



REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 82

Tuesday, May 27, 2008

**FOURTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 82
Tuesday, May 27, 2008

CALL TO ORDER

At 3:28 p.m., the Senate President, Hon. Manny Villar, called the session to order.

PRAYER

The Body observed a minute of silent prayer.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Emma Lirio-Reyes, called the roll, to which the following senators responded:

Angara, E. J.	Lapid, M. L. M.
Aquino III, B. S. C.	Legarda, L.
Cayetano, C. P. S.	Madrigal, M. A.
Defensor Santiago, M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Enrile, J. P.	Roxas, M.
Gordon, R. J.	Villar, M.
Honasan, G. B.	Zubiri, J. M. F.

With 16 senators present, the Chair declared the presence of a quorum.

Senators Arroyo, Biazon, Cayetano (A), Escudero and Revilla arrived after the roll call.

Senator Lacson was unable to attend the session due to a previously accepted engagement.

Senator Trillanes was unable to attend the session as he is under detention.

**DEFERMENT OF APPROVAL
OF THE JOURNAL**

Upon motion of Senator Pangilinan, there being no objection, the Body deferred the consideration and approval of the Journal of Session No. 81 to a later hour.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2323, entitled

AN ACT CREATING THE PERSONS WITH DISABILITIES AFFAIRS OFFICE IN EVERY PROVINCE, CITY AND MUNICIPALITY, AMENDING SECTION 40 OF REPUBLIC ACT NO. 7277, OTHERWISE KNOWN AS AN ACT PROVIDING FOR THE REHABILITATION, SELF-DEVELOPMENT AND SELF-RELIANCE OF DISABLED PERSONS AND THEIR INTEGRATION INTO THE MAIN-STREAM OF SOCIETY AND FOR OTHER PURPOSES

Introduced by Senator Loren Legarda

To the Committees on Social Justice, Welfare and Rural Development; Local Government; and Finance

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Senate Bill No. 2324, entitled

AN ACT PROVIDING FOR THE MANDATORY PREGNANCY TESTING OF ALL WOMEN OF CHILD-BEARING AGE WHO WILL UNDERGO COSMETIC PROCEDURES THAT ARE HARMFUL TO PREGNANT WOMEN AND UNBORN CHILDREN, AND DISCLOSURE OF THE POTENTIAL RISKS OF SUCH PROCEDURES AND FOR OTHER PURPOSES

Introduced by Senator Loren Legarda

To the Committees on Health and Demography; and Youth, Women and Family Relations

Senate Bill No. 2326, entitled

AN ACT INSTITUTING MECHANISMS FOR THE ESTABLISHMENT OF A CHILDREN'S HEALTH INSURANCE PROGRAM, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7875, OTHERWISE KNOWN AS "THE NATIONAL HEALTH INSURANCE ACT OF 1995," AS AMENDED BY R.A. 9241, AND FOR OTHER PURPOSES

Introduced by Senator Loren Legarda

To the Committees on Health and Demography; and Local Government

RESOLUTIONS

Proposed Senate Resolution No. 418, entitled

RESOLUTION CALLING ON THE PRESIDENT TO TAKE SWIFT ACTION TO SAVE AN OVERSEAS FILIPINO WORKER NOW IN DANGER IN THE HANDS OF HER EMPLOYER IN SAUDI ARABIA AND TO EXHAUST ALL LEGAL MEANS TO SECURE JUSTICE FOR THE MURDER OF FATIMA SAGADAN MAULANA, AND URGING THE SENATE COMMITTEE

ON LABOR, EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT TO CONDUCT, IN AID OF LEGISLATION, A FULL PROBE OF THESE TWO RECENT CASES OF ABUSES AGAINST OFWs TO ADDRESS THE ORDEAL OF THESE WORKERS AND THEIR FAMILIES, AND TO ENSURE THAT THERE IS NO MISCARRIAGE OF JUSTICE

Introduced by Senator Loren Legarda

To the Committees on Labor, Employment and Human Resources Development; and Foreign Relations

Proposed Senate Resolution No. 419, entitled

RESOLUTION URGING THE SENATE COMMITTEE ON URBAN PLANNING, HOUSING AND RESETTLEMENT TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE MASSIVE FORECLOSURE OF LOW COST AND SOCIALIZED REAL ESTATE MORTGAGES SOLD BY THE GOVERNMENT HOUSING FINANCE AGENCIES TO BALIKATAN HOUSING FINANCE, INC.

Introduced by Senator Loren Legarda

To the Committee on Urban Planning, Housing and Resettlement

Proposed Senate Resolution No. 420, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEES ON ENERGY; AND ENVIRONMENT AND NATURAL RESOURCES TO INQUIRE, IN AID OF LEGISLATION, ON THE IMPACTS OF COAL POWER PLANTS TO THE ENVIRONMENT AS WELL AS TO CALL FOR THE EXECUTIVE DEPARTMENT TO ADOPT A PROGRAM PROMOTING LESS DEPENDENCE ON COAL AND A SHIFT TOWARDS RENEWABLE ENERGY

Introduced by Senator Compañera Pia S. Cayetano *PC*

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To the Committees on Energy; and Environment and Natural Resources

COMMITTEE REPORT

Committee Report No. 56, prepared and submitted jointly by the Committees on Local Government; and Ways and Means, on Senate Bill No. 2325, with Senators Loren Legarda, Ramon "Bong" Revilla Jr., Manny Villar, Benigno S. Aquino III and Francis "Chiz" G. Escudero as authors thereof, entitled

AN ACT AMENDING SECTION 140(A) OF REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991,

recommending its approval in substitution of Senate Bill Nos. 71, 717 and 1426.

Sponsors: Senators Benigno S. Aquino III, Francis "Chiz" G. Escudero, Loren Legarda, Ramon "Bong" Revilla Jr. and Manny Villar

To the Calendar for Ordinary Business

ADDITIONAL REFERENCE OF BUSINESS

BILLS ON FIRST READING

Senate Bill No. 2327, entitled

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A PRESIDENTIAL CAMPAIGN FUND FOR PAYMENT OF THE APPROPRIATE AND ALLOWED EXPENDITURES OF POLITICAL PARTIES AND POLITICAL COMMITTEES IN PRESIDENTIAL AND VICE PRESIDENTIAL ELECTIONS AND ESTABLISHING PENALTIES FOR VIOLATIONS THEREFOR

Introduced by Senator Pangilinan

To the Committees on Constitutional Amendments, Revision of Codes and Laws; and Finance

Senate Bill No. 2328, entitled

AN ACT CREATING THE OVERSEAS FILIPINO WORKERS PENSION AND APPROPRIATING FUNDS THEREFOR

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Labor, Employment and Human Resources Development; Banks, Financial Institutions and Currencies; and Finance

Senate Bill No. 2329, entitled

AN ACT REORGANIZING THE PHILIPPINE STATISTICAL SYSTEM, REPEALING FOR THE PURPOSE EXECUTIVE ORDER NUMBERED ONE HUNDRED TWENTY-ONE ENTITLED REORGANIZING AND STRENGTHENING THE PHILIPPINE STATISTICAL SYSTEM AND FOR OTHER PURPOSES

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Economic Affairs; Civil Service and Government Reorganization; and Finance

Senate Bill No. 2330, entitled

AN ACT STRENGTHENING THE INDEPENDENCE OF THE COMMISSION ON HUMAN RIGHTS, AMENDING FOR THE PURPOSE SECTIONS 1 AND 5 OF EXECUTIVE ORDER NO. 163

Introduced by Senator Antonio "Sonny" F. Trillanes IV

To the Committees on Justice and Human Rights; Civil Service and Government Reorganization; and Finance

Senate Bill No. 2331, entitled

AN ACT PRESCRIBING THE STRENGTHENING OF THE NATIONAL EXTENSION SYSTEM TO ACCELE-

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**RATE AGRICULTURE AND FISHERIES
DEVELOPMENT, APPROPRIATING
FUNDS THEREFOR AND FOR
OTHER PURPOSES**

Introduced by Senator Angara

**To the Committees on Agriculture and
Food; Local Government; and Finance**

Senate Bill No. 2332, entitled

**AN ACT PROVIDING FOR A MAGNA
CARTA OF AGRICULTURAL
DEVELOPMENT WORKERS**

Introduced by Senator Pangilinan

**To the Committees on Civil Service and
Government Reorganization; Agriculture and
Food; and Finance**

RESOLUTIONS

Proposed Senate Resolution No. 421, entitled

**RESOLUTION URGING THE SENATE
COMMITTEE ON LABOR, EMPLOY-
MENT AND HUMAN RESOURCES
DEVELOPMENT TO CONDUCT AN
IMMEDIATE INQUIRY AND ASSESS-
MENT, IN AID OF LEGISLATION,
ANENT THE STATUS OF OVER-
SEAS FILIPINO WORKERS (OFWs)
IN DEATH ROW, WITH FOCUS ON
THE ASSISTANCE EXTENDED TO
THEM AND THE SHORT- AND
LONG-TERM POLICIES ADOPTED
BY THE COUNTRY RELEVANT TO
THE ISSUE**

Introduced by Senator Manny Villar

**To the Committees on Labor, Employment
and Human Resources Development; and
Foreign Relations**

Proposed Senate Resolution No. 422, entitled

**RESOLUTION COMMENDING JOE
DATUIN, FOR WINNING THE
GRAND PRIZE FOR SCULPTURE
IN THE INTERNATIONAL SPORT**

**AND ART CONTEST IN CONNEC-
TION WITH THE 2008 BEIJING
OLYMPICS**

Introduced by Senator Ramon "Bong"
Revilla Jr.

To the Committee on Rules

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session
was suspended.

It was 3:35 p.m.

RESUMPTION OF SESSION

At 3:36 p.m., the session was resumed.

**PRIVILEGE SPEECH
OF SENATOR GORDON**

Availing himself of the privilege hour, Senator
Gordon delivered a report on the ASEAN-UN Inter-
national Pledging Conference in Yangon, Myanmar
on May 25, 2008.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session
was suspended to allow for the audio-visual equip-
ment to be put in place.

It was 3:35 p.m.

RESUMPTION OF SESSION

At 3:36 p.m., the session was resumed.

The full text of the report of Senator Gordon
follows:

Introduction

While I was in Geneva attending the Inter-
national Red Cross Board Meeting last 23 May,
the President requested me, upon the recom-
mendation of Foreign Affairs Secretary Alberto
G. Romulo, to head the Philippine Delegation to
the ASEAN-UN International Pledging Conference
(IPC) held in Yangon, Myanmar on 25 May 2008.

Fifty-one countries and 22 international
organizations participated in the Conference. *MS*
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You will recall that the decision to convene the Conference was only reached during the Special ASEAN Foreign Ministers meeting in Singapore on 19 May 2008. That meeting discussed how ASEAN Member States could best assist the suffering in Myanmar brought about by Cyclone Nargis by using ASEAN as a facilitator of international assistance.

Background

The Cyclone Nargis that hit Myanmar on 02 May and 03 May, was of unprecedented intensity in Myanmar. The diameter of the storm was about 200 miles wide and the wind speed at the eye of the storm ranged from 120 to 150 miles per hour. The strong wind was accompanied by surging tidal waves that ranged from 7 to 12 feet in height.

According to General Thein Sein, Prime Minister of the Union of Myanmar, 7 townships in Ayeyarwaddy Division and 40 townships in Yangon were severely affected. The strong winds and the accompanying high tidal waves have caused heavy losses of human lives, farming cattle, livestock as well as extensive damages to properties. Some of the villages were completely wiped out due to the storm and the tidal waves.

The figures are truly saddening. According to the data collected to date, 77,738 people were confirmed dead, 55,917 were still missing so you may as well account to 130,000 may have been killed and 19,359 were injured. There were huge losses in properties and material damaged. Homeless victims totaled 1,064,623. Not only were lives lost, the means of livelihood in the affected areas - primarily farming and fishing - were also destroyed. Total damage to the agriculture, infrastructure, transportation, communication and industrial sectors have reached US\$10.67 billion.

On 04 May, the Myanmar government started rescuing and evacuating the more than one million homeless people to temporary shelters at 12 frontline camps, 15 transit camps and five base camps. Emergency relief items such as food and drinking water were delivered by helicopters and boats to some villages. The Myanmar government was able to carry out considerable effort in emergency search and rescue and is currently embarking on relief and rehabilitation measures together with the Myanmar Red Cross and other international humanitarian organizations.

Priority Needs

The big basic problem here is that in the beginning there was difficulty in accessing the

areas particularly Ayeyarwaddy district. Because of the difficulties, the ASEAN, United Nations meeting with the Prime Minister and the President of Myanmar was able to get the ASEAN to cooperate with it in making sure that facilitation assistance could be course through ASEAN which the leaders of Myanmar agreed upon.

Humanitarian assistance poured from local and international donors alike. Myanmar has received 3,273 tons of humanitarian supplies delivered by 150 cargo flights from foreign countries and international organizations.

According to the UN, as of 23 of May around 150 international air flights had arrived at Yangon international airport carrying some 3,400 tons of relief supplies, in addition to supplies carried separately by the cargo operations of regular commercial flights. Of these 150 flights, 77 were bilateral flights, 27 were from the United Nations agencies and IOM, 30 from the International Federation of the Red Cross/Red Crescent, and 16 from International NGOs. Flights are currently arriving at the rate of around 10-15 per day. These still need to step up further to meet the need.

Sir John Holmes, the undersecretary general for humanitarian affairs and emergency relief coordinator of UN-OCHA, said that further in depth assessment is urgently needed. The needs of the Myanmar people are not uniform and we can say, Mr. President, according to estimates of the United Nations, that at least 1 million or 41% of the 2.4 million people affected have receive some type of national or international assistance. That is less than 50%, through the combined distribution efforts of UN Agencies, the Myanmar Red Cross, International NGOs and Local NGOs and civil society. But many of these one million are in Yangon Division rather than the worst affected areas of Ayeyarwaddy Division, and few have received all they need. At present, we have no reliable means so far of measuring the reach of the Myanmar Government response, including distribution of the bilateral assistance they have received. The numbers of beneficiaries of their distribution should be in the hundreds of thousands, at least, and perhaps also up to a million. But there is likely to be overlap between the two sets of figures. This illustrates the urgent need for closer coordination, which is being addressed by the ASEAN-led mechanism about which we will hear shortly.

The crucial question is how many people of those in urgent need of major assistance have not been reached at all? The difficulties of

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access in some of these most devastated areas are worse, are very great, and assessments in many areas are still sketchy so far. We believe that of the 15 worst affected townships, 9 may still have major unmet needs, with perhaps 20% or less of the affected population reached. It remains very difficult to give more exact numbers in this area and it is of course a moving target. Many people have moved north to find help independently, or among those in camps or informal shelters. In any case, what is clear is that we need to scale up our delivery at the far end of the chain as fast as possible in these areas to avert the risk of extra and unnecessary deaths.

The needs of the Myanmar people, as I said, are not uniform, varying between areas badly affected by the cyclone itself, where shelter, food, reliable sources of drinking water and medical supplies are clearly needed but some infrastructure and housing remain visible, and those where the tidal surge was at its most destructive, where in some areas, little or nothing was left and everything therefore has to be provided. As I mentioned before, 15 of the 40 concerned townships are considered to be worst affected, mainly in the Ayeyarwaddy Division.

The World Food Programme estimates that to provide the necessary complete food basket for 750,000 people in the next six months, they will need 65,600 tons of rice at a cost of some \$70 million. Shelter materials, like tarpaulins and plastic sheeting, are also desperately needed in large quantities, or at least 400,000 items. Water treatment plants are also urgently needed.

Supplies of essential drugs and equipment have been arriving from UNICEF, WHO, International Red Cross and several major NGOs, but onward distribution remains patchy, given the access problems and destruction of local health resources.

Other Particular Concerns

Other particular concerns as the aid operations continue are the following:

1. The first and most critical is the possibility of a potential second wave of deaths due to diseases and nutritional deficiency among those not so far reached or only reached with small amounts of assistance. There is an ongoing health surveillance from both national and international teams but this needs to be maintained and stepped up, and health provisions stepped up as well.
2. On camps and settlements, people urgently need to be assisted. There are around 600

government-run and informal settlements altogether, housing more than 260,000 people. Satisfactory conditions need to be created before the people can return to their places of origin. Movements in and out of the camps seem to be fluid and unpredictable and there are fears of premature returns to areas where there are no basic health and social services.

3. The fate of unaccompanied children and the safety of women in temporary settlements are also of particular concern. The principles of family unity and community-based care and support for all children should be the foundation for any strategy and action plan for children.
4. Another issue for the future is the restarting of livelihoods for the largely farming and fishing communities of the delta. A significant reduction in rice production will ensue as it is very likely that rice re-planting in the devastated Ayeyarwaddy Delta not take place. Fishermen in the most devastated areas will need boats, nets and other equipment to restart. Early recovery is key to sustaining the lives saved by humanitarian efforts. Rapid assessment of the early recovery needs is required. Long-term recovery will need to be based on more comprehensive assessments of the extent of damage and future needs.
5. The international humanitarian community has learnt through recent experiences in responding to major natural disasters of the essential need to focus on reducing vulnerabilities. There is a need to make sure that the situation is stabilized as soon as possible and that longer term disaster risk reduction and preparedness strategies and measures are put in place for the future. Building back better must be a guiding principle.

ASEAN-UN International Pledging Conference

The ASEAN played a decisive role in the convening of the Conference. It all began when the ASEAN Foreign Ministers held a one-day special meeting on 19 May 2008 in Singapore to discuss how ASEAN Member States could best assist the Myanmar people in the aftermath of Cyclone Nargis.

Since coordinating international relief through a task force, would be a new undertaking for the ASEAN, on 24 May, I cautioned the other member states on the need to ensure the organization's credibility. I therefore suggested that the ASEAN Red Cross/ Red Crescent societies are already established in their capability to assist

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especially with the experience of the following countries, Philippines, Indonesia, Singapore, and Malaysia. I therefore recommended that the experts from the Philippines and Indonesia Red Cross were both experts in typhoons and tsunamis be used to immediately train the relief workers of Myanmar Red Cross or coordinate with the need workers of Myanmar Red Cross so that they could be more effective in their work.

The Philippines has designated Major General Glenn Rabonza (Ret.), Executive Officer of the NDCC, as the Philippines' senior official representative in the Task Force. He will be supported by an official from the Department of Foreign Affairs. The Task Force agreed to meet once a month in Yangon.

The ASEAN Task Force agreed to establish the Tripartite Core Group (TCG) that will operate in Yangon on a 24/7 basis during the next seven months. The TCG will provide on-the-ground support and assist the ASEAN Task Force in implementing its activities. The TCG will have nine members, three each from ASEAN, Myanmar Government and the United Nations. The ASEAN Secretary-General will have to select the three representatives of ASEAN to the Tripartite Core Group (TCG). Indonesia, Malaysia, Thailand and Singapore have so far expressed interest to nominate their respective nationals to the TCG.

The ASEAN Secretary-General has also recommended that an ASEAN Field Office be set up in Yangon to enable ASEAN work closely with the representatives of the Myanmar Government and the UN Office for the Coordination of Humanitarian Affairs (UN-OCHA) under the TCG framework. The ASEAN Foreign Ministers will have to approve this proposal.

The Philippine Delegation also attended the first meeting of the ASEAN Task Force for the Humanitarian Coalition for the Victims of Cyclone Nargis in the morning of 25 May and the ASEAN Heads of Delegations as I said the night before.

At that special meeting, ASEAN decided to work with the UN in organizing an ASEAN-UN International Pledging Conference as soon as possible. The ASEAN Foreign Ministers also established an ASEAN-led coordination mechanism that will facilitate the effective distribution, that is the task force, it now called the ASEAN Task Force for the Humanitarian Coalition for the Victims of Cyclone Nargis, headed by ASEAN Secretary-General Surin Pitsuwan of Thailand himself.

And so in Yangon, the Philippine Delegation attended both the Conference and First Meeting of the ASEAN Task Force.

The Conference was led by Myanmar Prime Minister Thein Sein, UN Secretary-General Ban Ki-Moon and Singapore Foreign Minister George Yeo, in his capacity as current Chair of ASEAN.

Myanmar Prime Minister Thein Sein officially announced at the Conference that Myanmar would welcome any assistance and aid from any country or organization provided that there would be no strings attached or politicization involved.

And here lies the cause of the problem the Myanmar authorities are extremely worried about political instability that could be caused by international agencies going into these areas that are in need of assistance.

The participants of the Conference responded positively to Myanmar's decision to open up to assistance from the international community. Many countries offered assistance. The UN has yet to finalize the exact amount of pledges made, but initial estimates put the amount of new pledges to about US\$30 million. That is a very low figure Mr. President in so far as this representation is concerned. The international agencies as well as countries who want to assist want the assurance that Myanmar will indeed open the door and allow these goods to be brought to these far flung areas. On the other hand Myanmar will now have to show whether it is indeed serious and sincere in allowing this opportunity to bring goods and relief and relief workers to areas that are affected. This amount is in addition to the pledges of about US\$200 million in bilateral and multilateral contributions that the UN has already raised before the Conference.

The UN has actually raised US\$51 Million already, some of which are already on the ground in Myanmar that is why even the World Food Programme has used 10 new helicopters to bring the food to different areas.

The Philippines made a humble pledge to contribute US\$100,000 in cash and another US\$250,000 in kind, such as medicines, relief goods and the cost of sending a 30- man medical team to Yangon via a PAF C-130 plane for the disaster victims in Myanmar. I believe that plane took off yesterday. The Philippines actually decided to increase its cash pledge of US\$50,000 to US\$100,000, upon consultation with the delegation, and that is what I am going to recommend to the President, because when we

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heard our smaller and poorer ASEAN neighbors like Cambodia pledging US\$250,000 in assistance and Lao PDR also pledging US\$100,000. I thought that the dignity of the country would be affected and certainly our ambassador would not have that kind of face and dignity considering that we are a bigger nation than Cambodia and Laos if we give less than these nations. The Philippine Delegation felt so much the spirit of "kapwa tao" during the Conference and thought that the Philippines should be seen in a much better light.

In addition, the Philippine National Red Cross, which I chair, will raise US\$15,000 to be handed over to Myanmar Red Cross.

Aware of the enormity of the disaster, I emphasized in my statement the need to scale-up the relief operations and get valuable expertise from other ASEAN governments and ASEAN Red Cross/Red Crescent Societies which could serve as a conduit to other international Red Cross Societies' resources and expertise. The International Red Cross has allowed for international "Appeal" they've already got US\$60 million MR. President, but they are planning to raise another US\$ 60 Million for Myanmar. I called upon the ASEAN and the Myanmar Government to tap the vast experiences and network of these humanitarian and disaster relief organizations which can effectively respond to the needs on the ground.

In response, Foreign Minister George Yeo of Singapore and ASEAN Secretary-General Surin Pitsuwan encouraged and supported our proposal that the Red Cross/Red Crescent societies in ASEAN be totally engaged in the humanitarian efforts in Myanmar as it will allow disaster relief experts to conduct enhanced, speedy and focused assistance for the disaster victims through the Myanmar Red Cross.

The Red Cross/Red Crescent movement, which is known for its principles of neutrality and impartiality, will be an effective partner of the Myanmar Red Cross in undertaking the humungous relief works in the country. It will also be easier for the Myanmar Government to accept their relief workers and assistance. The disaster is so huge that politics must not be allowed to get in the way of delivering immediate assistance to those who are in dire straits at this very moment. There are orphans, the elderly, the wounded, the sick, the hungry - all needing food, shelter, medicines, clothes, and human caring.

On 29 May 2008, the ASEAN Red Cross/Red Crescent societies will meet in Kuala Lumpur,

Malaysia to discuss how best they can put people Red Cross/Red Crescent expertise on the ground as quickly as possible.

The Philippine Delegation and I feel that the international community will provide more money and resources to Myanmar once the Myanmar Government has assured access to all areas in dire need.

Conclusion

The Philippines, with its active participation in the Conference and the ASEAN Task Force Meeting, has contributed to a meaningful and significant step in ASEAN's efforts to bridge Myanmar with the UN and the international community.

Things are looking up. Myanmar authorities have now unlatched its door to the world. I will however, as I said in Myanmar, caution as it will now be up to them to decide on how wide it will open its doors to let in a generous and compassionate world to help alleviate suffering among its people.

As I said, this is the cause of the issue to be able to get these doors to open so that the international community can have the confidence that their goods would be found where it is most needed by the most vulnerable in Myanmar without the hampering of their offer by Myanmar government authorities. I think I have a great deal of hope that the Myanmar authorities who have done, what I would say a reasonably good job, will now be able to do so because the whole world is now watching how it is going to happen.

Coordination and scaling up of speedy delivery and the logical distribution of relief and rehabilitation should be the main focus in the meantime. The task may seem daunting but need not be insurmountable, for Myanmar can rely on the experience and expertise of other societies including the Philippines and Indonesia in dealing with these disasters.

We should not waste precious time in fault-finding and fixing the blame or raising political issues. Our efforts should instead be directed and convincing or encouraging and providing Myanmar with the confidence to set aside politics so that the international community, in particular the ASEAN community, may be able to reach the most vulnerable of the people.

The Philippine Delegation's participation in the Conference and in the Task Force *AK*

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Meeting would not be as fruitful and productive as it was without the support of its members. I now would like to take this opportunity to thank them - Major General Rabonza, Ret., of the NDCC, Ambassador Noel C. Cabrera of the Philippine Embassy in Yangon, and Foreign Affairs Undersecretary Enrique Manalo, Assistant Secretary Romeo Manalo, and Director Zaldy Patron of the DFA.

Lastly, I would like to thank President Gloria Macapagal Arroyo and Secretary Romulo for allowing us the opportunity and the privilege to be able to show the Filipino trait of "kapwa tao" to be felt beyond its shores.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:01 p.m.

RESUMPTION OF SESSION

At 4:01 p.m., the session was resumed.

REFERRAL OF SPEECH TO COMMITTEE

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the privilege speech of Senator Gordon to the Committee on National Defense and Security.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:01 p.m.

RESUMPTION OF SESSION

At 4:02 p.m., the session was resumed.

COMMITTEE REPORT NO. 53 ON SENATE BILL NO. 2293 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2293 (Committee Report No. 53), entitled

AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51, AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997.

Senator Pangilinan stated that the parliamentary status was the period of committee amendments, and that Senator Roxas has requested that he be allowed to ask clarificatory questions.

Thereupon, the Chair recognized Senator Escudero, Sponsor of the measure, and Senator Roxas for his inquiries.

INQUIRIES OF SENATOR ROXAS

Upon query of Senator Roxas, Senator Escudero confirmed that the potential revenue loss from the exemptions is P12 billion.

Senator Roxas expressed concern over the exemptions as there might come a time when government workers receiving Salary Grades I and 2 would be exempt from tax but not those receiving Salary Grades 4 and 5 which might be in excess of the minimum wage. He suggested that a new provision be formulated stating that, "All workers, private or public, earning below the minimum wage set forth in the Regional Tripartite Wage Councils would be exempt from income taxation." Senator Escudero agreed to the suggestion, pointing out that it is in line with the wording of the House version. He said that the Committee was prepared to propose the specific amendment.

Asked if the minimum wage earner who would be covered by committee amendment could still avail of additional exemptions, Senator Escudero replied in the affirmative, saying that those who are earning even a peso higher than the minimum wage would benefit from the additional exemptions, depending on the number of their dependents. He explained that the taxpayer could avail of higher personal exemption which was increased to P50,000 regardless of whether he is a single, head of the family or married; and an additional exemption of P25,000 for each dependent, not exceeding four.

Asked by Senator Roxas if a worker earning P7,964 a month in the private sector in the NCR and a government employee earning P8,114 (Salary *10*

Grade 5, Step 6) also in the NCR, regardless of status, would be exempted from income tax, Senator Escudero replied in the affirmative.

In closing, Senator Roxas observed that tax administration would be much simpler under the proposed Act as taxes would now be based on the minimum wage in every region.

COMMITTEE AMENDMENT

On page 1, line 14, after the word "sector," as proposed by Senator Escudero, there being no objection, the Body approved the deletion of the phrase "RECEIVING COMPENSATION INCOME EQUIVALENT TO SALARY GRADE FIVE (5) AND BELOW" and in lieu thereof, the insertion of the phrase, WITH COMPENSATION INCOME OF NOT MORE THAN THE STATUTORY MINIMUM WAGE IN THE NON-AGRICULTURAL SECTOR WHERE HE IS ASSIGNED.

With respect to the suggestions of Senator Defensor Santiago, Senator Escudero informed the Body that the inclusion of ascendants as additional dependents would mean for the government a P9.13 billion revenue loss; an increase in personal exemptions to P75,000, a P6.74-billion revenue loss; and the exemption of hazard, holiday, night shift and overtime pay, a P4.74-million revenue loss.

TERMINATION OF THE PERIOD OF COMMITTEE AMENDMENTS

There being no committee amendment, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of committee amendments and proceeded to the period of individual amendments.

TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS

There being no individual amendment, upon motion of Senator Pangilinan, there being no objection, the Body closed the period of individual amendments.

APPROVAL OF SENATE BILL NO. 2293 ON SECOND READING

Submitted to a vote, there being no objection, Senate Bill No. 2293 was approved on Second Reading.

PRESIDENTIAL CERTIFICATION

Upon direction of the Chair, Secretary Reyes read the President's certification as to the necessity of the immediate enactment of Senate Bill No. 2293, to wit;

MALACAÑANG PALACE MANILA

HON. MANUEL B. VILLAR JR.
Senate President
Philippine Senate
Pasay City

Dear Senate President Villar:

Pursuant to the provisions of Article VI, Section 26(2) of the 1987 Constitution, I hereby certify to the necessity of the immediate enactment of Senate Bill No. 2293, under Committee Report No. 53, entitled

"AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51 AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997,"

to address the urgent need to cushion the adverse impact of the global escalation of commodity prices upon the most vulnerable within the low income group, by providing expanded income tax relief.

Best wishes.

Very truly yours,

(Sgd.) GLORIA M. ARROYO

cc: HON. PROSPERO C. NOGRALES
Speaker
House of Representatives
Quezon City

APPROVAL OF SENATE BILL NO. 2293 ON THIRD READING

In view of the presidential certification, upon motion of Senator Pangilinan, there being no objection, the Body considered, on Third Reading, Senate Bill No. 2293.

Pursuant to Section 67, Rule XXIII of the Rules of the Senate, upon motion of Senator Pangilinan, there being no objection, Secretary Reyes read only the title of the bill, to wit:

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AN ACT AMENDING SECTIONS 22, 24, 34, 35, 51 AND 79 OF REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997.

Secretary Reyes called the roll for nominal voting.

RESULT OF THE VOTING

The result of the voting was as follows:

In favor

Angara	Legarda
Aquino	Pangilinan
Cayetano (P)	Pimentel
Ejercito Estrada	Revilla
Enrile	Roxas
Escudero	Villar
Gordon	Zubiri
Lapid	

Against

None

Abstention

None

With 15 senators voting in favor, none against, and no abstention, the Chair declared Senate Bill No. 2293 approved on Third Reading.

EXPLANATION OF VOTE BY SENATOR PIMENTEL

Senator Pimentel stated that he is in support of the measure but he expressed regret that his proposal to cover families with children who are differently-abled in the bill was not accepted by the Committee, although he was given an assurance that the exemptions would be tackled in another bill.

For his part, Senator Escudero reiterated his commitment that exemptions would be given to families with differently-abled dependents.

MANIFESTATION OF SENATOR CAYETANO (A)

Senator Cayetano (A) manifested that he would have voted "yes" on the measure and like Senators

Pimentel and Escudero, he is committed to look into the tax burden of people who earn more.

MANIFESTATION OF SENATOR ZUBIRI

Senator Zubiri expressed his support for the proposal of Senator Pimentel and asked to be clarified if the same could still be included in the bicameral conference. Senator Escudero gave assurance that the Senate panel would bring it up in the bicameral conference with the understanding that it would not delay the approval of this much-needed tax relief.

Thereupon, Senator Zubiri requested that he be included as a member of the Senate panel.

COMMITTEE REPORT NO. 42 ON SENATE BILL NO. 2121 (Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2121 (Committee Report No. 42), entitled

AN ACT AMENDING SECTIONS 4, 9, 20, 21, 23, 25, 26, 30, 31, 32, 33, 34, 35, 38, 41, 43, 45, 48, 51 OF REPUBLIC ACT NO. 9136 ENTITLED "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY AND FOR OTHER PURPOSES."

Senator Pangilinan stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Enrile, Sponsor of the measure, and Senator Angara for the continuation of his interpellation.

INTERPELLATION OF SENATOR ANGARA (Continuation)

Adverting to Section 14 of the bill which seeks to amend Section 35 (*Royalties, Returns and Tax Rates for Indigenous Energy Resources*) of the EPIRA, Senator Angara asked on the meaning of the phrase, "THE COMMISSION, AFTER DUE NOTICE, SHALL FORTHWITH CORRESPONDINGLY reduce the PRICES AND/OR rates of ELECTRIC power from all indigenous energy resources AND IMPROVE THE GRID'S GENERATION MIX FOR PORTFOLIO PLANTS."

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 4:25 p.m.

RESUMPTION OF SESSION

At 4:26 p.m., the session was resumed.

Senator Enrile explained that if the country has indigenous sources of energy, the ERC should consider establishing a blend of all these sources and dispatch the cheapest so as to adjust the cost of power.

As regards the Renewable Energy Bill which provides that a generation mix of 20% of the grid must come from renewable sources, Senator Enrile noted that 20% is 2,000 megawatts which is equivalent to the capacity of the Luzon grid. He expressed concern that the country's renewable sources of energy might not be able to supply this volume. Senator Angara maintained that the 20% is just one of the sources to be tapped as he noted that solar energy alone can produce 7,000 megawatts.

Asked if the ERC would be authorized to reduce electricity cost considering that 20% of the supply would come from renewable energy sources, Senator Enrile replied that this would depend on the cost of producing renewable energy, pointing out that producing electricity from wind power is quite expensive as proven by the Burgos and Pagudpud experiments.

To the contention that the cost of producing electricity through hydrothermal sources is generally lower than the traditional means, Senator Enrile stated that constructing dams would not be cheap considering the high inflation rate and the high prices of raw materials and labor.

To the observation that the proposed amendment is a misleading statement as it would not necessarily lead to a rate reduction, Senator Enrile clarified that this is precisely the reason why the ERC will conduct a public hearing to determine the rates of electricity.

Even as he expressed his bias towards implementing a reduction in rates for renewable energy sources since this could serve as an incentive for distribution companies, Senator Angara suggested that the

provision be clarified as it implies that the ERC is authorized to mandate a reduction in electricity rates.

For his part, Senator Enrile pointed out that discovering a plentiful source of natural gas in the country, for instance, would lead to cheaper electricity only if its price would not be pegged to world market rates, which was not done in the case of the Malampaya plant because instead the DOE decided to tie up the price of natural gas with the world price thereby saddling the people with expensive electricity. He expressed willingness to accommodate Senator Angara's suggestion but asserted that the proposed 20% mixture for the grid as provided for in the Renewable Energy Bill ought not to be specified because this might be unattainable.

Upon further queries, Senator Enrile said that the country's present total power capacity is 15,000 megawatts although only 8,000 megawatts is actually being generated. He added that 20% of the projected 15,000 megawatt electricity demand by 2015 would be 2,800 megawatts.

To the contention that it is possible to generate 2,000 megawatts from renewable energy sources, Senator Enrile disagreed. He noted that hydro power, for instance, is finite as it is dependent on the amount of rainfall and the accessibility of rivers to dams. However, he expressed willingness to consider any amendment at the proper time.

Asked about the term "related business" in Section 7 (*Distribution Related Businesses*) of the bill, Senator Enrile said that the phrase "related businesses" covers businesses belonging to a single power distribution or generation firm, citing, for instance, Meralco which owns enterprises such as Rockwell or the company hospital which services Meralco employees and the general public. He cited the Meralco Theater as an example of an unrelated business because it is not used for power generation or distribution; therefore, it could not be subsidized by end-users of electricity.

On the difference between a "wheeling charge" and a "retail rate," Senator Enrile explained that the first refers to the toll charge collected by Transco from both the generation company and the distribution firm for the use of its transmission wires, while the second includes the cost of power, transmission, distribution and all ancillary services, which is applicable to distribution company because, in effect, it is the retailer.

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As regards the "captive market" of distribution utilities, Senator Enrile explained that this refers to end-users within a franchise area who have no other source of power except Meralco, for instance. On the hand, he said that the "non-captive market" refers to electric power consumers who get their power directly from the generation company. He stated that with open access, consumers have the option to use the services of Meralco or go directly to the generation company but pay a wheeling charge for the delivery of electricity to their establishment.

To the observation that in utilities law, the return is a just and reasonable formula, Senator Enrile noted that in lieu of the return-on-rate-base (RORB) formula which does not exceed 12%, the ERC is presently using the performance-base rate-making system, presumably to hide something. He pointed out that only used and useful assets and not the money cost must be included in the base.

Asked for the reason behind the switch to the performance-base system, Senator Enrile believed that this was done to increase the profits of utility companies.

Senator Angara wondered why ERC is being given so much discretionary authority. Senator Enrile stated that he was open to suggestions.

Asked how least cost to end-users would be ensured when there are many automatic pass-ons like the Generation Rate Adjustment Mechanism (GRAM) and transmission adjustment, Senator Enrile replied that automatic pass-ons are legitimate operating expenses of utility companies to deliver the power to the consumer. What is bad, he said, is charging the consumers for their inefficiencies as he noted that some power distributors allow people to steal their current and do nothing about it.

Senator Angara agreed that the operator should not be unduly burdened and must be allowed to recover costs, but he noted that the operators are practically passing on their foreign currency adjustment to consumers. Senator Enrile stated that precisely, the bill mandates a public hearing on any petition to increase rates.

With regard to pilferage, Senator Angara asked why urban areas are allowed systems loss of 9½% when it is more reasonable to cut it in half. In reply, Senator Enrile recalled that during the term of

President Marcos, the inclusion of pilfered electricity as systems loss was done through a presidential decree. He proposed that the bill only allow friction losses. Senator Angara suggested that a cap on systems loss be placed at 4½% for urbanized areas and 10% for rural areas because electric posts in rural areas are set afar, thus allowing for more friction and the losses are potentially higher. Senator Enrile agreed, suggesting that the distribution company, using in-house electricity, ought to have its own meter so that its facilities could be inspected to determine its actual consumption.

Senator Angara expressed the view that the biggest safeguard which could be introduced in the bill to curb unreasonable rates is to control the discretion of the ERC as he explained that the effectiveness and true value of the EPIRA lies on how well and wise the ERC has exercised its tremendous power over the households.

Asked what the policy decision on the RORB against performance-base system would be, Senator Enrile admitted that he rewrote the RORB formula and detailed what are allowable and not allowable when he presented the comprehensive amendment to the EPIRA. He stated that the present formula in the EPIRA will remain and it is up to the people to decide whether the performance-base rate formula is a workable formula where Meralco, as the major distributor, can earn 23% profit. Also, he stated that he is open to any suggestion to bring back either the RORB or the performance-base system not to exceed 12%.

With regard to open access, as to the rationale for the reduction of the privatization requirement from 70% to 50%, Senator Enrile explained that if the player exceeds 30% of the grid, it cannot participate in the spot market. With the reduction, he stated that 49% of the generating capacity of Meralco has already been disposed and PSALM and Napocor are expected to achieve the 50% disposition of IPPs by August or September this year or put them into the hands of IPP administrators. By the time the 50% disposition is achieved, he said that the era of open access would come in and the requirement of a minimum of one megawatt and above consumption is expected to go down to 750 kilowatts after three years, and thereafter, ERC would decide when the power would step down correspondingly. He acknowledged that it is difficult to take control of the many technicalities that the ERC is doing like the installation

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of facilities to step down the power. Nevertheless, he said that the Power Commission should be able to do it.

But Senator Angara pointed out that the PowerCom's function is a different matter and Congress should not intervene in the energy policy being made by the Executive.

INTERPELLATION OF SENATOR ROXAS

Senator Roxas noted that the concept of open access as it was first instituted in the original EPIRA is to create a competitive space on the demand side or the customers' side relative to competitive space on the generation side; in fact, big customers can already buy power directly from various generating companies (Gencos).

Senator Enrile opined that the competitive aspect of the industry was only in the area of generation; the purpose of having an open access was to create a market where generating companies would compete to supply the open market. Unfortunately, he said, he was one of the few who were against those provisions that were inserted in the measure. He said that many have been lobbying to emasculate the bill, the reason all those conditions, though difficult to fulfill, were imposed.

Expressing his belief that open access can never be attained, Senator Enrile proposed a 50% disposition instead of 70% where 30% of present capacities of Napocor would be left. He opined that open access could be initiated without prejudice to the continuation of the disposition of the capacities of Napocor and PSALM up to the level of retaining only 30% of their present capacities. He reiterated that the intent was to create competition among the Gencos for the non-captive market which consumes one megawatt or more. Had he been given the chance to exert influence in crafting the original bill, he said that he would have opted to not only establish competition on the generation side but also on the retail side. He lamented the fact that there is no competition on the retail side because Meralco dictates where to buy its supply at a certain price since it is the biggest buyer of electricity to retail.

Asked how a competition on the retail side would come about, Senator Enrile replied that Meralco should be broken down into four parts. He disclosed that the Meralco that was returned to the Lopez

after the EDSA Revolution is no longer the Meralco that was transferred to the Meralco Foundation; it was already a bigger Meralco because the Meralco Foundation had acquired some other franchises in the surrounding areas of its franchise area, but all of these acquired franchises which have long period of remaining years being used to service their clients had been consolidated in one mega franchise when the principal franchise of Meralco expired sometime in 2002 or 2003; Meralco then became a giant that it now controls 70% of the Luzon grid and about 60% of the national grid.

But Senator Roxas pointed out that the percentage of the national grid or the Luzon grid is a reflection of where the malls, factories and other population centers are, which happened to be within the Meralco area. Senator Enrile agreed. However, he recalled that in 1973 when Meralco was taken by the Meralco Foundation, many of the areas then were not within the franchise area of Meralco. Nonetheless, in the course of time, Senator Roxas surmised that all of those franchises were incorporated probably because of the economy of scale.

Senator Enrile opined that all those franchises were consolidated into one franchise in order to reduce any area of contention.

On the issue of open access, Senator Roxas believed that the conditions set forth were meant precisely to ensure a competitive environment. He stated that Napocor, beneficiary of government largesse, was supposed to have sold 70% of its owned and operated Gencos, and 70% of its IPPs so that at that point, it would end up with 30% of its size, and it would no longer be able to dominate the generation market.

Senator Enrile believed that it was foolish to have disposed of government share in Petron and it is already too late to buy back its 40% share. He stressed the need to be careful in going down to 30% because there are other players in the market who are in the business of acquiring generating capacities which might become later on the Napocor that everyone is afraid of.

Asked where exactly Napocor is in the legally mandated divestment process, Senator Enrile replied that it is in the reduction process and it has already disposed 49% of its directly-owned generation ~~AF~~

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capacity, one percent short of 50% as proposed in the bill. In the case of IPPs, he said that Napocor intends to have its capacities fully transferred to an IPP administrator by August or September of this year.

Senator Enrile said that Napocor would dispose of the remaining 1% of its directly-owned generation capacity by August.

Senator Roxas asked how many of the IPPs have already been disposed of.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:31 p.m.

RESUMPTION OF SESSION

At 5:34 p.m., the session was resumed with Senate President Pro Tempore Ejercito Estrada presiding.

Upon resumption, Senator Enrile stated that nothing has been disposed of yet but Napocor has promised to complete the process by August or September 2008, otherwise, it would have to answer to the people.

Asked on the original deadline for the attainment of the 30%, Senator Enrile stated that it should have been made within three years. He said that the EPIRA is being amended to hopefully hasten open access.

Senator Roxas asked how Napocor answered to the people when it failed to meet the original deadline.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:37 p.m.

RESUMPTION OF SESSION

At 5:37 p.m., the session was resumed.

Senator Enrile stated that when the EPIRA law was passed in 2001, most of the personnel complement of Napocor retired and some were rehired by PSALM. However, he disclosed that since Napocor could not attain the privatization as ambitiously envisioned by those who pushed for the original EPIRA, many of the people in Napocor were rehired. Nonetheless, he stressed that with the open access policy being proposed in the amended EPIRA, people would be relieved of their difficulties.

Senator Roxas asked whether Napocor's IPPs are in the nature of tolling agreements under which Napocor purchases the raw material, tolls through the IPPs, and sells the end-product which is electricity. Senator Enrile agreed. He recalled that during the Ramos administration, government contracted power producers that used diesel or coal to fire up their plant capacities to convert the fuel bought by Napocor into electricity, and the marketing of that electricity was Napocor's function. He said that the rate was based on the agreed price per kilowatt hour whether it is used or not.

Senator Roxas observed that this is not an arm's length transaction as Napocor has control over the IPPs, being the purchaser of the raw materials and controller of the end-product.

Senator Enrile stated that while the tolling charge was agreed upon between Napocor and the plant owner, the variables – the costs of the fuel and the other components – would depend upon the people running Napocor. He said that if the price of coal or diesel could go up, this would be reflected in the price of electricity, and the burden is passed on to the consumer.

Senator Roxas asked whether Napocor pays duty and/or VAT in its purchases.

SUSPENSION OF SESSION

Upon motion of Senator Enrile, the session was suspended.

It was 5:45 p.m.

RESUMPTION OF SESSION

At 5:45 p.m., the session was resumed.

Upon resumption, Senator Enrile said that Napocor pays taxes and duties on its supplies. *ms*

He explained that before the EPIRA, Napocor pays only its franchise tax to the government in lieu of all taxes. He said that the cost of fuel net of taxes depended on the faithfulness of those who run Napocor in discharging their duties to the people.

SUSPENSION OF SESSION

Upon motion of Senator Roxas, the session was suspended.

It was 5:47 p.m.

RESUMPTION OF SESSION

At 5:49 p.m., the session was resumed.

Senator Roxas stated that Napocor, for its Gencos and IPPs, is treated, from a tax and duty point of view, the same as a private sector entity.

Senator Enrile affirmed that tariffs and VAT for a ton of coal, for instance, purchased by a Napocor-IPP would be treated the same way as a ton of coal purchased by a private sector Genco.

Asked if there are other government concessions accorded to Napocor-owned and operated plant, a Napocor-IPP and a private sector operation, Senator Enrile replied in the affirmative. However, he pointed out that they are not supposed to pay income tax if they are losing. He agreed that the entities would be competing with one another on equal terms, at least, as regards government tax treatment.

Senator Roxas asked on the starting point in megawatts of the Napocor-owned and operated Gencos and of the IPPs before they dispose of the 49% and where they are today.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 5:54 p.m.

RESUMPTION OF SESSION

At 6:08 p.m., the session was resumed.

MANIFESTATION OF SENATOR PANGILINAN

Upon resumption, Senator Pangilinan said that after conferring with Senators Enrile and Roxas, it was agreed that the consideration of the measure would be suspended for the day and resumed the next day.

Moreover, he informed the Body that Senator Pimentel had manifested to Senator Enrile the desire of the members of the Minority to come up with some proposed amendments to the measure in a caucus to be called within the week or early next week.

MANIFESTATION OF SENATOR ENRILE

Senator Enrile expressed his apologies for not being able to answer the questions proffered by Senator Roxas as they required technical answers. He expressed dismay over the inability of Napocor officials to answer the questions because they are expected to have the figures at their fingertips considering their efforts towards privatization. He believed that the Napocor people should know their capacity, how much they have sold, and the balance that they have to sell. He said that he has never figured in a debate on a bill unless he knew the facts, thus, it was unfortunate that he was not given the correct figures.

Senator Roxas remarked that the inability of the concerned agencies to provide the data to his queries was not a reflection of the outstanding work that has been undertaken so far by Senator Enrile in defending the proposed measure. He commented that it was certainly reasonable to expect that the representatives of the concerned agency would know the technical aspects of the bill.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2121

Upon motion of Senator Pangilinan, there being no objection, the Body suspended consideration of the bill.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 6:11 p.m. AF

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RESUMPTION OF SESSION

At 6:19 p.m., the session was resumed.

COMMITTEE REPORT NO. 51 ON SENATE BILL NO. 2264 (Continuation)

Upon motion of Senator Cayetano (A), there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2264 (Committee Report No. 51), entitled

AN ACT AMENDING THE COOPERATIVE CODE OF THE PHILIPPINES TO BE KNOWN AS THE "PHILIPPINE COOPERATIVE CODE OF 2008."

Senator Cayetano stated that the parliamentary status was still the period of interpellations.

Thereupon, the Chair recognized Senator Zubiri, Sponsor of the measure, and Senator Aquino for his interpellation.

INTERPELLATION OF SENATOR AQUINO

Asked by Senator Aquino if he would agree that cooperatives are set up primarily for the marginalized sectors and that joining them is intended to strengthen their economic clout and improve their lives, Senator Zubiri replied that originally, the cooperative movement was supposed to help the marginalized sectors of society but lately, cooperatives could also be organized and utilized by the middle class and the rich.

Senator Aquino reasoned that if all members of the society, regardless of their financial status, could form themselves into cooperatives, there was no logic in exempting cooperatives from taxes and import duties and granting them other benefits but not the other groups who formed themselves into partnerships and corporations.

Senator Zubiri clarified that technically, individuals from any sector, whether rich or poor, could form themselves into a cooperative but the benefits that were placed in the proposed measure were really intended as incentives so that farmer cooperatives, for example, could import their inputs tax-free, utilize them for production, and sell their produce to their own members. He maintained that the provisions

would, in effect, really help the thousands of cooperatives all over the country.

Senator Aquino warned that nobody would then bother to form a corporation and people would simply organize a cooperative and avail of the benefits that are granted to them under the law.

Senator Zubiri stated that cooperatives do not exist for profit but deal only on net surplus. He believed that rich individuals would not join them because even if they put a P5-million seed capital, they could not own more than 10% of the cooperative, and they would only be entitled to one vote. The net surplus, he said, would be divided among the members as patronage refund and interest on capital.

However, Senator Aquino noted that Section 62 of the original Cooperative Code, in effect, exempts from taxation any reserves or undistributed surpluses from P10 million and below.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 6:27 p.m.

RESUMPTION OF SESSION

At 6:28 p.m., the session was resumed.

Upon resumption, Senator Zubiri explained that reserve funds or surpluses of cooperatives that go over the amount of P10 million are subject to national, city, municipal and barangay taxes. He said that the tax provision in the old law was not touched.

Asked by Senator Aquino if "accumulated reserves" or "undivided net savings" is the remaining profits of a cooperative after the distribution of patronage refund, Senator Zubiri replied that accumulated reserves are actually retained earnings, of which 10% is kept and 90% is given back as patronage refund.

Asked if the remaining 90% of the earnings of a cooperative are subject to tax, Senator Zubiri replied that it will be distributed back to its members.

As regards Section 42, Senator Aquino noted that relatives up to the second civil degree of

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consanguinity or affinity shall not be elected or appointed in the same board. Senator Zubiri stated that many cooperatives, especially those in the provinces, have relatives within the same family serving in the same board.

On the concern that the amendment to Section 42 would allow a family to advance its own interest at the expense of the other members, Senator Zubiri maintained that even with a more relaxed requirement, there is still democracy as the election of an officer needs a three-fourths vote of the members. He cited the example of the Matigsalog Multipurpose Cooperative in the Davao-Bukidnon boundary, all of whose members belong to just one family and so as not to break the law, they asked that the inhibition be relaxed.

Senator Aquino argued that the original provision was meant to protect the interest of a cooperative by insulating its officers from conflicts of interests.

Asked on the basis of the increased paid-up capital of P30,000, Senator Zubiri replied that the original amount of P2,000 made it easy for fly-by-night cooperatives to register. A higher paid-up capital would allow a cooperative to engage in a more serious economic activity and other incidentals, he said.

Senator Aquino noted that only P5,000 is required as paid-up capital to put a corporation, an amount for an entity that is supposed to engage in an endeavor to earn a profit. He asked why the requirement for cooperatives is more stringent given that it services a marginalized sector of society. He posited that the basic premise of the Cooperative Code is to assist the marginalized sectors but the increase in paid-up capital might mean lesser chances for the marginalized sector to be assisted. He pointed out that farmers in Tarlac, for instance, who want to put up a cooperative would find it hard to raise that kind of money since they earn little from their harvests. Senator Zubiri expressed openness to suggestions specifically on the amount of the paid-up capital. He revealed that the cooperative sector requested that the paid-up capital be increased to P50,000, while he opted for P15,000 so they compromised on P30,000.00.

With respect to air transport cooperatives, Senator Zubiri pointed out that as soon as they start selling their goods and services to non-members, the Bureau of Internal Revenue (BIR) will consider them as income-generating entities that must pay income tax.

Senator Zubiri offered to provide Senator Aquino with documents of the Asian Spirit which, he noted, pays taxes to the BIR each time it sells tickets to non-members of the cooperative.

To the observation that Article 62 of the bill which states that cooperatives transacting business with both members and non-members shall not be subject to tax contradicts the case of Asian Spirit, Senator Zubiri clarified that the bill provides that transactions with non-members would be taxed.

Asked whether it is possible for a cooperative to be tax-free for as long as its profits do not surpass the P10-million cap, Senator Zubiri replied in the affirmative.

On whether it would be profitable for a corporation to reformulate itself into a cooperative, Senator Zubiri explained that it would not be practical nor would it make good business sense for a family to reconfigure themselves as a cooperative because the CDA ensures that a member will not own more than 10% of the entity. He said that in the case of PAL, every member of the cooperative would only have an equal share as Mr. Tan, who might not even be elected as an officer of the organization. He noted that Asian Spirit, which registered a P300 million deficit in 2007, ended up selling its assets to a Chinese consortium.

On whether the Code or the amendatory bill provides that the cooperative can refuse the application of any member, Senator Zubiri replied in the affirmative, adding that he would furnish Senator Aquino with a copy of Article 28 of the Code.

Asked if there are safeguards to prevent PAL owner Lucio Tan from transforming the PAL into a cooperative and avail of the benefits of the bill, Senator Zubiri conceded that although such a move is possible, it may not be practical since it would not be Mr. Tan but the members of the cooperative who would enjoy these benefits. He added that if the PAL were to service the needs of non-members, then it would be subject to tax payments. Moreover, he said that PAL, operating as a cooperative, would not be as profitable as it is now.

To the concern that such an entity when operating as a corporation would not only be exempt from paying sales tax but could even import fuel without paying duties, Senator Zubiri said that the BIR has

filed several cases against these erring multipurpose cooperatives for non-payment of taxes. Therefore, he believed that not only Mr. Tan, but even anyone else would also find it difficult to skirt the law and avoid paying taxes by using the cooperative as a disguise.

Upon further queries, Senator Zubiri stated that under Article 127 of the bill, not only tax evaders would be fined a maximum of P100,000 pesos and face up to four (4) years' imprisonment but even government employees or officers violating the Code would be penalized particularly since several BIR and DoF officials have been known to conspire with erring cooperatives. He said that the CDA is responsible for reviewing and determining whether the cooperatives are genuinely part of a marginalized sector or are bogus organizations. Nonetheless, he expressed willingness to accept any amendments to strengthen the provisions on Articles 60, 62 and 63 of the existing Code which is not being amended in the bill.

Asked whether the provision on the right of first refusal would not only violate the procurement law but would also stifle competition because it would, in effect, grant a monopoly to the cooperative, Senator Zubiri clarified that cooperatives may be given the right of first refusal in limited source bidding, direct contracting or negotiated procurement, but only for agricultural products such as rice, corn, grains, fish and other marine commodities. He conceded that the provision might violate the provision on open bidding, but the inclusion of the provision was a request made by the cooperative sector particularly since such groups are not entertained by local government units and agencies, some of which make a profit from awarding contracts on such projects.

Senator Aquino noted that if this was the case, then the cooperatives could file cases against such local government units or agencies with the Sandiganbayan. He wondered whether the proposed amendment on the mandatory right of first refusal was borne as a result of the weakness of the original provision on preferential treatment. Senator Zubiri explained that filing a case against such government agencies would not only be expensive, but cooperatives also hesitate to do so out of fear of the powerful officials behind these agencies. Therefore, he said that these cooperatives end up selling their produce elsewhere.

Upon further query, Senator Zubiri pointed out that giving preferential rights to cooperatives does

not really work because even if they are made to participate in public biddings, they would still lose to more developed and moneyed bidders since they do not have the right connections to the local government units or agencies. He noted that cooperatives that have labor and stevedoring services in terminals and ports are easily eased out by other non-coop operators.

Asked whether a group that organizes itself into a cooperative to manage a public market can contract operations of the same to a third party, Senator Zubiri replied that only the cooperatives must utilize these rights.

At this juncture, Senate President Pro Tempore Ejercito Estrada relinquished the Chair to Senator Cayetano (A).

Asked if it refers to actual utilization of the stalls or spaces by members of the public market cooperative, Senator Zubiri said that it is just the management and not the actual occupancy of the market.

Senator Aquino asked whether in the management and operation of public terminals and ports, whether land, sea or air transports, the transport cooperative operating there has the right of first refusal to manage and operate all land, sea or air terminals. Senator Zubiri acknowledged that this might be difficult to achieve but it was the request of many cooperatives to be allowed to manage these ports and markets and be given the right of first refusal. He stated that the bill provides that a public transport service cooperative may be entitled to financial support for the acquisition and/or maintenance of land, sea and air transport equipment, facilities and parts, through the programs of government financial institutions.

Asked which provision limits the right of first refusal and the amount of financial support that government should give cooperatives, Senator Zubiri stated that there is no mandatory provision. He said that the Senate Employees Transport Service Cooperative, the main function of which is to buy a bus and transport the members to and from the Senate, is a very concrete example of a public transport service cooperative.

At this juncture, Senator Cayetano (A) relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

Senator Zubiri expressed willingness to insert an amendment to make sure that this provision would benefit only the marginalized sector and not big-time entities.

Senator Aquino wondered why air transport, which is never cheap, was included in the coverage. Senator Zubiri said that according to the CDA experts, only the Asian Spirit has been successfully operated as a cooperative.

SUSPENSION OF SESSION

Upon motion of Senator Zubiri, the session was suspended.

It was 7:18 p.m.

RESUMPTION OF SESSION

At 7:18 p.m., the session was resumed.

Senator Zubiri said that the CDA has no knowledge of the transactions between Asian Spirit and their new buyers because the agency, under the present Code, monitors the cooperatives by simply relying on their annual reports. On the other hand, he stated that the bill seeks to allow the CDA to open the books and monitor the operations of cooperatives.

Senator Aquino opined that the members of the Asian Spirit cooperative cannot be characterized as marginal. Senator Zubiri said that many of the mechanics and the flight attendants could still fall under the lower middle class bracket or those earning P10,000 to P12,000 a month.

Asked if members of the Asian Spirit cooperative availed of the various benefits accruing to cooperatives even as a substantially more expensive cooperative than the typical cooperatives set up by marginalized sectors. Senator Zubiri replied that they availed of some tax exemptions until they started selling to private consumers.

SUSPENSION OF SESSION

Upon motion of Senator Aquino, the session was suspended.

It was 7:22 p.m.

RESUMPTION OF SESSION

At 7:24 p.m., the session was resumed.

Senator Aquino asked whether a market vendors cooperative, which is not well-off and decides to exercise the right of first refusal to manage a public market, would be entitled to other benefits. Senator Zubiri replied that there would not be any special benefits and that instead, it would have to comply with the necessary requirements of the government agency or local government unit with respect to the management of the public market.

On whether a group with a P30,000 capital would be capable of running a public market and meet all the obligations like the execution of bonds, Senator Zubiri replied in the affirmative. He said that the bill provides that only appropriate cooperatives may apply since it might be difficult for cooperatives to meet the financial and technical requirements, and for the LGU to choose somebody else. Nonetheless, he expressed willingness to insert an amendment to require the cooperative to have the necessary qualifications for the said business entity and services.

Senator Zubiri expressed willingness to retain the provision on preferential treatment as embodied in the original law.

Asked about the "right of first refusal in rice distribution," Senator Zubiri explained that most of the farmers cooperatives experience difficulty in selling their products to NFA because the latter has been very selective in purchasing rice. Recognizing the anomalies and the corruption involved in this process, he believed that marginalized farmers cooperatives would benefit from the "right of first refusal." He appealed to the Body that this provision be retained particularly on the sale of rice to government agencies. He said that he would be willing to accept amendments at the proper time to improve the provision.

On another matter, Senator Aquino stated that "social audit" refers to examining the conduct of the cooperative and that its existence is geared towards improving the social conditions of a community.

Senator Zubiri shared the same view, adding that social audit determines how well a cooperative was able to fulfill its social obligations in improving the lives of its members. He said that the Committee, with the help of cooperative luminaries, has incorporated in the bill provisions for human resource development and corporate social responsibility to

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ensure the well-being of members and the community as a whole.

Asked on the criteria in conducting a social audit, Senator Zubiri replied that the criteria would be spelled out in the implementing rules and regulations (IRR) of the CDA. Nevertheless, he said that the Committee would welcome any suggestion to enhance the provision on social audit.

On whether there are certified social auditors in the country, Senator Zubiri replied in the negative. However, he pointed out that there are manuals developed by the cooperative sector and the academe on social audit instrument. Further, he informed the Body that the CDA provides the necessary trainings and programs, and state universities and colleges like the Polytechnic University of the Philippines and the University of the Philippines-Los Baños, have already adopted a more formal approach to cooperatives. He said that the bill intends to make a pioneering provision on social audit to strengthen the cooperative sector.

On whether the provision would facilitate the conduct of the social audit and assess the impact of the cooperative on the community as well as justify the privileges and benefits granted to these cooperatives, Senator Zubiri replied in the affirmative, adding that the Committee proposes on Article 7(2) that "every cooperative shall have at least one major socio-civic undertaking that must have a positive impact on social concerns as: membership, education, environment, health, democracy and/or such other aspects of human betterment or empowerment."

Asked what would happen if a cooperative fails in the social audit, Senator Zubiri replied that the matter was not included in the bill but the CDA can impose penalties on erring cooperatives. He said that the suggestions raised during the Committee hearings, particularly on retraining and retooling, can be considered at the proper time.

Senator Aquino then proposed the inclusion of a provision to impose penalties on the said cooperatives and also justify the privileges granted to them. Senator Zubiri agreed to the proposal.


On another matter, Senator Aquino asked how an entity with a capitalization of P30,000 can reinsure the risk that it would undertake as an insurance

cooperative. Senator Zubiri replied that it has to comply with the requirements of the Insurance Commission similar to a coop bank that has to comply with the requirements of the *Bangko Sentral ng Pilipinas*. He observed that only few multi-purpose cooperatives or even large cooperatives provide insurance coverage to their members, citing the Cooperative Insurance System of the Philippines (CISP) and the Philippine Assurance Cooperative (PHILAC) as examples of an insurance cooperative.

On whether existing cooperatives which are selling branded insurance coverage are considered agents of other insurance companies, Senator Zubiri replied that the CISP is not an agent and does not sell private insurance coverage but it exists as a typical insurance company covering all the risks attendant to an insurance provider.

Asked whether a marginalized sector could invest the necessary capital in terms of equipment and personnel training to be able to perform the business processing outsourcing (BPO) area of the business, Senator Zubiri replied in the affirmative. He stated that there are at least 25,000 Filipino cooperative members engaged in big local and foreign companies. For instance, he cited Shoemart which has a penchant of hiring not regular but contractual workers from companies or cooperatives like Asia-Pro that provides contracts for these people. He observed that one good thing about it is that all these people are members of that cooperative that provides service to Shoemart, hence, they get every benefit or amount that Shoemart gives without any deduction; needless to say, all benefits except for the minimal management fee go back directly to the cooperative.

Senator Zubiri said that BPO is another fast-growing industry in the Philippines and there are some BPO operators that want to do contractual work every six months.

On whether a newly formed cooperative would have the capability to set up its own BPO outfit, Senator Zubiri replied in the negative, pointing out that it is limited to providing service to the BPO. But he pointed out that if the cooperative is financially capable and possesses the expertise, it could put up its own BPO outfit; however, he clarified that what the bill envisions is just providing labor services to the BPOs. 



Senator Aquino asked how a cooperative with a capitalization of P30,000 could run a BPO which is capital-intensive. In response, Senator Zubiri stated that the 15 or 1,000 members of the cooperative can always put up the needed capital which might be P5 million and run the BPO themselves. He said that the advantage of a cooperative managing a BPO is that if it earns P100 million, after retaining a portion for operation, everyone will get an interest on share capital or dividends, which is not to exceed 10%. The BPO, he said, like any normal business entity is taxed because it is contracting its services with a private company.

Senator Aquino believed that a group can collectively own more than 10% of the cooperative if can get around the inhibition on the election or appointment of relatives up to the second degree of consanguinity to the board.

Asked if the benefits provided in the bill would compensate for the diminished activities of the small- and medium- enterprises, Senator Zubiri stated that the Magna Carta for Small- and Medium-Enterprises gives the enterprises their share of incentives.

Senator Aquino recalled that then Prof. Gloria Macapagal-Arroyo taught her students about the value of competition in the marketplace and she gave emphasis on efficient decision-making processes. He said that the right of first refusal is government's way of intervening in the marketplace that leads to inefficiency.

On the provision of having only one cooperative bank in a province, Senator Zubiri clarified that it is a requirement set by the *Bangko Sentral ng Pilipinas*. He said that the Committee is willing to sit down with Senator Aquino and, at the proper time, consider amendments to the bill.

Senator Aquino asked if it would be more prudent to list down several criteria to shorten the period within which an entity could monopolize a particular sector, as in the case of cooperative banks in the provinces. However, Senator Zubiri cautioned that this might intrude into the jurisdiction of the BSP.

In conclusion, Senator Aquino expressed support for strengthening the cooperative movement and its principles in addressing the concerns of the middle

class and marginalized sector of society. However, he expressed concern that this could enhance more competition within the sector, making it more difficult for the sector to compete.

Senator Zubiri stated that the questions raised on the floor would guide the Committee in formulating the amendments. He said that the Cooperative Code bears the imprints of the Aquino legacy as Sen. Butz Aquino was one of its principal authors and President Cory Aquino signed it into law.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2264

Upon motion of Senator Cayetano (A), there being no objection, the Body suspended consideration of the bill.

APPROVAL OF THE JOURNAL


Upon motion of Senator Cayetano (A), there being no objection, the Body dispensed with the reading of the Journal of Session No. 81 and considered it approved.

ADJOURNMENT OF SESSION

Upon motion of Senator Cayetano (A), there being no objection, the Senate President Pro Tempore declared the session adjourned until three o'clock in the afternoon of the following day.

It was 8:01 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO-REYES
Secretary of the Senate

Approved on June 2, 2008