision?" So I think we'll leave it really for the exigencies of time, when the national interest dictates, or what is the mood of that time of that particular.

CHAIRMAN PATERNO.

How would you word it?

COMMISSIONER BENGZON.

Just take out the number. This is good. We need to say "regulated..."

COMMISSIONER FERNANDEZ.

Mr. Chairman, if that should be the case, then the section should be deleted already because if that should be the case, I believe with only one provision, we would tackle a lot of the sections in this particular article. If we leave it up to Congress to decide on the matter, then we won't have to handle all the nitty gritty of this particular article.

COMMISSIONER BENGZON.

Mr. Chairman, that's true. I think even before the consultations, we were really geared towards liberalizing everything and actually taking out all the economic policies out of the Constitution and put it in the laws, especially those mga 60-40. And just put motherhood statement and directional statements.

COMMISSIONER FERNANDEZ.

One section lang pwede na.

COMMISSIONER BENGZON.

Hindi naman. Anyway, we'll just take it out and then, I think there's also one here for mass media. We'll go to that after.

CHAIRMAN PATERNO.

Suppose we say, "The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, provide for limitations in foreign ownership of certain industries."

COMMISSIONER BENGZON

There you go. It's a directional, motherhood statement.

COMMISSIONER FERNANDEZ.

Mr. Chair, this section already tackles private agricultural, public lands, natural resources, or types of use of lots, and the economy and mass media and even, just for this one section it already tackles everything, even for education. Leave it to Congress to make laws and decide on the matter...

CHAIRMAN PATERNO.

So what shall we say about mass media and so on, education?

COMMISSIONER BENGZON.

I thought we said we're going to liberalize the whole thing?

COMMISSIONER FERNANDEZ.

Section 10 already covers everything. You're a brilliant author; you're a brilliant Chairman. You were able to answer all our problems.

COMMISSIONER BENGZON.

That was what his intention really. But I think you were just putting in some of the concerns.

COMMISSIONER PEÑA.

Mr. Chairman, by doing this section, we also tighten up, rather than give everything individually, and then we just pick up from things that are different from the economy.

CHAIRMAN PATERNO.

You know, we can continue with the, you might say, innocuous provisions, such as the one about promoting preferential use, Filipino labor...

COMMISSIONER BENGZON.

How about Section 11, can we entirely...?

CHAIRMAN PATERNO.

This appears in the Constitution since 1935. Unless we explicitly remove, Congress might have difficulty.

COMMISSIONER BENGZON.

Because you know what, if we really want just one section, let's say, Section 10, to address liberalization, we have to make it tight because we, lawyers, will look at it and we say it's only when the national interest dictates and upon recommendation of economic and planning agency.

CHAIRMAN PATERNO

May I ask you to handle while I attend to my needs?

(Laughter)

SUSPENSION OF MEETING

COMMISSIONER APOSTOL

Mr. Chair, five-minute recess.

COMMISSIONER FERNANDEZ

Five-minute recess because the proposal, we cannot continue without you.

RESUMPTION OF MEETING

CHAIRMAN PATERNO.

We're now on Section 10. Would you agree to maintaining that last paragraph, "The State shall regulate and exercise authority over foreign investments."?

COMMISSIONER GONZALEZ

Yeah.

COMMISSIONER BENGZON

Yes.

CHAIRMAN PATERNO

Okay. Section 11. What are your ano on Section 11? 'Yon na lang ang pinakamahirap eh. Public utilities.

COMMISSIONER ESPINA.

Why don't we open this?

CHAIRMAN PATERNO.

Well, we are.

COMMISSIONER BENGZON

Yeah, put it all...

COMMISSIONER PEÑA.

Yes, covered...

CHAIRMAN PATERNO

Inalis na natin 'yong 60% eh.

COMMISSIONER ESPINA.

Alisin na. Para mawala 'yong monopoly ng PLDT at saka Meralco.

COMMISSIONER BENGZON.

It doesn't make sense if you just remove the 60% if you're opening it up. You will have to take it out. And then you will expand Section 10, not only to cover those when the national interest dictates but actually all...

COMMISSIONER GONZALEZ.

We must have that statement.

COMMISSIONER BENGZON.

Yeah. I think so, Sir. We would have to craft, either expand Section 10 or craft a Section 11 that will encompass public utilities, mass media, education.

COMMISSIONER ESPINA.

May I just give an observation? On the basis of my experience, both in the 1971 ConCon and nine years in Congress, that these limitations, I suspect, were insisted to be in the Constitution in order to protect the current holders of powers in the economy in the country at that time. They were actually protecting para walang makapasok na bago. That's why if we want to liberalize, let us liberalize all the way.

COMMISSIONER BENGZON.

And still say that the state shall regulate and exercise authority over foreign investment.

COMMISSIONER ESPINA.

OK. Wala na 'yang 60%, 70%.

COMMISSIONER BENGZON.

And that Parliament will craft laws in accordance with a particular industry.

COMMISSIONER PEDROSA.

Second the motion.

CHAIRMAN PATERNO.

Remove the section on public utilities?

COMMISSIONER BENGZON

Yes, but refer to particular ano...

CHAIRMAN PATERNO

My concern only is that the limitation on ownership of public utilities has been there since 1935.

COMMISSIONER PEDROSA.

That's why we're here. We're suffering from these economic problems.

COMMISSIONER ESPINA

That's why we're amending.

CHAIRMAN PATERNO.

It's been there for three constitutions. Let me be very frank. The largest corporations in this country are in public utilities. Whether they be airlines—Lucio Tan, electric power, water distribution—Ayala, telecommunications—PLDT, shipping—Aboitiz, Chiongbian, Gothong, etc. Now I am afraid that Congress may not be up to removing the limitations or sustaining the three Constitutions. That's my problem. If it's the Constitution, it's done. But if we leave it up to Congress, it may not be done.

COMMISSIONER ESPINA.

Mr. Chairman, let them make the decision. We recommend to them that we open. And then let them face their own conscience every session day of Congress. I can also cite an example of another thing, which has not been there and is now there. There was no anti-dynasty provision in the 1935 Constitution. There was none in the 1972. Suddenly it came in the '87 because of the reaction to Marcos and the Romualdezes. So exactly the same that from '35 to the '72, nandoon na 'yon for three decades. So you can cite example on other areas. So let Congress, anyway they will have the final say. But let it come from us that we are allowing foreigners to own land but we are limiting them from public utilities. We will be inconsistent.

CHAIRMAN PATERNO.

No, precisely, we've been saying that we should liberalize, remove the 60-40 requirement.

COMMISSIONER ESPINA.

Yes, we should remove.

COMMISSIONER ROMUALDO.

Ah, Mr. Chairman.

CHAIRMAN PATERNO.

Commissioner Romualdo.

COMMISSIONER ROMUALDO.

Thank you. Actually, I am about to be in the sunset of my life. So I may not or most of us may not benefit from liberalization. But after in existence in this world for 70 years, I really saw that this provision should be liberalized. Thank you so much.

COMMISSIONER ESPINA.

May I disagree? I disagree that he is in the sunset of his life, only for today.

COMMISSIONER JURADO.

Right now, Mr. Chairman, I'm thinking of putting down. First I apologize for not having been around from the very beginning of our session. But if the discussions mirror the consultations that have taken place here and there, I would think that the general sentiment that I now think is being expressed of liberalization is correct. Now my own thinking is something like this: will it be possible to make a declaration in the Declaration of Principles that whatever right we give to Filipinos we also extend to foreigners so long as they are citizens that give us these reciprocal rights? Now when we go to the economic provisions, that's when we make the exception.

CHAIRMAN PATERNO.

How can you make an exception to a principle?

COMMISSIONER JURADO.

Okay, that's a good point. So let's take it away. Let it be stated as a general proposition that economic policy is open to foreigners, and then subject to some exceptions, which will be enumerated, mainly land. In presenting a matter like this, we do not anymore need to talk about public utilities, educational institutions, advertising, media because they will all be covered by the rubric of that major declaration.

COMMISSIONER ESPINA.

Except, Mr. Chairman, that they are so provided in the present Constitution and it cannot be amended by a general statement. Meaning, that this particular provision will still stay and then you have a general, so we have to deal with these specific provisions in the Constitution because it's there now eh. If there is none, then that suggestion would be...

CHAIRMAN PATERNO

Okay, one comment na lang.

COMMISSIONER JURADO.

Just one comment. I'm also concerned that our present Constitution is overwritten.

CHAIRMAN PATERNO.

Yes, I agree.

COMMISSIONER JURADO.

There are so many provisions there that really need to be deleted. Hence, we cannot limit ourselves to what Gerry, Commissioner Espina, I always call him Gerry that's why I miss his second name all the time, is referring to that we more or less structure our thought in accordance with provisions already written down. I'm saying let us not do that. Let us rewrite, revamp this Constitution if need be.

COMMISSIONER ESPINA.

Delete. Then that proposal becomes...

COMMISSIONER JURADO.

Alright. So before we proceed to the deletion let's agree first on that general statement and then agree on the exception, and then agree on all the deletions.

CHAIRMAN PATERNO.

What we have been doing is tackling specifics. And you're saying let's go back and redo this. I'm afraid it's going to take us the rest of the day and maybe tomorrow, to do it according to that.

COMMISSIONER LAUS.

I would like to believe that we still tackle the issue on per subject matter because when we consulted the people, we asked them precisely on those. And I don't think there is one sweeping decision or view from the public that we consulted. In fact there's a view pertaining to education, there's a view pertaining to mass media, public utilities, and advertising, different percentage and different approach. So I propose that we will address this provision as they are and make the amendments, if there are any.

CHAIRMAN PATERNO

The Co-Chairman.

COMMISSIONER ORTIZ-LUIS.

Regarding the statement of the Chairman a while ago that he's worried because the other Constitution does not carry it, I subscribe to the inclusion of a general principle as proposed by Mr. Jurado because that's precisely, we'll put the onus on the Congress to address this once and for all if we have a general principle at hand. We cannot address all the consultation areas. I think, on principle, we have arrived at a conclusion that it showed that, you want to treat everybody, that the general principle is liberalization except on the land.

COMMISSIONER LAUS.

I beg to disagree, Mr. Chairman. I don't think that's the sense of the public consultation. It's not for liberalization.

COMMISSIONER PEDROSA.

Which public are you talking about?

COMMISSIONER LAUS.

I'm talking here of mass media, for example. Even in the proposal, there's nothing here that says, are we fully opening mass media? Not even in this recommendation of the Committee. Because the public consultation provided some sort of limit and I don't remember a consultation where the people are unanimously in favor of liberalization.

COMMISSIONER BENGZON.

I think we can trump that with another kind of consultations. But I guess as a Body, we really have to know, are we gonna be on the populace vote or are we gonna be visionary about it? Taking, of course, into consideration what we've heard. But it may also appear that Congress may limit this when they want to but let's just take this out of the Constitution.

COMMISSIONER PEÑA.

As I mentioned earlier, I think it's important that when we say we're liberalizing, we're only taking it out from the Constitution and giving it to the Parliament to decide at what conditions at that time and space, they will then provide, which they will be coming to have to defend that every time they come into government and that might alleviate our economic situation.

CHAIRMAN PATERNO.

Would you agree, however, if all of this is given to Congress, that the liberalization will not take effect until after Congress has made its decision? I mean the implementation has to be there.

COMMISSIONER BENGZON.

Sir, we will have to provide that in the transitory provisions. At the end of this ano, I will have to ask for, what is our transitory provision on this thing?

CHAIRMAN PATERNO.

There is already a proposed transitory provision.

COMMISSIONER VARELA.

Mr. Chairman, in the light of that, I think we can delete this provision because we can just cover it up in the transitory provisions. We don't have to go into too much argument on this because our...

CHAIRMAN PATERNO.

Okay, I have had my say. I just want to say that in the consultations in Mindoro, they were against liberalization of public utilities, until I made a statement, “Ilang pamilya ba ang maykaya sa public utilities?” And at that point, they said, “Yes, let’s liberalize pero large-scale lang.”

COMMISSIONER PEDROSA.

Mr. Chairman, Mr. Chairman.

COMMISSIONER VARELA

I think that does not cover particular areas, Mr. Chairman.

COMMISSIONER PEDROSA.

Mr. Chairman, I think the companion principle of letting Congress be the implementing body for investments or policy-making body for investments is that we should not put a nationality to investment. Why do we keep putting this, like, “operation of enterprises wholly-owned by Filipinos”? I mean, this is not the world now. The world now is really where investment is needed and the people of a country are not able to afford it, then, you did not have to put that down. Just remove the nationality provision.

CHAIRMAN PATERNO.

Intellectually, I agree with you. But practically, I am saying that if we want this Constitution to be approved by the plebiscite, let us try to anticipate what are the objection points. And if not necessary, let us not impose them. You know, you want to delete certain provisions, but the fishermen might object and so on. Why have enemies when you can have friends?

COMMISSIONER ESPINA

Mr. Chairman, this is one time when I join the...

COMMISSIONER ROMUALDO

Mr. Chairman.

CHAIRMAN PATERNO

Commissioner Romualdo.

COMMISSIONER ROMUALDO.

Yes, thank you. Constitution-making is not addressed to any sector. It should be the totality of the nation that we should address. In short, why worry? The fisherfolk, for instance, as you said, might object, or the urban poor. Again, I’m even against all these kinds of sectors because you are classifying Filipinos already. Now, constitution-making is for every Filipino, whether we like it or not. It should be a vision what will happen, not only tomorrow, but forever and a day. That should be a Constitution. So I, for one, will not worry.

CHAIRMAN PATERNO

Commissioner Bengzon.

COMMISSIONER BENGZON.

I will just make a one last ditch effort for liberalization. In the study by the World Bank, one of the woes of the Philippines, and a major woe, is the fact that only a few oligarchs and a few family-owned in the Philippines hold the economic power. And although in our Constitution, we have a section there against monopolies and restraint of trade, we do not have an anti-trust law. And I think this particular provision here only addresses to that particular family or families who own

big telecommunications company, public utilities. So in the idea of public distribution of wealth, without us having an anti-trust law yet in place, and a restraint against monopoly that does not have any teeth in law, I think we will be well-equipped if we take this out and liberalize. Thank you.

CHAIRMAN PATERNO.

Just one comment before, I want to say my piece. Upon joining the Constitutional Commission, I resigned, and I provided copies of the SEC notification, I resigned from four companies. The four companies are two real estate companies because they might be affected by whatever we do with respect to lands. And I resigned from two Lopez companies, Benpres Holdings and First Philippine Holdings. So I am saying what I've said because I'm now free, not being a director. But if the majority wants this provision or this article, this section, to be removed, then I have already, at least, said my piece in public. It has not been because the Chairman did not push for it. It is because the Committee insisted on it.

COMMISSIONER PEDROSA

Thank you. I think that's a...

COMMISSIONER ROMUALDO.

Mr. Chairman, 'yong sinasabi ng Tagalog, nahirapan ako kasi Bisaya ako eh, 'yong utang na loob, mayroon din kasi you have served them. But I saw your being really, ever since, a statesman. And that's what you are doing today.

CHAIRMAN PATERNO.

Thank you.

COMMISSIONER ROMUALDO.

Thank you so much, Mr. Chairman.

CHAIRMAN PATERNO.

But, you know, I had to say what I've said. But it's up to the Committee to make its decision.

COMMISSIONER ESPINA

I was just trying to...

COMMISSIONER ROMUALDO.

I move, Mr. Chairman, that the Committee will recommend liberalization on public utilities.

COMMISSIONER ESPINA.

Full liberalization.

COMMISSIONER ROMUALDO.

Yes, Mr. Chairman.

COMMISSIONER PEDROSA.

I second the motion.

CHAIRMAN PATERNO.

So moved. So delete the section on...

COMMISSIONER PEDROSA

Yes.

COMMISSIONER ROMUALDO.

Mr. Chairman, before we go to the next section, Mr. Chairman. Let me emphasize that those who voted for this particular provision, when we go to the plenary we hope nobody will speak against.

COMMISSIONER BENGZON.

Bakit, mayroon bang gano'n?

COMMISSIONER ROMUALDO.

Baka mayroon. Sa Congress nangyayari 'yan eh. Because if you belong, if you're a member of a committee, unless you make, right in the Committee itself, a reservation. Now nobody made a reservation so we hope those non-members may be the one to interpellate or ask some questions. Thank you very much.

CHAIRMAN PATERNO.

So the Committee wants deletion of Section 11.

COMMISSIONER ESPINA

In the limitation on public utilities.

CHAIRMAN PATERNO

Deletion of the entire section.

COMMISSIONER ESPINA.

Yeah, in the spirit of liberalization.

CHAIRMAN PATERNO

Okay. Delete.

COMMISSIONER GONZALEZ

Mr. Chair, may I just have one opinion.

COMMISSIONER ESPINA

For once, Mr. Chair, I am joining Commissioner Pedrosa.

(Laughter)

COMMISSIONER PEDROSA.

Thank you. I am very honored.

CHAIRMAN PATERNO

Commissioner Gonzalez.

COMMISSIONER GONZALEZ.

I would just want to call attention to the group that when Congress picks up the drafting of the Constitution, they're going section by section. And franchise of public utilities is a very important issue. Are we just going to delete this and not even mention? I feel that what the Chair has put here is relevant to the submission of the entire recommendation. Basta mawawala na lang 'to.

CHAIRMAN PATERNO

Mawawala talaga.

COMMISSIONER BENGZON.

Hindi po. That is just a repetition of the present provisions in the Constitution.

CHAIRMAN PATERNO

It's not, it is a deletion.

COMMISSIONER BENGZON

I mean, basically...

CHAIRMAN PATERNO

It's a deletion of the provision.

COMMISSIONER ROMUALDO.

To be orderly, if Commissioner Gonzalez is aggrieved despite that she voted and then she voted in favor, and therefore she has the right to request for reconsideration.

CHAIRMAN PATERNO

At the plenary.

COMMISSIONER ROMUALDO

No, here in the Committee, not in the plenary.

CHAIRMAN PATERNO.

Are you requesting reconsideration?

COMMISSIONER GONZALEZ.

Yes, I feel that we should follow the correction that the Chair has made on the final redraft. So that is my opinion.

COMMISSIONER ESPINA.

May I also support the position of Commissioner Gonzalez? I am looking at this possible scenario because we are now removing the issuance of a franchise. It removes the national character of a public utility endeavor. So I would like to reconsider our previous decision, still using "no franchise," but removing citizenship requirement na lang.

COMMISSIONER GONZALEZ.

Correct. That's my stand. I have a motion.

CHAIRMAN PATERNO

It's no longer...Is that a motion?

COMMISSIONER ESPINA.

To reopen.

CHAIRMAN PATERNO

Commissioner Bengzon.

COMMISSIONER BENGZON.

Yes, sir, but in principle that's okay. But look at it in reality, in practical terms. How are you gonna say it? "No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except, shall be granted...?" So you say "All franchise, certificate, or any other form of authorization for the operation of a public utility shall now be liberalized?" I mean, you don't also know what Congress is going to say.

CHAIRMAN PATERNO.

No, "shall be granted except to..."

COMMISSIONER BENGZON.

Except to?

CHAIRMAN PATERNO.

"...citizens of the Philippines or to corporations or associations..."

COMMISSIONER BENGZON.

But then you're not liberalizing, Sir.

COMMISSIONER GONZALEZ

Read on, read on.

COMMISSIONER BENGZON

That means you're only saying...

CHAIRMAN PATERNO.

No, no, excuse me. You're saying that only domestic corporations may receive a franchise from Congress. Foreign corporations may not receive a franchise from Congress.

COMMISSIONER GONZALEZ.

Yes, that's right.

COMMISSIONER BENGZON.

But to operate a public utility you really need a franchise. So therefore, you're limiting the franchise to 60-40.

COMMISSIONER GONZALEZ

No, no, no.

CHAIRMAN PATERNO.

The corporation must be organized under the laws of the Philippines. It must be a domestic corporation.

COMMISSIONER GONZALEZ.

Right. Domestic corporations can be 100% foreign-owned.

CHAIRMAN PATERNO.

Can be foreign-owned. There are a number of domestic corporations which are foreign-owned.

COMMISSIONER BENGZON.

It cannot be legally well crafted. There is an "except."

CHAIRMAN PATERNO.

We can say, "This shall be granted only to citizens or to domestic corporations."

COMMISSIONER BENGZON.

Sir, when we say foreign corporations we normally mean...

COMMISSIONER ESPINA.

Maybe what we can do, Mr. Chairman, is, "No franchise except to locally-registered corporations which maybe 100% owned by foreigners but registered in the Philippines." That is the idea.

COMMISSIONER ORTEGA.

Mr. Chairman, after listening to all the arguments, what has to be deleted following their line of thinking, is just "at least 60%" and retain the whole provision after that, which would be, if you delete the "60 per centum," it simply means, "can be granted to citizens or to domestic corporations."

COMMISSIONER BENGZON.

In practical terms, we do this, Sir, no foreign corporation will come here. They really anyway organize here because the taxation is not, is beneficial if you do it through here. I mean if you go through 100%.

COMMISSIONER GONZALEZ. *(off mic)*

We're following you because then, they can also register as a local corporation and they can receive a franchise.

COMMISSIONER BENGZON

I just want the wording, but it doesn't...

COMMISSIONER GONZALEZ

If you want to reword it, try to see how you can word it. But that is the substance.

(Commissioners speak off mic.)

CHAIRMAN PATERNO *(off mic)*

We can say, "Corporations registered...must be corporations under the law of the Philippines."

COMMISSIONER PEDROSA

Better, better, Mr. Chairman.

COMMISSIONER BENGZON.

So therefore you don't want an unincorporated joint venture, which is normally the way to go now? There is such a vehicle called unincorporated joint venture.

CHAIRMAN PATERNO.

Nationally registered corporation.

COMMISSIONER PEÑA.

Mr. Chairman, for those who want the deletion of Section 11, it would seem that they would be looking at Section 10 when, say to speak, the Parliament, on recommendation of an economic planning agency, says utilities, so that's where they're covered, under Section 10. But

specifically, as I'm hearing today, there are those who want specific mention of a franchise, certification power for utilities, as mentioned, allowing local corporation... It's just a matter of style.

CHAIRMAN PATERNO *(off mic)*

Utility can be made without a franchise.

COMMISSIONER PEÑA

So it's just a matter of style. So it's just a question of how it's worded, I believe.

SUSPENSION OF SESSION

COMMISSIONER ROMUALDO

Mr. Chairman, may I request for a recess so you can reconcile?

CHAIRMAN PATERNO

Recess, recess.

RESUMPTION OF SESSION

CHAIRMAN PATERNO

Session is resumed.

COMMISSIONER FERNANDEZ.

May I just make some information as regards to what is happening in local government. There was this one big business that entered a city in the Cordilleras. The council members, the mayor and the vice-mayor thought that the entry of this big business would be of great benefit to the city. Unfortunately, they found out that this certain business was only registered in Metro Manila and registered the big establishment in Baguio City as a branch. So what happened was that this big mall in the city was remitting all its taxes to Metro Manila and only was paying the mayor's permit for the branch. The city did not benefit anything from it. The thing is if foreign companies will not be registering as domestic corporations, then all revenues might not be retained in the country. Like, they're earning so much money in the Philippines, but they shall be remitting everything in their mother company outside of the country. That's my only concern as of the moment. But the only thing that we could see right now is that as long as Congress will be granted the authority to franchise these things, they won't mind. But what we're talking about right now is the remittances of the revenues. If foreign corporations will not form their own domestic corporations in the country, then it also goes to say that all the earnings will be brought out of the country. That's the only information that I may want to be settled.

CHAIRMAN PATERNO.

Thank you. May I just emphasize that we are not talking about ownership of public utilities. We're only talking about the entities that can receive franchises from Congress. The franchises are necessary to operate the public utility.

COMMISSIONER PEÑA.

Mr. Chairman, again it would be a matter of style, I think, that three things being discussed is, one, that Section 10 be enlarged to incorporate all the other sections; two, we rephrase Section 11 as a second option; and the third, that we move this option to the transitory. So, with those three, I think, we can come with the decision, we can solve the problem immediately.

CHAIRMAN PATERNO.

Okay. Let me then ask how many of us want this section to be deleted completely? Section 11.

(The Chairman counts the votes.) Deletion? Deletion of the Section? You want deletion of the section in toto, the whole thing. *(The Chairman resumes counting the votes.)*

Those who want the section to be retained possibly with some amendments?

COMMISSIONER ESPINA *(off mic)*
As contained in the second column.

CHAIRMAN PATERNO *(Counts the votes)*
So, the section is deleted completely by the Committee.

COMMISSIONER GONZALEZ. *(off mic)*
But will be incorporated in the other...? Will it be incorporated in the other...?

CHAIRMAN PATERNO.
No, but maybe, but you reserved your right having voted against to raise your question in plenary.

COMMISSIONER BENGZON.
I just wanna make a final, if the concern is that we take this out of Constitution, there will be no laws. I tell you gentlemen, in private practice, before you can get a franchise, there is an NTC law, the DOTC law, before you can even get the mass media, you have to also go to the DOTC. And one of the requirements is to incorporate, of course right now presently at 60-40. And without the endorsement of the DOTC and the NTC, the SEC will not grant you a license to do business. So, it's amply still provided by law. But what we are saying is take it out of the Constitution. Thank you.

CHAIRMAN PATERNO.
Okay. So, Section 11 is deleted by a 5-4 vote. Section 12, "The state shall promote the preferential use of Filipino labor, domestic materials and locally produced goods and adopt measures that will help make them be competitive." Is that alright to retain? Thank you.

Section 14, or Section 13, delete. The section has not being meaningful. That's also the sense of the Committee before, so I presume there are no objections to that. Section 14.

COMMISSIONER CATAN.
To save time, I would like to speak in favor of retaining Section 14 with an amendment.

CHAIRMAN PATERNO.
What is the amendment?

COMMISSIONER CATAN.
It is to add the word, "the sustained development of a reservoir of national talents consisting of Filipino scientists, inventors..." and so on. May I just give the following information? No more? Okay.

CHAIRMAN PATERNO.
Okay. No, I don't think there's any need.

COMMISSIONER CATAN.
No more? Okay.

CHAIRMAN PATERNO

Any objection to include the inventors? No problem?

COMMISSIONER BENGZON

Sir, can I just ask?

COMMISSIONER CATAN

Just a little background, Mr. Chairman. You know, there is what we call Inventors Incentives Law and since 1967, there was this R.A. 3850, the first Inventors Incentive Law, then it was called Filipino Inventor Commission. And then sometime during the Marcos regime, there was this P.D. 1423 comes the Inventors Incentive Law by the creation of PIDI, Philippine Inventions Development Institute, which was to ask even the birth period of the inventors. And then come now 1992 is R.A. 7457, the present copy inventor's law. So more or less, that will give you already an idea that there are really scientists that are promoting their products that are so-called not patented and the so-called popular technology. And then there is the so-called patented technology. That's why the word invention or inventors is important. That is all, Mr. Chairman.

COMMISSIONER BENGZON

Mr. Chairman.

CHAIRMAN PATERNO.

Is there any objection?

COMMISSIONER BENGZON.

No, no. No, objection. I just want to ask if one of the proponents of Section 14 can just give me a rational. I just want to play the devil's advocate. In the idea and in the spirit of liberalization, which would also include in the practice of profession, I am a New York attorney as well, Mr. Chairman, so I was given that reciprocity there, what is the concern in limiting the professions in the Philippines to be limited to Filipino citizens?

CHAIRMAN PATERNO.

"Save in cases prescribed by law"?

COMMISSIONER BENGZON.

In the Constitution, di ba, it's all? There is a corresponding section to this. In the Foreign Investments Act, they have put down everything including law, architects, engineers, etc. I just want to act somebody, the proponent, to defend it.

CHAIRMAN PATERNO.

I used to handle the Board of Investments Law. And we only, at least in my time, limited those professions which were not covered by liberalization under law. In my time, in the regulation by the Board of Investments, we limited foreign employees only in those professions which are not liberalized by law.

COMMISSIONER BENGZON.

Yes. But if you, I will have to look at it. I think it's in the Constitution or I think it's in the FIA which is the Foreign Investments Act. There's a long list of, really long list of whose professions are limited to citizens like lawyers, doctors, architects, engineers, those that basically need government licenses.

COMMISSIONER CATAN.
Mr. Chairman, if I may...?

COMMISSIONER BENGZON.
Why, Sir? Why, if it's in the spirit of liberalization, why don't we just open this up? I'm just asking.

COMMISSIONER CATAN.
Mr. Chairman, can I speak on this?

CHAIRMAN PATERNO.
May I just say the reason for this has been in some cases the idea that Filipinos will not get displaced in professions of which there are plenty of qualified Filipinos. That really is the point and it is very hard to argue against that in view of the unemployment situation that now exists.

COMMISSIONER CATAN.
Can I also add, Mr. Chairman, on this? I am also a Member of the Philippine Regulatory Commission with the Board of Agriculture that more or less regulates the profession. And I'm very happy to know that there are also agreements done with other countries and so that can be covered by that and that most of this may even involve reciprocity.

CHAIRMAN PATERNO
Yeah, they need a bargaining point.

COMMISSIONER CATAN
But I think it is very important to have this because if you notice the word, "promote," it is just promoted and the other one is "encourage." It does not really completely limit it to foreigners. So those according, for instance, with some reciprocal agreements, I am an agriculturist, if they also give the same approval in their countries, then the agriculturists can also practice here.

CHAIRMAN PATERNO.
So it is the Commission already that can...?

COMMISSIONER CATAN.
Yes, the Philippine Regulatory Commission.

COMMISSIONER BENGZON.
But, so that would fall under "save in cases prescribed by law." If there is no law, then therefore...

CHAIRMAN PATERNO.
No, the law is the Regulatory Commission which is given the authority to liberalize.

COMMISSIONER CATAN
Already.

COMMISSIONER BENGZON.
Suppose, Sir, in the extreme event, for argument's sake, that the PRC decided to liberalize the whole profession, isn't that in contravention of the Constitution?

CHAIRMAN PATERNO.

No.

COMMISSIONER BENGZON.

So, why should we just say that the practice of profession in the Philippines shall be regulated by law without necessarily limiting it to Filipino citizens? It is a clear contradiction and I can put you to court and say I have the Constitutional fiat here to say that whatever you say there cannot hold...

CHAIRMAN PATERNO.

Would Commissioner Bengzon be willing to accept the amendment that, "The practice of all profession in the Philippines by non-Filipino citizens..."

COMMISSIONER BENGZON.

Shall be what, Sir, I am sorry?

CHAIRMAN PATERNO.

"...shall be regulated"?

COMMISSIONER BENGZON.

Yeah, shall be regulated.

COMMISSIONER VARELA.

I think, as pointed out by Commissioner Catan, that as long as there is reciprocity. I think it is very important. We can say that it can be opened up provided that there is reciprocity.

COMMISSIONER BENGZON.

We'll have to put that in the Constitution because otherwise, what the PRC may be doing will be in clear contravention of the Constitution.

CHAIRMAN PATERNO.

Okay. So, would you therefore accept that proposed amendment, "...the practice of profession in the Philippines would..."?

COMMISSIONER BENGZON.

But, Sir, this is very contentious. This is a very, what I am trying to say is that I know, that's why I asked the question, because I know there are existing laws that are actually inconsistent with this. So, how do we harmonize this? But at the same time, if we take it out, we're gonna get flak from the IBP and all those things. So, we have to make a clear case. I'm just putting it into the Body, I am not really advocating.

CHAIRMAN PATERNO.

That is why I am asking you whether you would be willing to accept the amendment that, "The practice of all professions in the Philippines by non-Filipino citizens shall be regulated"?

COMMISSIONER BENGZON.

Exactly, thank you, Sir. Yes.

CHAIRMAN PATERNO.

Okay na iyon.

COMMISSIONER BENGZON.
Brilliant. Thank you, thank you.

CHAIRMAN PATERNO.
Okay.

COMMISSIONER ESPINA.
By whom?

CHAIRMAN PATERNO.
“Shall be regulated.” Tapos. Or, “shall be subject to regulation,” if that’s what you want. “Shall be regulated,” tama na iyon.

COMMISSIONER ESPINA. *(off mic)*
Again, the constitutional question might be brought before the court and say, would be regulated by whom? Is it Congress, the Governor, if he’s practicing in my country?

COMMISSIONER APOSTOL.
Lagay natin, “regulated by law.” Regulated by law.

CHAIRMAN PATERNO.
“Shall be regulated by law.” Okay.

(Commissioner Espina speaks off mic.)

CHAIRMAN PATERNO
Hindi na, as prescribed by law na lang.

COMMISSIONER APOSTOL.
Mr. Chair, I just came here because the Committee on Style is there waiting to help you. So once you finished, perhaps you can sit down with them, then we go on Committee on Style. Yeah, I go back.

COMMISSIONER BENGZON.
Mr. Chairman, you are right. Here it’s just one sentence but we have the Foreign Investments Act that actually enumerated which ones are, so with that provision that would still in effect, still by law, thank you. So, if we take that out and regulate it, we devolve it to the present Foreign Investments Act right now. Okay, thank you.

COMMISSIONER ESPINA.
If we do not say by law, if we go to the federal system, which law, the federal state law or the national federal law?

CHAIRMAN PATERNO.
Section 15, any objection?

COMMISSIONER ESPINA.
I think we should delete it.

COMMISSIONER LAUS.
I support the deletion also, Mr. Chairman

COMMISSIONER GONZALEZ.

By supposing, one way or another somehow...

Commissioner Ortega.

But it's contradictory saying they, they already deregulate it.

COMMISSIONER GONZALEZ.

Maybe we should sustain...

COMMISSIONER BENGZON.

Commissioner Dee, Commissioner Peña espoused and Commissioner Varela and Commissioner Jurado is that they want to liberalize it. And Commissioner Dee, can we hear from Commissioner Dee?

COMMISSIONER DEE.

It's just that I couldn't understand why we are keeping this particular exemption in the Constitution when clearly it is to the advantage for youth that we open it up and then they have, education is a matter of choice, eh. So, we have to really open it up and let people just choose where they want to go and not prejudice to any other group.

COMMISSIONER PEÑA.

Mr. Chairman, my suggestion would be, rather than going through this wordy provision, to be very general again that throw it to Parliament to come up with a programs and then Minister of Education to come up with a more rigid policy. But does the Constitution need to have this?

CHAIRMAN PATERNO.

Well, again I'm talking about practicality. If somebody says we are allowing children to be educated by foreigners, then we might get into problems. Minimum, I would say, we limit this to only private educational institutions. Although that's clear, maybe it will not help to make it redundantly clear. That is not, let's not affect the public school system. Commissioner Laus.

COMMISSIONER LAUS.

Mr. Chairman, some of the worries during the consultations pertaining to opening up educational institutions is, as far as high school and elementary there is no problem there. They want it to still, to be retained by Filipinos. Because they're saying if our schools will be confronted with foreign educational institution, they're worried that the good teachers will go to these foreign schools to the detriment of the poor students, those who cannot afford to go to the more expensive schools. And that could affect the education of the poor people in the society.

CHAIRMAN PATERNO.

The problem was raised to me not in public but in private. When you say foreign ownership, you are considering all foreign ownership, including Islamic, and you might be exposing your madrasahs to ideologies which you really don't want to promote. But you cannot say all foreigners except Islamic. You cannot say that.

COMMISSIONER CATAN.

Mr. Chairman, just a kind of a question. Is it not that one of our fundamental problems is the lack of really the love of country by our, especially the young people. Generally speaking, that is observed. And I cannot just imagine how, compared to China, compared to Vietnam, how they really instill in their educational system the love of country. I cannot say if we have, for instance, because the Chinese, many of them are of course Filipinos, if we will have so many

Chinese schools all over because they can afford. And all our, most of our children will be studying Mandarin and so on and so on. Well, it may be good but we will wake up one day and we will be a province of China. You may say very good but, those are just my concerns Mr. Chair, how we can address this?

CHAIRMAN PATERNO.
Commissioner Donald Dee.

COMMISSIONER DEE.
Mr. Chairman, I was only reacting to that phrase, "other than those established by religious groups and mission boards." That was the only one I was reacting to. I was not talking about opening up to foreign, in fact I agree. It should just read, "Educational institutions at the elementary and high school level shall be owned solely by citizens of the Philippines or associations or corporations". I have no problem with that. I am just talking about that phrase.

CHAIRMAN PATERNO.
We're going to have a big voting block against the Constitution.

COMMISSIONER PEÑA.
Mr. Chairman, sorry Ma'am, may I again just point out that one, is it really necessary in the Constitution? This I don't think is a major stumbling block of everybody here. Maybe it's a question of wording it and leaving it up to the legislators to decide whether or not they want the religious to stay or not and just be...

COMMISSIONER ESPINA.
Just to follow the example mentioned to the Chairman in private be some people or associations, with this exemption, this will allow, in fact, the setting up of these Islamic schools because you are exempting them from citizenship requirement.

CHAIRMAN PATERNO
And they have the money.

COMMISSIONER ESPINA
Yes, and they have the oil money. Oo, that's why tama si Donald. They should not exempt religious groups. Otherwise, we will have the Islamiah setting up...

COMMISSIONER GONZALEZ.
Mr. Chair, I would like to give the example of UP. In UP, we have about 66,000 applicants and we can only afford to bring in 11,000. So, where do these other students go? Then, you have the state universities also funded by our government, kulang din. Kulang na kulang. We have so many state universities pero hindi nakaka-sustain doon sa mga aplikante sa lahat ng universities. But I am more familiar with UP. Kasi sa UP, every year we have around 66,000, we can only bring in 11,000. And to think that our faculties are not paid as high as Ateneo or La Salle University. So, I feel that we should really open. We should really open the educational institution. You know in Thailand, there is a university which was brought, they have a branch from England. It's doing very well. The government allows them to be there, of course they charge very high. But many people can afford to send their children. So this is the look-out now of the educational institution.

CHAIRMAN PATERNO.
You're talking of what level? Elementary, high school?

COMMISSIONER GONZALEZ.

For me, I am open to all levels, eh. But if my colleagues here feel it should only be tertiary, I am willing to yield on that. But I feel that we should really get the foreign investors to come in and improve the quality of our educational system and get more faculty well-paid.

CHAIRMAN PATERNO.

Yeah, let's move on then. I guess we are ready to vote on this. Who are agreeable to the section as it now appears? Anyone? We are talking of Section 4, 2. No one is agreeable to the section as it now appears. Okay. What arguments are proposed, if any?

COMMISSIONER LAUS.

Mr. Chairman, well, it is the inclusion of elementary and high school levels. I mean, that's where we can open.

CHAIRMAN PATERNO.

Okay.

COMMISSIONER BENGZON *(off mic)*

Open all levels?

COMMISSIONER LAUS *(off mic)*

Not all levels, just the two.

COMMISSIONER BENGZON

No, but that's what it says.

COMMISSIONER LAUS

No, but there is the existing provision, di ba?

CHAIRMAN PATERNO

No, the provision that we have now as worded.

COMMISSIONER LAUS

As being proposed?

CHAIRMAN PATERNO

Yes.

COMMISSIONER LAUS

So, I...

CHAIRMAN PATERNO

That's okay with you? So we have one who is agreeable to the paragraph as it now stands.

COMMISSIONER ORTIZ-LUIS.

Mr. Chairman, in order to address the concern of Commissioner Dee and also the concern of Commissioner Espina, can we put there, "except religious groups which are already existing at the time of this..."

COMMISSIONER ESPINA. *(off mic)*

I might compromise on that.

COMMISSIONER ORTIZ-LUIS.
So, we that we don't get the...

(Commissioners speak off mic.)

CHAIRMAN PATERNO.
So, we will say, "other than those already established".

COMMISSIONER PEÑA *(off mic)*
Yes, and don't mention "religious" at the time this Constitution was approved.

COMMISSIONER ORTEGA *(off mic)*
Just insert one word, "already." Tapos na, tapos na 'yon.

COMMISSIONER BENGZON *(off mic)*
'Other than those already in existence.'

CHAIRMAN PATERNO
Alright, already established. Okay.

COMMISSIONER DEE.
But, Mr. Chairman, my problem there is, other religious groups who have not established any schools here may feel that we put this just to prejudice them.

CHAIRMAN PATERNO.
No, no. This is ano, this is a kind of a, what do you call that, parang vested rights na ito eh. Established na.

COMMISSIONER DEE.
Mr. Chairman, we don't have to put that because we cannot legislate retroactively anyway, so if they are there, they are there. But we are talking about the future, so...

CHAIRMAN PATERNO.
Kaya ilalagay na natin "already" para maliwanag na.

COMMISSIONER DEE.
Okay lang.

COMMISSIONER BENGZON.
Kaya sabi niya, 'those already in existence...'

COMMISSIONER DEE.
Okay lang. At least I got part of it.

COMMISSIONER ORTIZ-LUIS.
That's what I want because you have a problem with other possible religious that will establish schools.

CHAIRMAN PATERNO.
So, are there any objections to this, "as already established"? Puwede na? Okay. Thank you. Doon sa General Provisions, what do you want to do on advertising and mass media?

COMMISSIONER ROMUALDO.

Mr. Chairman, I don't know if it was this Committee, this was already deleted. In one, I don't know which committee was that. This was deleted.

CHAIRMAN PATERNO.

Alisin na ang Section 11.

COMMISSIONER BENGZON.

Those were talking points before.

CHAIRMAN PATERNO.

Section 11 delete?

COMMISSIONER ROMUALDO.

Yes, Sir.

CHAIRMAN PATERNO.

Delete. Okay.

COMMISSIONER ESPINA *(off mic)*

This was the Committee on Patrimony.

COMMISSIONER BENGZON *(off mic)*

On talking points.

COMMISSIONER ESPINA

But we deleted this already.

COMMISSIONER BENGZON

Sa talking points lang 'yon.

COMMISSIONER ESPINA

Yeah, but there was consensus on that.

CHAIRMAN PATERNO

Wala na, wala nang Section 17.

COMMISSIONER BENGZON.

Yeah, but the JI will come here. JI, ba iyon? Al Jazeera.

CHAIRMAN PATERNO.

Both mass media and advertising are deleted. Now, I have a proposed Transitory Provision. "Every provision liberalizing the extent of foreign ownership of corporations in certain lines of business and of industrial, commercial and industrial lands shall take effect only upon passage of legislation implementing the provision." Puwede na iyon?

COMMISSIONER ESPINA

I would like to...

COMMISSIONER BENGZON.

Sir, I have a question about Section 17.

CHAIRMAN PATERNO.
Where is Section 17?

COMMISSIONER BENGZON.
Page before the transitory...

CHAIRMAN PATERNO.
Ah, sorry, sorry.

COMMISSIONER LAUS.
Point of order, Mr. Chairman.

CHAIRMAN PATERNO.
Excuse me, excuse me, I skipped one page, Section 17.

COMMISSIONER LAUS.
Mr. Chairman, point of inquiry?

CHAIRMAN PATERNO.
Yes, Commissioner Laus?

COMMISSIONER LAUS.
Pertaining to Article 16, is it our understanding that from a 100% ownership on mass media, we are now opening up to 60-40?

CHAIRMAN PATERNO.
No, we are deleting.

COMMISSIONER LAUS.
Deleting altogether?

CHAIRMAN PATERNO.
We are deleting altogether.

COMMISSIONER LAUS.
That means puwedeng 100% foreign-owned?

CHAIRMAN PATERNO.
Depends on Congress na lang because Congress has to pass the implementing legislation.

COMMISSIONER LAUS.
But, Mr. Chairman, again I don't know, this again in relation to the public consultation that we did. I think in most of those public consultations, the people would prefer a sort of partial liberalization. Meaning, instead of 100%, they're open to 60-40.

CHAIRMAN PATERNO.
Yeah, that's why instead of making any statement with respect to foreign ownership, we just make no statement whatsoever. Delete. Bahala na ang Congress.

COMMISSIONER BENGZON.

Anyway, in the Transitory Provision, it says there before Congress can craft that rule, the present laws stay, and there is a law for the NTC again that you cannot get a CPCN if you are not 60-40. So unless, that's, so may safeguard pa rin during the transition when Congress enacts a new law.

CHAIRMAN PATERNO.

Yes. So, Section 17. Let's go back to page 8, Section 17.

COMMISSIONER BENGZON.

Can we just ask the proponent to explain?

CHAIRMAN PATERNO.

I am the proponent.

COMMISSIONER BENGZON.

Yes, Sir, that's right.

CHAIRMAN PATERNO.

Secretary Gonzales of the Department of Justice made a statement on television in front of Peter Wallace whom you know, that during times of national emergency, the state may take over any business. And I believe that the intent of Section 17 is not to allow the take-over of the ownership, but only of the operation of a business. But because it is worded as, "may temporarily take over or direct the operation of..." Gonzales' interpretation may have some grounds.

COMMISSIONER BENGZON.

Sir, can I subject you to interpellation?

CHAIRMAN PATERNO

Please.

COMMISSIONER BENGZON

But in the Corporation Law, if you say, if you put this word "direct the operation..."

CHAIRMAN PATERNO.

No, "direct", or "take over the operation."

COMMISSIONER BENGZON.

What is your ano? "Temporarily direct," di ba?

CHAIRMAN PATERNO.

"Temporarily direct, or take over the operations of..."

COMMISSIONER BENGZON.

"...the operation", okay. So, in an instance where, so therefore the powers of the shareholders are suspended during the time, is that what you are actually saying in effect?

CHAIRMAN PATERNO.

The ownership of the shareholders remains.

COMMISSIONER BENGZON.

But the power, but you know that the power to direct the business and everything stems also from the shareholders? So, during that time of national emergency, you're saying that the power of the shareholders is suspended?

CHAIRMAN PATERNO.

To direct the operations, yes.

COMMISSIONER BENGZON.

To direct the operations. But they at all times retain the ownership?

CHAIRMAN PATERNO.

Retain the ownership.

COMMISSIONER BENGZON.

Okay, thank you.

COMMISSIONER GONZALEZ. *(off mic)*

Can we say "manage" instead of "direct"? "Manage the operation."

CHAIRMAN PATERNO.

"Manage" is more encompassing than "direct" because direct, I think, refers only to the Board of Directors. Manage means that the state may put in all the executives that they want.

COMMISSIONER BENGZON.

But they can also do that if they want to hands-on, if they want to direct. Under this, if you look at the, under the "take over" word.

CHAIRMAN PATERNO.

Still questionable, pero 'yong manage, mahirap na kuwestiyonin.

COMMISSIONER DEE.

Mr. Chairman, my worry here is, if government takes over and runs it down, who assumes all these liabilities? The poor shareholder will now have to assume those liabilities, for example, if government says, state of emergency, I take over a power distribution business, electric distribution and says: Okay, from now, I'm going to give it for free. So the company now goes into a financial distress, the shares goes to zero, you mean to say the stockholders must now assume all those liabilities?

COMMISSIONER ESPINA.

In that instance the government who takes over will collapse. *(Laughter)*

COMMISSIONER BENGZON.

This is not just peculiar to Filipino Constitution. In other constitution, this is what you call the sovereignty power of the government under the police power. So, I just want to actually interpellate kanina, but this is a reserved power given to governments.

CHAIRMAN PATERNO.

This is a reserved power. Technically, the shareholders have the right to complain, ano. And file suit for recovery.

COMMISSIONER BENGZON *(off mic)*

Yes, but you still have as to whether it's appropriate. Ang inaano nila dito, their question is, is there an emergency really and is the public interest of the public...

CHAIRMAN PATERNO.

And are the terms reasonable? So are we agreeable na? Okay. Section 18, there's no question about this, interest of national welfare; we just put in, "upon timely payment of just compensation," baka hindi mabayaran agad. Okay. Section 19, Regulation of Monopolies. Retain. Section 20, kagalit natin si Governor Singson kung aalisin natin ito. Section 21, Foreign Loans, etc. No problem.

COMMISSIONER ESPINA

Bangko Sentral na ng Pilipinas, instead of Central Bank of the Philippines. Officially, it's name is BSP, Bangko Sentral ng Pilipinas

(Commissioners speak off mic.)

CHAIRMAN PATERNO.

Okay, so we will change Bangko Sentral. So okay na iyon. Let's leave it there. Transitory, anong...?

COMMISSIONER BENGZON. *(off mic)*

Wait a minute, advertising Sir?

CHAIRMAN PATERNO.

We deleted it already.

COMMISSIONER BENGZON

Kasama na rin, na-delete na?

CHAIRMAN PATERNO

Delete na lahat iyon.

COMMISSIONER ESPINA. *(off mic)*

Itong transitory provision, does it mean that there will be no law passed? That the...

CHAIRMAN PATERNO

Present will remain? Yes.

COMMISSIONER BENGZON.

As I said there are present laws.

COMMISSIONER ESPINA.

I don't think that we should have this. This could in fact kill what we are suggesting.

CHAIRMAN PATERNO.

We leave it up to Congress.

(Commissioners simultaneously speak off mic.)

CHAIRMAN PATERNO

So what shall we, what do you suggest here at the timeline?

COMMISSIONER BENGZON. *(off mic)*
That the Parliament or the Congress is enjoined...?

CHAIRMAN PATERNO
No, you can't...

COMMISSIONER ESPINA. *(off mic)*
'Yong ano, that all...of the law shall be crafted within the transitory period. Well, in transitory period, in three years maybe.

COMMISSIONER BENGZON. *(off mic)*
Naku, matagal 'yon, can you imagine ang mass media mo wala for three years?

COMMISSIONER ESPINA *(off mic)*
No later than.

(Commissioners simultaneously speak off mic.)

COMMISSIONER BENGZON
Because there's a proposal that we put a timeframe in the Transitory Provision for the crafting of the legislation, I support that. I support that but I think it should be within one year not three years.

CHAIRMAN PATERNO
Hindi kaya ng Congress 'yan.

COMMISSIONER ORTIZ-LUIS *(off mic)*
They will just have a reason to say that it is unreasonable and therefore they cannot meet it. But give them a reasonable timeframe. They have only themselves to blame.

COMMISSIONER ESPINA *(off mic)*
Or, "during the transition of not later than three years."

COMMISSIONER BENGZON
Liberalization will not happen until three years? When you can that by an Executive Order right now. Why...?

CHAIRMAN PATERNO.
"Shall take effect after three years or upon earlier passage of legislation."

(Commissioners speak off mic.)

COMMISSIONER APOSTOL *(off mic)*
Ilagay mo na lang specific. It will take three years.

COMMISSIONER BENGZON
Bakit three years? Two na lang. Sir, three years for foreign investments especially in mining are just waiting in the wings for this and they're coming in. But what's going to happen if they wait for three years, we're gonna be behind.

CHAIRMAN PATERNO.

Can we say, “shall take effect after three years or upon earlier passage of legislation”?

COMMISSIONER ESPINA. *(off mic)*

Why don't we say that it will be implementable upon the adoption of a new Constitution subject to the issuance of the guidelines by the...

COMMISSIONER BENGZON. *(off mic)*

IRR? Hindi puwede...

CHAIRMAN PATERNO.

Magulo ang implementation 'pag walang implementing legislation

COMMISSIONER APOSTOL. *(off mic)*

Parang tama na 'yong within three years from the time...

COMMISSIONER ESPINA. *(off mic)*

Pero 'yong point ni Commissioner Bengzon is also valid. That those who are eager at this point in time already to come in, eh, aanhin pa ang damo kung patay na ang kabayo?

COMMISSIONER PEÑA

Correct, but...

COMMISSIONER BENGZON.

That's why the Mining Law, pinilit na lang 'yan eh. Kahit if you're a true constitutionalist, the rationale there is not within because they know the exigencies of the time.

(Commissioners speak off mic.)

COMMISSIONER ORTIZ-LUIS. *(off mic)*

I think it is stronger if we put, “no later than three years or earlier.” I think it is stronger, “no later than three years.”

COMMISSIONER ESPINA. *(off mic)*

Oo, within three years.

CHAIRMAN PATERNO.

Within three years na lang?

COMMISSIONER EPINA *(off mic)*

Parang 'yong una kong sinabi, “not later than three years after ratification.”

COMMISSIONER ADAMAT *(off mic)*

Style na lang, style.

CHAIRMAN PATERNO

O sige. Can we have...? Counsel, can we have language?

COMMISSIONER BENGZON *(off mic)*

“Shall be enacted within three years from the time of the ratification of the Constitution.”

COMMISSIONER DEE.

Mr. Chairman? Mr. Chairman? I just want to be clarified. What happens if after three years the enabling law doesn't come? What happens?

COMMISSIONER ESPINA.

That is my point kanina na it should be, in concept, implementable and then the issuance of guidelines because what happens if Congress does not act on it? Sino ang idedemanda mo?

CHAIRMAN PATERNO.

May I propose that, "shall take effect three years after passage of the ratification of the Constitution or upon earlier passage of legislation"?

COMMISSIONER BENGZON. *(off mic)*

"shall take effect" is more, ipso facto...

COMMISSIONER ROMUALDO *(off mic)*

That's the meaning. Let the Style do the styling.

CHAIRMAN PATERNO.

"Shall take effect ..."

COMMISSIONER BENGZON *(off mic)*

Three years ipso facto 'yan eh

CHAIRMAN PATERNO

"...after three years or upon earlier legislation" or "shall take effect on the third year after ratification of this Constitution."

COMMISSIONER ROMUALDO *(off mic)*

"Shall take effect within three years."

COMMISSIONER ESPINA. *(off mic)*

"Upon the issuance of implementing rules and regulations"

(Commissioners speak off mic.)

CHAIRMAN PATERNO.

Yeah, but you have a timeline. You cannot have regulation without the law.

(Commissioners speak off mic.)

COMMISSIONER BENGZON.

Exactly. I know that. You need the Republic Act; the IRR only supports the enabling law.

COMMISSIONER APOSTOL *(off mic.)*

Okay na 'yan.

CHAIRMAN PATERNO.

"Shall take effect three years after ratification of this Constitution or upon earlier passage of implementing legislation."

COMMISSIONER BENGZON *(off mic)*
Yes.

(Applause)

CHAIRMAN PATERNO
Chairman of the Committee on Economic Reforms, excuse me.

COMMISSIONER ORTIZ-LUIS.
Mr. Chairman, may I just take note that some of those we are saying that will take affect are deletions. What are we going to say now? We deleted it, it will take effect and therefore there are no more safeguards unless...

CHAIRMAN PATERNO.
No, no. We are saying that every provision liberalizing the extent of foreign ownership of corporations in certain lines of business. Whatever you delete, wala na. Na-liberalize mo na.

COMMISSIONER ORTIZ-LUIS.
What about, well, maybe the Transitory Provision is not complete because what about those which we deleted, which our agreement with the people is that there will be safeguards that will be passed by legislation. We are saying, wala nang safeguards 'yan, basta deleted na 'yan?

COMMISSIONER BENGZON.
No, there are implementing laws naman in existence pa ngayon and there are safeguards still that we put in there, di ba? Mga motherhood statements contained conservation of environment, that the state shall regulate foreign investments.

COMMISSIONER ORTIZ-LUIS
The issue of Commissioner Laus earlier on media and advertising, we deleted it. So what happens now? If there is no regulatory aspect that is passed, it's open field?

COMMISSIONER BENGZON
No, there is. The present law is still effective kasi even if you take it out of the Constitution, there are still laws by the DOTC, by the SEC. You cannot actually just go on and incorporate if the DOTC does not sign. If you get a CPCN, you need a 60-40 corporation. The SEC will not approve your corporation for a telecom, with the primary purpose of telecoms, if you are not 60-40. We're just taking it out. So that in the meantime, mawala 'yan, nagte-take effect pa rin 'yong laws na 'yon.

COMMISSIONER ESPINA.
But I see the point of Commissioner Ortiz because we already deleted ownership requirement.

COMMISSIONER ORTIZ-LUIS
It's not that. SEC will have to issue...

COMMISSIONER ESPINA
Wala na sa Constitution. And then it is here argued that I have to comply with the 60-40, then I can go to court and say they have no constitutional basis under 60-40 requirement.

CHAIRMAN PATERNO.
Excuse me. No, excuse me.

COMMISSIONER BENGZON.
May transitory eh.

COMMISSIONER ORTIZ-LUIS. *(off mic)*
We have to make the transitory provision cover that.

(Commissioners speak off mic.)

CHAIRMAN PATERNO.
Can we leave that to the Committee on Style and to the plenary? This is only to convey the sense that we want.

COMMISSIONER ROMUALDO.
Mr. Chairman, we have to look into that Constitution is prospective not retroactive.

CHAIRMAN PATERNO.
Correct.

COMMISSIONER ROMUALDO.
And therefore, those existing corporations with that limitation of ownership will go on until such time that there will be a law that will be passed in accordance with the new Constitution.

CHAIRMAN PATERNO.
That would be my argument as Chairman of the Committee on Economic Affairs of the Senate of which I was until 1992.

COMMISSIONER ROMUALDO.
Thank you. I am sorry to reiterate it for you.

(Laughter)

CHAIRMAN PATERNO.
Okay, para matapos na tayo.

COMMISSIONER APOSTOL.
But, Mr. Chair, you still have a work. You have to work now with the members of the Committee on Style to finalize your work.

(Laughter)

CHAIRMAN PATERNO.
Yeah, but I have to incorporate the amendments.

COMMISSIONER APOSTOL.
That's it. They are there waiting for you. You have now there your clerical staff there.

CHAIRMAN PATERNO.
No, I don't trust this to my clerical staff.

COMMISSIONER APOSTOL *(off mic)*
No, the staff there of PMS and then the...

CHAIRMAN PATERNO

Ako na ang gagawa. I brought my computer.

COMMISSIONER LORENZANA.

Mr. Chairman, housekeeping lang, Mr. Chairman. Housekeeping lang. We would like to ask all of the chairmen and co-chairmen of all committees to meet tomorrow at 12.00 for lunch here together with the Committee on Style because we have to finish everything, right, form, etc. So kung puwede lang 'yong mga chairmen and co-chairmen, please tomorrow at 12.00 here, committee, all the committees. So for tomorrow, we expect you all for lunch dito lahat ha, the committee chairmen and the co-chair.

COMMISSIONER APOSTOL. *(off mic)*

What will be meeting tomorrow will be the Committee on Style and the Committee on Sponsorship.

COMMISSIONER LORENZANA.

Exactly.

ADJOURNMENT OF MEETING

COMMISSIONER ROMUALDO

Mr. Chairman, I move to adjourn. Hindi naman recorded ito.

CHAIRMAN PATERNO.

I would like to say that my sense is that we no longer need to meet as a Committee. So, this Committee is dissolved.

(Laughter)

COMMISSIONER ROMUALDO.

Mr. Chairman, remember that tomorrow, we'll have plenary. If there is a necessity for the Committee as a whole, with you as presiding to do it, we can do it. So do not dissolve it. Thank you very much.

COMMISSIONER CATAN

Recess lang.

CHAIRMAN PATERNO.

So shall we recess or adjourn? Adjourn lang. So, this Committee is adjourned.

It was 3.51 p.m.

