

DRAFT

**2005 CONSULTATIVE COMMISSION
COMMITTEE ON PREAMBLE, NATIONAL TERRITORY,
DECLARATION OF PRINCIPLES AND POLICIES/CITIZENSHIP,
BILL OF RIGHTS, POLITICAL RIGHTS**

Wednesday, 19 October 2005

Minutes of the Meeting

CALL TO ORDER

At 2:39 p.m., the Committee Chairman, Francis Chua, called the meeting to order.

ROLL CALL

Upon motion of Commissioner Apostol, there being no objection, the Body dispensed with the roll call.

In reply to the Chair's query whether there was a quorum, Commissioner Apostol stated that it is not an issue as long as no member raises the question of quorum.

The following were present in the meeting:

Abueva, Jose V.
Adamat, Ronald L.
Amin, Omar U
Apostol, Sergio A. F.
Bello Jr., Jose C.
Chua, Francis (Chairman)
Dee, Donald G.
Lambino, Raul L.
Marohombsar, Emily M.
Ortiz-Luis Jr., Sergio R.
Soriano, Luz Emmanuel
Tabanda, Betty Lourdes F.
Varela, Miguel B. (*Co-Chairman*)

The following Commissioners who are not members of the Committee were also present:

Gonzalez, Nelia T.
Matula, Jose Sonny G.
Sarmiento, Mel Senen S.

Lawyers Job M. Ambrosio and Larry B. Peredes from the Puyat, Jacinto and Santos Law Office (PJS Law Office) were also present as guest resource persons:

PREPARATION OF THE MATIRX

The Chair explained to the members of the Committee that although they have not met formally in the past weeks, they have conducted small group meetings with some commissioners and have produced a matrix of suggested revisions to the articles/sections under the jurisdiction of the Committee. He disclosed that the matrix was prepared with the *pro bono* assistance of the lawyers of the PJS Law Office.

Commissioner Amin said that they have not consulted with the various sectors regarding the proposed revisions. The Chair, however, explained that in the previous week there were many ideas aired in the small group meetings and that these should be discussed and collated by the Committee. He also mentioned the request of the religious sector, through Bro. Dizon, for the Committee not to touch the Preamble.

**PROPOSAL ON THE
PREAMBLE**

According to the Chair, the only major revision being proposed on the Preamble was to delete the word "conserve" which was perceived as too restrictive, and to insert the term "responsibly" to read as "*responsibly develop our patrimony...*" The

members agreed to the inclusion of the term “responsibly” but Commissioner Tabanda

proposed the retention of the word “conserve” so that the phrase would read “*conserve and responsibly develop...*” She explained that efforts should be made to keep what could possibly be kept while still allowing the development of natural resources. The Chair explained that the reason for removing the term “conserve” was that its definition may not be applicable for some economic activities like mining and oil exploration, and thus may not be implemented at all.

Commissioner Dee suggested that the Committee first agree on the principle and the definition of the term “conserve.” Commissioner Tabanda explained that removing the term “conserve” may give the cue to develop all natural resources. She said that there should be a conscious effort to develop only as much as necessary but to still retain what is retainable.

Commissioner Marohombsar agreed to the phraseology “conserve and responsibly develop”; Commissioner Gonzalez, on the other hand, suggested the phrase “responsibly conserve and develop”; Commissioner Soriano averred that the term “responsibly” should go with the term “develop”, as in “conserve and responsibly develop”, because development should be made in a responsible manner.

The Chair said that the courts might interpret the term “conserve” to mean “explore.” Commissioner Soriano then suggested that the Committee give its own definition to avoid misinterpretation. However, it was pointed out that definitions are not included in the Constitution. Commissioner Dee added that even if the agreed definition cannot be included in the Constitution, the Committee should provide an explanation of what “conserve” shall mean in order to guide the Supreme Court and other bodies.

The Chair underscored that the word “responsibly” would mean that conservation is not totally closed but development should be done responsibly. It added that the intent was for the sustainable development of the country’s natural resources. Chairman Abueva believed that the insertion of the term “responsibly” was commendable and very important in order to emphasize that the Commission wants sustainable, equitable and fair development of natural resources.

Commissioner Dee proposed rephrasing the provision putting “conserve” last, so it would read “responsibly develop and conserve.” Commissioner Adamat proposed that “conserve” be stated first, as in “*conserve and responsibly develop.*”

Commissioner Apostol stated that in the case of mining, it is inherently impossible to conserve. But Commissioner Dee opined that such was an overreaction to the present state of the mining industry. He added that there is really no strong objection on mining but the objection was on the absence of responsible extraction of minerals, the manner in which mining is done; and on the equitable sharing of profits.

Com. Bello said that the term “conserve” would refer to resources that are limited. He supported the phrase “conserve and responsibly develop.” He also urged the Committee to observe the wisdom of the framers of the other Constitutions where the term “conserve” was consistently used and retained. Commissioner Adamat added that the word “conserve” may also refer to endangered species and indigenous peoples.

Commissioner Varela informed the Committee that the intent of the Committee on National Patrimony and Economic Reforms was to liberalize the economy and the term “conserve” may be construed to be limiting. Commissioner Tabanda argued that the retention of the term “conserve” in the

preamble should pose no problem and that specific provisions on liberalization can be stated in the provisions on National Economy and Patrimony. She added that the Supreme Court will interpret first specific provisions of the Constitution and that only in case of ambiguity will it refer to the preamble.

There being no further objection, the Committee decided to retain the word “conserve” and added the word “responsibly” to read as “conserve and responsibly develop our patrimony...”

ABUEVA PROPOSAL

At this point, Chairman Abueva stated that he had to leave for the meeting of the Committee on the Form of Government but he would like to state first his objection to the proposed deletion of Section 23, which provides that the State shall encourage non-governmental, community-based organizations; and secondly his proposal to include a Bill of Citizens’ Duties and Obligations.

ADAMAT PROPOSAL

Still on the Preamble, Commissioner Adamat proposed the insertion of the word “united” so that the phrase would read “in order to build a *united*, just and humane society...” He explained that the Committee should introduce a word that would unite the Filipinos in the light of the country’s current state of divisiveness.

Commissioner Dee pointed out that the country has always been divided in politics because it is based on personality, but has always been united in their aspirations. Commissioner Bello added that the phrase “We, the sovereign Filipino people” already implies unity and oneness.

Thereupon, the Committee decided to retain the original phrase without any revision.

ARTICLE I: NATIONAL TERRITORY

The Chair informed the Committee that the proposal was to include the phrase “including those territories over which the Philippines has legal or historic titles” in Article I.

Commissioner Amin averred that the phrase “*legal and historic title*” was only deleted in the 1987 Constitution. He further provided the committee a definition of what are considered “*legal*” and “*historic*” titles: historic right refers to titles that are based on the exercise of sovereignty and dominion over a territory or state for a period of time, which may be derived from historical factors that are of vital interest to the state; while legal right refers to one that is complete and perfect as far as rights of ownership is concerned.

Commissioner Amin cited that in the case of the Philippines’ claim to Sabah, the Sultan of Brunei ceded it to the Sultan of Sulu in 1674, and the Sultan of Sulu then leased Sabah to a British company in 1878. He explained that although it is mentioned to be a permanent lease, it is contrary to the law, which states that the terms for a lease contract could only be for 99 years, as in the case of Hong Kong and Macau when these were leased to Britain and Portugal respectively, by China and subsequently returned after the expiration of the lease. He said that the lease on Sabah was overdue by more than 200 years. He added that the country has rights to the disputed islands such as the Spratlys. He then distributed copies of the 1878 deed, leasing Borneo (Sabah) to the Gustavos Baron da Overbeck and Alfred Dent.

Commissioner Bello, however, warned that the inclusion of the phrase might lead to conflict with neighboring countries. He said that the Sabah claim could just be a civilian

claim by the Sultan of Sulu. He added that Sabah is already a part of the Federation of Malaysia and that the possible means of claiming it are: through an occupation; if Sabah secedes from the federation; and/or for the Philippines to go to the International Court of Justice.

However, Commissioner Amin said that the International Court of Justice cannot be a venue, because the case would not prosper without the consent of Malaysia to go to the ICJ. But Commissioner Bello warned that the Committee may be putting in the Constitution something that it could not implement. Commissioner Amin admitted that it might not be possible to implement it by force at the moment but it could be done diplomatically.

Commissioner Marohombsar informed the Committee that the particular reason why the phrase was deleted in the 1987 Constitution was to preserve and promote better relations with Malaysia and at the same time allow flexibility in pursuing the Sabah claim.

The Chair stated that the case of Sabah is only an example and that the phrase was not specifically referring to the Sabah claim alone. He offered to keep the phrase because the Philippines may someday be strong enough to pursue its claims on such territories, similar to the successful claim of China for Hong Kong and Macau.

At this point, Commissioner Ortiz-Luis reminded the Committee that the Body's mandate was only recommendatory and that a debate on the matter would still be done in Congress.

Thereupon, the Committee decided to adopt the suggested revision by inserting the phrase "including those territories over which the Philippines has legal or historic title." However, per the suggestion of Commissioner Bello, the specific case of Sabah should be omitted from the committee's explanatory note as it may

inadvertently affect diplomatic ties with Malaysia.

SARMIENTO PROPOSAL

Commissioner Sarmiento, a non-member of the Committee, commented on the Committee's proposal to delete Section 25 of Article II which provides that the State shall ensure the autonomy of local governments. He opined that the proposal would be unpopular, particularly to the local government officials. The Chair explained that the deletion was proposed since more specific provisions on local autonomy are already provided in Article X. Commissioner Sarmiento stated that the Commission should explain this during the consultations.

The Chair pointed out that the sections proposed for deletions are those that are already stated in other sections, and that the proposal was aimed to make the Constitution concise.

ARTICLE II: DECLARATION OF PRINCIPLES AND STATE POLICIES

For Sections 1 and 2, the members raised no comment and the sections were retained.

Section 3 was proposed to be revised by removing the sentence saying that the Armed Forces of the Philippines is the protector of the people and the State, which had been cited as a primary justification for military coup d' tat. Commissioner Lambino proposed that the second and third sentences be deleted entirely, as the sentence referring to the goal of the military *to secure the sovereignty of the State and the integrity of the national territory* could be placed in other parts of the Constitution such as the General Provisions. The Committee however decided to adopt the original proposal to delete only the second sentence of Section 3.

Section 4 of Article II (Duty of Government), was retained without any revision.

Commissioner Marohombsar commented that Section 5 (Maintenance of Peace and Order) is already redundant. The Committee agreed to the deletion of Section 5, which was not found in both the 1935 and 1973 Constitutions.

The Committee agreed that Section 6, which pertains to the separation of the Church and the State, should be retained; Section 7 (Foreign Policy) was also retained without revision.

The Committee decided to delete Section 8 (nuclear-free policy).

In reply to Commissioner Amin's query, the Chair affirmed that the provision was a restriction for the country to develop nuclear weapons or to develop a nuclear energy generation program which presently is necessary in the light of the expensive cost of electricity.

The Committee decided to delete Section 9 based on the proposal of the resource persons; Section 10 (Social Justice) was retained; while Section 11 (Human Rights and Dignity) was revised as follows: "The State recognizes that all human persons are created equal. The State values the dignity of every human person and guarantees full respect for human rights." The revision was also based on the proposal of the PJS lawyers, as agreed upon during previous meetings.

In relation to Section 12, the Chair explained that one of the major problems of the country is the 'runaway' population growth, but the government does not even know how to touch the issue of population control. It suggested that the Committee look into this in order to avert bigger social or economic problems. It noted that every year, the government's school-building program is facing more serious and worse

problems because of the (rapid) population growth, whereas in China, it is the opposite – there are many extra schoolrooms but there are no children to fill these up. This is because China has population control measures.

Asked by Commissioner Bello why, despite China's 1.2 billion population, there are still extra schoolrooms, the Chair explained that wealth is measured by per capita income so if population increases, income suffers.

While the Committee's initial proposal was to delete the whole Section 12, per consultation with Commissioner Tendero, a compromise was reached and the Committee decided to keep the section but deleting the sentence "*It shall equally protect the life of the mother and the life of the unborn from contraception*".

Section 13 was deleted as proposed because it is already covered by the last sentence of Section 12 which states "*(t)he natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.*"

On the proposed deletion of Section 14 which provides that "*(t)he State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men,*" Commissioner Bello commented that there should be no big issue about women in this section. But Commissioner Marohombsar said that the section should be retained. Thereupon, the Committee decided to retain the section.

On Further argument of Commissioner Amin that Section 14 is already covered by Section 1 of Article III, which states that "*(n)o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.*" Commissioner

Marohombsar contended that the Constitution should give special attention to the role of women because women compose more than half of the population.

Thereafter, the Committee decided that Section 15 (Promotion of Right to Health) be deleted since this is not necessary; Section 16 be retained because this is about the environment; and Section 17 (Education, Science and Technology, etc.) be also retained since there are no problems with the provision.

With regards to Section 18 (Labor), the Chair explained that one of the big problems today, especially when it comes to foreign investors, is the labor problem and how this section is sometimes abused to the detriment of business. Therefore, it suggested that the Commission put some responsibility on the workers by adding the word "*responsible*" and to revise the section to read: "The State affirms labor as a *primary and responsible social economic force and shall protect and promote the welfare of workers.*" The Committee agreed on the said proposed changes in Section 18.

The Chair noted the proposed revision of Section 19 (National Economy) as follows: "*The State shall develop a self-reliant, productive and competitive economy that will serve best the interest of Filipino people.*" Commissioner Amin inquired whether or not the provisions on National Economy and Patrimony already cover this statement. Thereupon, the Committee agreed on the deletion of this section.

The Committee also approved the deletion of Sections 20 (Role of Private Sector) and 21 (Agrarian Reform). However, Commissioner Amin questioned the deletion of the provision on agrarian reform, in reply to which, the Chair explained that one of the problems with the present agrarian reform program is that it was "chopping down the land" into small portions, which reduces productivity and overall economic value,

defeating the purpose of developing the land. The Chair clarified that Hacienda Luisita is a different case and that it is more of a political issue than a true agrarian reform issue.

The Chair stated that "we try to fool ourselves that there is agrarian reform when in reality there is no effective agrarian reform program." It added that such is the same rationale for the Committee proposal to remove the provision prohibiting political dynasties since it is not realistically implementable.

But Commissioner Bello pointed out that there is an existing agrarian reform law. He asked if the Constitution's subsequent silence on this issue would prevent the government from enacting a law for this, and what would happen to the existing Comprehensive Agrarian Reform Law, which shall then have no constitutional basis.

To this query, the resource person explained that the proposed revisions of the Consultative Commission would not automatically make certain laws, such as the agrarian reform law, unconstitutional. He said that Congress would still have the plenary power to legislate the law. Further, the resource person stated that the deletion of this provision would also give more leeway to Congress to legislate on this matter, whether this would be pursued or not.

As to the basis of the law that would be passed if it is not mentioned in the Constitution, lawyer Ambrosio explained maintained that Congress has the plenary power to enact laws. Commissioner Bello then asked if it was correct to say that when an issue is not expressed in the Constitution, it should not be legislated. The Chair stated that this was precisely the reason why the Committee wanted to make the Constitution as wide and as general as possible to allow legislation. But lawyer Ambrosio affirmed that the power of

Congress to enact laws is actually limited by the provisions of the Constitution.

Commissioner Amin averred that the basis of legislation is the Constitution, which may be limited to a certain extent, particularly in the definition of territory where an issue is excluded if it is not included in the definition. The Chair noted that the Committee was no longer discussing national territory.

Lawyer Ambrosio reiterated his explanation that the power of the Congress is defined by the Constitution and that it has legislative power to enact any law as long as it does not violate the Constitution.

Following these explanations, the Committee confirmed its deletion of Sections 20 and 21.

The Chair then noted the proposal to delete Section 22 (Rights of Indigenous Cultural Communities).

However on the suggestion of Commissioner Adamat to retain the section considering that it is the only state policy Indigenous Peoples, Commissioner Bello asked why the phrase "*cultural communities*" should be included in the section. In reply, Commissioner Marohombsar noted that the wording of the 1973 Constitution (Article XV Section 11) seemed to be more appropriate -- "*The State shall consider also the customs, traditions, beliefs, and interests of the national cultural communities in the formulation and implementation of state policies.*"

Commissioner Amin then explained that the basis for issuing PD 1083, which promulgated the code recognizing the system of Filipino Muslim laws and codified Muslim personal laws, was the same provision in the 1973 Constitution. He said that Section 22 was included in the present Constitution to also serve as basis for the constitutionality and legality of PD 1083, so

that if Section 22 would be deleted, problems might arise in the promulgation of Muslim laws in the country. He suggested lifting the phraseology of the 1973 Constitution.

The resource persons, however, observed that Section 11, Article XV of the 1973 Constitution is passive as it merely states the "consideration of customs, traditions," whereas Section 22 of the 1987 Constitution is more proactive because of the statement "*recognize and promote the rights of indigenous cultural communities*".

Commissioner Marohombsar suggested the retention of Section 22 of the present Constitution and the incorporation of the concepts of "customs, traditions and beliefs" as contained in the 1973 Constitution. There being no objection, the Committee adopted the suggestion of Commissioner Marohombsar.

As to Section 23 which the Committee proposed for deletion, the Committee decided to retain it upon the earlier request of Chairman Abueva. On the other hand, the Committee agreed on the deletion of Section 24 (Communication and Information).

The Chair then inquired why Section 25 (Local Autonomy) was proposed to be deleted. The resource persons explained that the provisions for the local government units were already in Article X (Local Government). The Committee agreed to the proposal, having noted the comments made earlier by Commissioner Sarmiento.

As for Section 26 (Political Dynasty), the Chair suggested its deletion since this provision is not been implemented in reality, to which Commissioner Bello agreed. Commissioner Marohombsar further commented that the phrase "*as may be defined by law*" is very ambiguous. The Committee thus agreed to proposal to delete the section.

The Committee also agreed to the proposed deletion of Section 27, which states that *“The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption”*. The resource persons said that it is already covered in Article XI (Public Accountability). On the other hand, Section 28 (Public Disclosure) was retained by the Committee.

ARTICLE III: BILL OF RIGHTS

The Chair stated that the entirety of Article III would be retained, as these provisions conform to international agreements on human rights.

ABUEVA PROPOSAL

The resource persons noted that Chairman Abueva earlier proposed the inclusion of an Article on Duties and Obligations, which seeks to make people realize that they do not only have rights but they also have obligations towards the State. Other members of the committee agreed to the rationale behind the proposal which was based on the CMFP draft Constitution.

The Chair, however, suggested that Chairman Abueva’s proposed article be discussed later and that the Committee proceed to the proposed revisions on the remaining Article.

ARTICLE IV: CITIZENSHIP

The Chair read Section 1 of Article IV as follows: *“Section 1. The following are citizens of the Philippines: [1] Those who are citizens of the Philippines at the time of the adoption of this Constitution; [2] Those whose fathers and mothers are citizens of the Philippines...”* Upon suggestion of the Chair, the Committee agreed on the retention of items (1) and (2) of Section 1.

The Chair, however, proposed the revision of item (3) by deleting the second

phrase *“who elect Philippine citizenship upon reaching the age of majority.”* He explained the rationale behind this: first, it is cumbersome and very procedural; and second, people do not even follow it because they do not want to undergo the inconveniences of the existing procedures. The Chair pointed out that if the mother is already a Filipino, there should be no more need for the process of election. The Committee members agreed to this observation and to the proposed deletion, while retaining item (4) of Section 1.

The Committee also agreed to the retention of the first sentence of Section 2 and the deletion of the second sentence pursuant to the earlier decision of doing away with the process of electing Filipino citizenship.

Section 3(Reacquisition of Lost Citizenship) and Section 4(Citizens Who Marry Aliens) were retained by the Committee.

On Section 5 (Dual Allegiance), lawyer Paredes explained that a person can have dual citizenship but not dual allegiance, as the Philippine Constitution provides that when one has pledged allegiance to the US, then he shall have renounced his Filipino citizenship.

Lawyer Ambrosio averred that citizenship is passive since it is deemed to happen by “accident”; allegiance, on the other hand, is active since there is the intention to swear allegiance to, for example, the US government. He pointed out the difficulty in dual allegiance because in the event of conflict between the two countries to which a person has sworn allegiance, that person must choose where his allegiance should remain.

Commissioner Amin said that if there is no existing law on dual allegiance, this provision is needed.

Lawyer Paredes pointed out that there are specific provisions found in the Articles of War; and for civilians there are limitations found in the laws on public office.

However, the Chair stressed that as far as the Constitution is concerned, dual allegiance is not allowed.

Lawyer Paredes added that there was once a case questioning the provisions in the Local Government Code concerning dual citizenship or dual allegiance, and the Supreme Court ruled that there is recognition of citizenship but dual allegiance is not allowed, as he underscored that what is not prohibited by the Constitution can be legislated by Congress.

The Chair stated that before one could acquire Filipino citizenship (naturalized citizen), the law states that one must denounce his allegiance to his former citizenship.

In this regard, Commissioner Amin asked what would happen if a country and the Philippines which both recognize dual citizenship, wage war against each other. Attorney Paredes said that in such a case, the person would choose which country he would pledge allegiance to, even as the law allows dual citizenship.

Commissioner Marohombsar related that she has grandchildren who are American citizens since they were all born in the US, but every time there is a problem in the Philippines, the US embassy always checks up where they are.

Commissioner Bello inquired if being an American citizen requires swearing allegiance to the American government. Commissioner Marohombsar said that swearing allegiance is not necessary if one is already an American citizen by birth, unless he or she would join the US Armed Forces.

Attorney Paredes added that American citizenship may be acquired by marrying an American citizen and go through the naturalization process in the US. In this case, he said, an individual is required to swear allegiance to America and renounce his Filipino citizenship.

Thereupon, the Committee decided to retain Section 5 of Article IV.

PROPOSED BILL OF DUTIES AND OBLIGATIONS

The Chair then read the proposed Bill of Duties and Obligations. It (the Chair) commented that the proposed sections are verbose suggested that they be abbreviated if they are to be included in the proposed Constitution. Attorney Ambrosio stated that the provisions in the proposed article may no longer be necessary since they are already covered by existing laws and constitutional provisions.

The Chair added that these provisions may be too academic, saying that these are matters which schools should teach, not something that the Constitution should impose. However, Commissioner Marohombsar argued that if these are stated in the Constitution, the provisions would be mandatory and authoritative.

Commissioner Bello commented that if the proposed Section 3 would be put in the Constitution, the government cannot impose execution on anybody, as the Chair agreed that the phrase "*for whatever purpose*", referring to the taking of life, is heavy with meaning.

Lawyer Ambrosio commented that the proposal would actually limit the rights of the citizens. The Chair added that the problem of peace and order is uncontrollable and some people can get away with their crimes. In this light, Commissioner Marohombsar suggested the adoption of just the first part of the sentence (Sec 3).

Commissioner Bello raised the question of whether it is really necessary to include the Bill of Duties and Obligations in the Constitution.

Pertaining to another proposed provision, the Chair commented that it is the duty of every citizen to engage in gainful work even if it is not contained in the Constitution. One member commented that there would be a problem if this provision is included in the Constitution, but the State could not provide work.

Commissioner Marohombsar also asked if the proposed Sections 4 and 5 really need to be stated in the Constitution. Likewise, the Chair noted that Section 6 is already covered by other constitutional provisions.

Attorney Ambrosio commented that since these are Duties and Obligations, violations of these provisions should have corresponding sanctions to be imposed, and if there are no sanctions or penalties for violations thereof, then there is no point in including these. He reiterated that there are already existing laws regarding rights, obligations and contracts, the respect for human rights or life (which is covered by the penal code), and regulations on commerce (already covered by the mercantile law). The resource person added that anyway, it is also within the plenary power of the Congress to determine the specific duties and obligations of citizens.

The Chair stated that since the proposals came from Chairman Abueva, the Committee should relay to the Chairman the sentiments expressed with regard to the proposed Bill of Duties and Obligations.

In reply to Commissioner Amin's query, the Chair affirmed that the recommendations of the Committee would be brought up in the plenary discussion, probably on October 20, 2005. But Commissioner Marohombsar informed the Committee that the agenda for the next Plenary session was already full.

Nonetheless, the Chair gave the assurance that the proposals of the Committee will be tackled in plenary.

ADJOURNMENT OF MEETING

There being no other matters to be discussed, the committee meeting adjourned at 4:39 p.m.

Certified correct:

Com. Francis Chua
Committee Chairman

___ November 2005