

REPUBLIC OF THE PHILIPPINES

S e n a t e

Pasay City

Journal

SESSION NO. 34

Wednesday, November 10, 2004

**THIRTEENTH CONGRESS
FIRST REGULAR SESSION**

SESSION NO. 34

Wednesday, November 10, 2004

CALL TO ORDER

At 3:45 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Richard J. Gordon led the prayer, to wit:

O God, we pray for guidance, enlightenment and resoluteness at this time when our country is in dire need of financial resources, that as we craft tax legislations, we may be imbued with the wisdom to create a fair system that enables us to tax those who deserve to be taxed without further burdening the rest of the citizenry with unwarranted duties.

We pray that those who handle the finances of this country be accountable for their ways so that we may avoid unnecessary losses and expenditures and devote the money to where it can do the most good for the most people.

We pray for the courage to speak and act against those who would steal from the coffers of the nation through corruption, smuggling and nonpayment of taxes, for they are siphoning the resources of the nation, neutralizing hard-earned gains and saddling our people unjustly with paying the taxes and losses that these malefactors should have paid.

Inspire us with the vision to conceive new ways to provide the people of this great nation with the opportunities to acquire a good education and decent jobs, so that they may experience the pride and dignity of contributing to the productivity of the nation, to create a better country and uplift their status in life by their own efforts.

We pray for accountability, Lord, for both leader and led, to create a future that makes decent, dignified, compassionate and spiritual people out of all of us, so that we, as your children, may bring glory to Your Name.

Amen.

ROLL CALL

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

Angara, E. J.	Lacson, P. M.
Arroyo, J. P.	Lapid, M. L. M.
Cayetano, C. P. S.	Lim, A. S.
Defensor Santiago, M.	Madrigal, M. A.
Drilon, F. M.	Magsaysay Jr., R. B.
Ejercito Estrada, J.	Osmeña III, S. R.
Ejercito Estrada, L. L. P.	Pangilinan, F. N.
Enrile, J. P.	Pimentel Jr., A. Q.
Flavier, J. M.	Revilla Jr., R. B.
Gordon, R. J.	Roxas, M.

With 20 senators present, the Chair declared the presence of a quorum.

Senators Recto and Villar arrived after the roll call.

Senator Biazon was on official mission.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 33 and considered it approved.

REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Emma Lirio-Reyes, read the following matters and the Chair made the corresponding referrals:

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RESOLUTION

Proposed Senate Resolution No. 127, entitled

RESOLUTION EXHORTING THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES TO ADOPT THE NECESSARY COURSES OF ACTION FOR THE IMMEDIATE CLEANUP, RESTORATION, AND DETOXIFICATION OF THE SUBIC NAVAL BASE AND CLARK FIELD AIR BASE, INCLUDING TAKING THE APPROPRIATE LEGAL ACTION BEFORE THE INTERNATIONAL COURT OF JUSTICE AGAINST THE GOVERNMENT OF THE UNITED STATES OF AMERICA IF NECESSARY

Introduced by Senator Pangilinan

To the Committees on Environment and Natural Resources; and Health and Demography

COMMUNICATIONS

Letter from Deputy Executive Secretary for Legal Affairs Manuel B. Gaite of the Office of the President of the Philippines, transmitting to the Senate two (2) original copies of the following republic acts which lapsed into laws on 8 August 2004, pursuant to Section 27(1), Article VI of the Constitution:

Republic Act No. 9315, entitled

AN ACT GRANTING THE FIBER TELECOMMUNICATIONS INCORPORATED A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEM THROUGHOUT THE PHILIPPINES;

Republic Act No. 9316, entitled

AN ACT GRANTING THE SLL INTERNATIONAL CABLE SPECIALIST CORPORATION, INC.

A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN LOCAL EXCHANGE NETWORK IN REGION VI;

Republic Act No. 9317, entitled

AN ACT GRANTING THE DATELCOM CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN LOCAL EXCHANGE NETWORK IN REGION III;

Republic Act No. 9318, entitled

AN ACT GRANTING THE RADIO CORPORATION OF THE PHILIPPINES A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN RADIO AND TELEVISION BROADCASTING STATIONS IN THE PHILIPPINES;

Republic Act No. 9319, entitled

AN ACT GRANTING THE CLAVERIA AGRI-BASED MULTI-PURPOSE COOPERATIVE (CAPMPC) A FRANCHISE TO CONSTRUCT, ESTABLISH, INSTALL, MAINTAIN AND OPERATE LOCAL EXCHANGE NETWORK IN THE MUNICIPALITIES OF CLAVERIA, STA. PRAXEDES AND SANCHEZ MIRA, ALL IN THE PROVINCE OF CAGAYAN;

Republic Act No. 9320, entitled

AN ACT AMENDING REPUBLIC ACT NO. 8597, ENTITLED AN ACT GRANTING THE TRENTO TELEPHONE SYSTEM, INCORPORATED A FRANCHISE TO CONSTRUCT, ESTABLISH, INSTALL, MAINTAIN AND OPERATE LOCAL EXCHANGE NETWORK IN THE MUNICIPALITY OF TRENTO,

Handwritten initials and a vertical line.

PROVINCE OF AGUSAN DEL SUR;

Republic Act No. 9321, entitled

AN ACT GRANTING THE eTELCO, INC., A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES;

Republic Act No. 9322, entitled

AN ACT RECLASSIFYING A PORTION OF LAND COMPRISING FIVE HUNDRED TWELVE AND EIGHTY (512.80) HECTARES OF PUBLIC LAND UNDER TIMBERLAND PROJECT NUMBER 13-G, BLOCK A, AS PER LAND CLASSIFICATION MAP NUMBER 3400 IN BARANGAY RANSANG, MUNICIPALITY OF RIZAL, PROVINCE OF PALAWAN AS AGRICULTURAL LAND OPEN FOR DISPOSITION;

Republic Act No. 9323, entitled

AN ACT RECLASSIFYING A PARCEL OF TIMBERLAND LOCATED IN BARANGAY ATABAY, MUNICIPALITY OF HILONGOS, PROVINCE OF LEYTE, AS ALIENABLE OR DISPOSABLE LAND FOR RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND OTHER PRODUCTIVE PURPOSES;

Republic Act No. 9324, entitled

AN ACT CONVERTING, AND DECLARING CERTAIN ROADS NAMED HEREUNDER IN THE FIRST DISTRICT, PROVINCE OF NORTHERN SAMAR INTO NATIONAL ROADS AND PROVIDING FUNDS THEREFOR;

Republic Act No. 9325, entitled

AN ACT CONVERTING THE MALALAO PROVINCIAL ROAD IN THE MUNICIPALITY OF TABUK, PROVINCE OF KALINGA INTO A NATIONAL ROAD AND PROVIDING FUNDS THEREFOR;

Republic Act No. 9326, entitled

AN ACT CONVERTING THE BULO PROVINCIAL ROAD IN THE MUNICIPALITY OF TABUK, PROVINCE OF KALINGA INTO A NATIONAL ROAD AND PROVIDING FUNDS THEREFOR;

Republic Act No. 9327, entitled

AN ACT CONVERTING THE RIZAL PROVINCIAL ROAD IN THE MUNICIPALITY OF RIZAL, PROVINCE OF KALINGA INTO A NATIONAL ROAD AND PROVIDING FUNDS THEREFOR;

Republic Act No. 9328, entitled

AN ACT CONVERTING THE LUBUAGAN-BATONG BUHAY PROVINCIAL ROAD IN THE MUNICIPALITY OF LUBUAGAN, PROVINCE OF KALINGA INTO A NATIONAL ROAD AND PROVIDING FUNDS THEREFOR;

Republic Act No. 9329, entitled

AN ACT RENAMING THE WHOLE STRETCH OF ROAD STARTING FROM THE JUNCTION OF BARANGAY BAGONG SIKAT INCLUDING LIBORO STREET UP TO BARANGAY CAMINAWIT PIER IN THE MUNICIPALITY OF SAN JOSE, PROVINCE OF OCCIDENTAL MINDORO AS BISHOP FELIX Y. MANALO AVENUE;

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Republic Act No. 9330, entitled

AN ACT ESTABLISHING THE SAN ANTONIO AIRPORT IN THE ISLAND-MUNICIPALITY OF SAN ANTONIO, PROVINCE OF NORTHERN SAMAR AND APPROPRIATING FUNDS THEREFOR;

Republic Act No. 9331, entitled

AN ACT NAMING THE PHILIPPINE NATIONAL POLICE PROVINCIAL OFFICE IN THE MUNICIPALITY OF LAGAWE, PROVINCE OF IFUGAO AS CAMP COLONEL JOAQUIN P. DUNUAN;

and Republic Act No. 9332, entitled

AN ACT NAMING THE PHILIPPINE NATIONAL POLICE (PNP) PROVINCIAL OFFICE IN THE CITY OF MAASIN, PROVINCE OF SOUTHERN LEYTE AS CAMP GOVERNOR ALFREDO KANGLEON BANTUG

To the Archives

ADDITIONAL REFERENCE OF BUSINESS

RESOLUTION

Proposed Senate Resolution No. 128, entitled

RESOLUTION CONCURRING WITH THE RATIFICATION OF THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF HIGHLY MIGRATORY FISH STOCKS IN THE WESTERN AND CENTRAL PACIFIC OCEAN AND ITS ANNEXES

Introduced by Senator Mar Roxas

To the Committee on Foreign Relations

QUESTION OF PRIVILEGE OF SENATOR OSMEÑA

On a question of personal privilege, Senator Osmeña spoke on the ongoing fiscal crisis and the actions of the Senate committees to address the same.

Hereunder is the full text of the speech:

This is in reaction to a short article published in *The Daily Tribune* this morning which stated that, "Opposition Senators Resolved to Block Bill to Hike Sin Taxes."

Now, we all know here that it is completely false. What we have been saying is that there are different interpretations of the way the tax should be raised. Senator Enrile has his ideas, Senator Recto has his, the House has its own, and each of us here is desirous of the opportunity to be able to amend later on the floor whatever bill or committee report will be presented to the Chamber for its consideration and approval.

But what bothers me especially is that I have been able to discern a propaganda campaign that seeks to paint the legislators as wholly to blame for the fiscal crisis that we are in. I would like to remind the *Filipino people* that we did not spend the money. We merely appropriated it and usually every year we do a rubber-stamp appropriation of the budget that is sent to us by Malacañang. As a matter of fact, this year we are operating on a budget that we approved in December 2002. So, therefore, also taking into consideration that the Senate President himself has, two or three times in the recent past, been blamed for not passing a bill that was never proposed by Malacañang.

But let me just update my colleagues in this Chamber of what has been happening.

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The ways and means committee conducted two hearings on the fiscal crisis and three hearings on the sin taxes.

The finance committee conducted two hearings with the DBCC (Development Budget Coordinating Committee) which gave us an overview and tried to defend its assumptions for the projected budget for 2005.

The energy committee also held a couple of hearings on the deficits of Napocor and the EPIRA.

In all those hearings, this Representation has requested several documents, information, that would assist this Chamber -- not me alone but this Chamber -- because I asked that the documents be presented to the Chair of the committees so that we would be able to analyze properly the problems as they are today, how we got here, and what we can do to make sure they do not happen again.

Now, let us remember that the biggest scandals have been the GOCCs because these are items that are contingent liabilities that actually become liabilities within six months simply because those GOCCs like the Napocor have been operating in the red and these liabilities are now included in our total fiscal picture and the deficit known as the "consolidated public sector deficit." And, more or less, correct me if I am wrong, this year we are projected to collect P650 billion in revenues and spend P1 trillion. That is P200 billion in the national budget deficit and another P150 billion caused by the GOCCs including but not limited to the National Power Corporation's deficit.

So, what we have is a situation wherein they are coming to the legislators -- by "they" I mean Malacañang, the executive department -- and saying, "You increase the taxes of the Filipino people so that we can plug this deficit and raise electricity rates and other fees.

Now, the Constitution, the Filipino people reposed in the members of Congress, both the Upper House and the Lower House, the power to tax. And the power to tax must carry with it the responsibility to explain to the Filipino people the justification for increasing the taxes. And before we can explain that, we have to find out first what caused the problems. We simply cannot again give Malacañang a blank check and say, "Okay, here is another P200 billion in taxes, you go ahead and spend it the way you have been spending." That is not fair to the Filipino people and that is not exercising our duty and responsibility as legislators.

Therefore, to cut short this speech of mine, I just would like to outline the information that has not been furnished to us which we requested as long as six weeks ago even before the break.

Of Secretary Amatong, I asked for a breakdown of expenditures by agencies from 1992 up to the present. This should be easily printed out. I have not received this.

Of the SSS officers, I asked for the remuneration of the members of the board of directors of the SSS or the commissioners. This has not been furnished us.

As we know the salaries of GSIS and SSS can range from half a million pesos a month, basic pay; the president and CEO of GSIS receives P6 million a year in discretionary fund which he does not have to account for. On top of that, he sits in the boards of several corporations where GSIS has a substantial stake and where he enjoys as director the emoluments and year-end bonuses, which is equivalent to 1% of the net profit of the corporation, divided by the number of directors -- this is standard -- plus all the travel allowances, representation allowances, *et cetera*. I have asked for that. They have not given that to us.

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I asked for the report on the government's purchase of the Napocor bonds and its impact on the consolidated public sector deficit. We have not received that.

I asked for a study on the impact of the proposed additional tax measures. And this I asked of Director Romulo Neri about the proposed additional tax measures and the rate increases on the disposable income of the Filipino family, particularly the poor -- the C, D, and E class. I have not received that. I asked, if we tax them now, how long will it take them to go back to the level that they are today before the tax is to be imposed. I did not receive that information.

I asked Secretary Amatong and Undersecretary Nieves Osorio of the Department of Finance the amount of revenues to be collected by the government if we remove some items that are now exempted from the e-VAT and subject them to e-VAT. I have not received that.

I asked for a breakdown of tax revenues for the proposed 2005 fiscal program to explain the 13.6% expected growth from the 2004 level. In other words, they said: "We will collect 13.4% more." Where is that coming from? We did not receive that.

I asked for a breakdown of the obligation budget where it exceeds the cash budget, and to give examples of what accounts for those gaps, and how it will be covered. We did not get that.

We asked for the data on the budget level by expense class from the years 1996 to 2010 to give us a comparable. We have not received that.

We asked for a report on the uses of funds from the road user's tax, which was imposed three years ago, which amounted to P25 billion, and which I believe was used in the elections to pay

all the road sweepers wearing those blue jackets. We have not received that.

I asked for the details on the reported \$50 million loan extended by the GSIS to the Department of Foreign Affairs. We have not received that.

I asked for comments on the report submitted by Congressman Joey Salceda which was entitled "A Roadmap to Fiscal Rehabilitation" where Joey Salceda projected an additional 100-basis points increase in our borrowing rates over the next years, and its assumptions therefor. We have not received that.

We asked for a copy of the survey they used to build the year 2000 tax data base of the DOF, which contains data on the estimated total assets of P11.8 trillion and a total networth of P4.4 trillion. We have not received that.

We asked for their study, analyzing whether or not people with pending criminal cases such as malversation of public funds can avail themselves of the proposed tax amnesty, we have not received that.

We asked for an explanation of the huge discrepancies in the recorded income tax filers on a year to year basis. Sometimes it is P1 million, sometimes they say P400,000. They had not given that to us.

We asked for the studies on the supply/demand of alcohol and tobacco products and what the impact on the demand for cigarettes would be if we increase the tax by P1.00, P2.00, P3.00. We have not received that.

We asked for the effective tax rates of cigarettes since 1980 in order to give us a comparable data. We have not received that.

We asked for a position paper where various laws passed by Congress have allowed the indexation of taxes. We have not received that.

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We have received about one-half of what we have requested and I have not read before this Chamber those that we have received or partially received. So, therefore, I think that the Palace would get better cooperation from the members of Congress if they cooperated with us, if they were more transparent with us, if they were able to tell us, "Look, guys, this is the problem, this is how we got here, this is where first we are going to cut expenses." Because the first thing we have to make government do is cut their expenses first before they immediately tax the poor.

My concern is not the rich. They can afford to pay. We can raise the taxes tomorrow, but we can hear the howl that we will get from the Makati Business Club if we say we propose to increase the corporate tax rate to 35% or 40%. But if they say, "Wow, let us increase the tax of the poor by increasing the E-VAT from 10% to 12%, then to 15%; by increasing fuel taxes by P2.00 per liter." *Okay lang sa kanila iyon, kasi walang ka-kuwenta-kuwenta iyon sa bulsa nila.* For example, every time there is a proposal to increase tax on text message, we will see an orchestrated effort by the two large mobile service providers, condemning the members of Congress for even thinking about increasing or putting a tax on text message.

Let me share this with the members of this Chamber and those who are here, our visitors, today. Over the past four, five months, whenever I got the opportunity, I had asked the taxi driver, the waiters, visitors to my office, students, particularly, a simple question: "*Aangal ba kayo kung maglalagay po ang gobyerno ng P0.10 per text message? Magkano po ba ang binabayaran ninyo ngayon?*" *Sabi nila, P1.00 per text.* "If we put the P0.10 tax on text, will that really affect you?" "*Hindi, walang ka-kuwenta kuwenta po iyan, sir.*" In other words, for somebody with a phone card expense of P300.00 a month, and sending the equivalent -- let

us say, he does not make any voice calls of P300 -- text messages a month or P0.10 per day, he will spend the same amount if he cuts down to P0.09, if there is a P0.10 tax. And not one person complained and said: "That is too much." In other words, here are responsible Filipinos willing to contribute, and how much will a P0.10 tax on text messaging raise for the government? Seven billion a year, easy, because we have 70 billion text messages a year, 200 million text messages a day. And so without much effort, that will raise P7 billion and that will be recurring because the text message volume is growing by 10% to 20% a year. But these are things that we do not hear of because the Makati Business Club refuses to hear about it. So, this is where I think the members of this Chamber should be alerted: that there seems to be an effort to put the blame, to put the onus on the members of the Chamber.

And I believe we have been working. But we cannot work if they cannot give us the information and I certainly will not go to the Filipino people and tell them, "Sorry, we raised your taxes but I do not know why we raised it." Because they would not give us the information or Malacañang would not furnish us with the information anyway.

They are always talking about a credit downgrade. We have been downgraded already by the market. It is over. It is finished. While they are talking about Moody's, Fitch and Standard and Poor's downgrading us from Ba-2 to Ba-3, the market which trades ROPs or Philippine bonds, foreign-denominated bonds, everyday, every hour, has already charged us that downgrade. It does not matter what Fitch or Moody's or Standard and Poor's will do tomorrow.

As a matter of fact, in today's *Herald Tribune*, there is a long article which is headlined, "Moody's Weighs a Cut to Philippine Ratings on Budget Fears." But it says also in its article that

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“Although Moody’s has yet to announce another downgrade, the markets responded as though it were a foregone conclusion, the benchmark stock index dropped 1.3%.” That means, by rule of thumb, our interest rate just went up by 1.3% and the Philippines peso was stable against the dollar.

I know the Senate President is very much involved with this and we will have a meeting at 6:30 today to try to orchestrate the passage of bills that have been deemed top priority measures by Malacañang. I think we should tell Malacañang to lay off. Otherwise, by stonewalling on the information that we have been requesting, they will be cutting their own throats because I will certainly stand up here and say, “I will not allow this tax measure to pass. I do not know enough about it and I am sorry I tried my best to obtain the information. They just will not give it to us.”

Lastly, Senate Minority Leader Nene Pimentel delivered a speech on the new national railway expansion or upgrade from Manila to Marilao which will cost almost a billion pesos per kilometer. Somebody informed me after that speech that one of the reasons why it is so expensive is that they are building two tracks.

Even in America, they only use a single track because they use switches. When a train is oncoming, they switch it to a siding so that the other train going the other way may pass and allow the train to proceed. In that way, they only build one track, not two tracks.

Even more important, here we are complaining about IPP contracts that were signed in 1993-1994 which we are now having to pay for and which are causing the bulk of our consolidated public sector deficit. And yet, Malacañang goes and signs a US\$500 million foreign loan for a project that Congress has not approved. Where are they going to get

the money? Let us guess again. They are going to slip it into the budget two or three years from now and say, “By the way, we already signed this. The President signed a forward obligational authority and now we have to pay.” So six, seven years from now, the Filipino people will be facing the same problem, paying for a project that Congress had not approved and yet Congress will then, at that time, be asked again to raise taxes to pay for those projects. So this is what I object to. Nobody has briefed us. I doubt if anybody here has been briefed on the particulars of that railway project and again I think Malacañang has been trying to play fast and loose with the national funds. I decry this and I hope that the Chamber will keep this in mind as we proceed with our deliberations on the tax measures.

**COMMITTEE REPORT NO. 4
ON SENATE BILL NO. 1745**

(Continuation)

Upon motion of Senator Pangilinan, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1745 (Committee Report No. 4), entitled

AN ACT PROVIDING FOR
COMPENSATION TO THE VICTIMS
OF HUMAN RIGHTS VIOLATIONS
DURING THE REGIME OF FORMER
PRESIDENT FERDINAND MARCOS,
DOCUMENTATION OF SAID
VIOLATIONS, APPROPRIATING
FUNDS THEREFOR, AND FOR
OTHER PURPOSES.

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

Thereupon, the Chair recognized Senator Pimentel, sponsor of the measure, and Senator Ejercito Estrada (J) for his interpellation.

INQUIRY OF THE CHAIR

Noting that the Body would proceed to the period of interpellations, the Chair asked whether

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Senator Osmeña, who was supposed to deliver his cosponsorship speech, would simply submit a written cosponsorship speech to be inserted into the Record. Senator Osmeña replied in the affirmative, saying that since he was informed only two days ago that he would be delivering a cosponsorship speech, he needed more time to prepare it. He said that if Senator Pimentel was willing to be interpellated, he would not object.

INTERPELLATION OF SENATOR EJERCITO ESTRADA (J)

Recalling that he was only nine years old when martial law was declared in 1972, Senator Ejercito Estrada (J) inquired on the definition of the term "martial law." Senator Pimentel stated that he was not too sure about the exact legal definition of the term but he explained that the martial law that then President Marcos declared was supposedly based on his constitutional powers, which at that time was a declared authority and power of the President. He said that the declaration was followed by issuances, one of which was General Order No. 1 that placed the governance of the country entirely in the President's hands. However, he seriously doubted if there were legal parameters that circumscribed the proclamation of martial law.

Asked whether compensation would be given to the human rights victims of the Marcos regime, Senator Pimentel replied in the regime, saying that the measure seeks to compensate those who have been abused, maltreated and oppressed.

On whether it would be proper to also take into consideration the victims of the Macapagal Arroyo regime, Senator Pimentel stated that the measure speaks only of the victims of human rights violations of the Marcos regime. But he clarified that this does not mean that the Macapagal Arroyo administration is exempt from being charged for any abuse that it might have committed. He pointed out that while a sitting president cannot be called to account for the things he/she has done except through impeachment proceedings, a victim would have to wait until the president's term is over before he can sue him/her on a personal level.

Asked to cite what kind of suffering anyone went through during the Macapagal Arroyo presidency, Senator Ejercito Estrada recalled that the EDSA III incident resulted in the death of three people who stormed Malacañang. Senator Pimentel said that if excessive force was used in the suppression of a peaceful demonstration, those responsible for the deaths should be properly sanctioned. However, he stated that going up to the level of the President might be difficult but the people responsible for the deaths could be charged, assuming that a case could be established against them.

Asked whether the country is presently under a state of undeclared martial law, Senator Pimentel stated that indeed there were such indications in the recent past when some police authorities were quite exorbitant in their demands of the people that they cannot, even in small numbers, gather to talk about what has been happening in the country. The right of the people to peaceful demonstration, he underscored, cannot be curtailed by any military officer.

Senator Ejercito Estrada recalled that there were also instances when protesters with legitimate concerns were violently dispersed by the military and the police.

Senator Pimentel narrated that Ms. Marichu Maceda had told him that she was among the protesters who were violently dispersed with tear gas and water cannons in a rally in Makati. He stated that the standard reply of the police was that the protesters had no permit to rally. Some kind of legal action, he posited, could be taken against those responsible for using excessive force in dispersing the rally.

On whether he would be willing to propose a measure that would address the plight of human rights victims of the Macapagal Arroyo administration, Senator Pimentel said that it would be better if the measure would apply to any administration.

Stating that he and his father, former President Estrada, were victims of arbitrary detention because of politics, Senator Ejercito Estrada asked if they are entitled to compensation

just like the victims of the Marcos regime. Senator Pimentel stated that another measure could address Senator Ejercito Estrada's concern.

POINT OF ORDER OF SENATOR DEFENSOR SANTIAGO

Raising a point of order, Senator Defensor Santiago inquired whether the Committee on Rules had already released the Rules of the Senate for the 13th Congress. Senator Pangilinan replied in the affirmative, recalling that the 12th Congress adopted the same Rules that the 11th Congress adopted. The same Rules, he said, would also be adopted in the 13th Congress unless a senator wished to propose amendments thereto.

Senator Defensor Santiago said that she does not have any problem with the present Rules except that in the previous day's session, the instant bill was supposed to be sponsored by two members of the sponsoring committees. She pointed out that under Section 71(b) of Rule XXV, the sponsorship of a measure could be done by the committee chairman or by any member designated by the committee. However, she noted, the sponsorship was not done by the chairman but by Senator Pimentel, a member of the Committee on Justice and Human Rights. She also noted that the original plan was to have a second sponsorship speech which seemed to go against Section 71(b) which implies that there should only be one sponsorship speech. She clarified that she merely pointed it out so that if a committee decided to have two sponsorship speeches, the pertinent Rule could be suspended.

Senator Pangilinan agreed to the observation. However, he pointed out that in the previous Congresses and as a practice, cosponsorship speeches are allowed. Further, he acknowledged that as Senator Defensor Santiago has correctly pointed out, Section 71(b) seems to suggest that only one sponsorship speech is allowed.

INTERPELLATION OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago expressed support for the bill, as she posited that it has various legal bases, namely, the Philippine Constitution, the Universal Declaration on Human Rights and the

International Covenant on Civil and Political Rights, the U.S. Alien Tort Statute and the U.S. Torture Victims Protection Act. She stated that the U.S. Alien Tort Statute gives the U.S. courts jurisdiction to award damages for international human rights violations even if the wrongdoing was not committed in the U.S. She noted that it was the first time Congress dealt with a foreign law.

Giving a historical background, Senator Defensor Santiago pointed out that Mr. Marcos moved to Hawaii after he was ousted from power in 1986 and became the first former head of state to be tried under the U.S. Alien Tort Statute; Mr. Marcos died in Hawaii in 1984. She recalled that despite defense objections, the U.S. Federal Court of Appeals ruled that the immunity applies only to heads of state who are still in power, thus, the U.S. court proceeded with the case.

Senator Defensor Santiago disclosed that in *Wiwa vs. Royal Dutch Oil Company*, the U.S. Federal Court held that "deliberate torture perpetrated under the color of official authority violates universally accepted norms of international human rights law and it constitutes a violation of U.S. domestic law giving rise to a claim under the U.S. Alien Tort Law, the perpetrator having been properly served within U.S. borders.

The fourth basis of the bill, according to Senator Defensor Santiago, is the U.S. Torture Victims Protection Act which provides that U.S. courts have jurisdiction over suits by aliens alleging torture under the color of law of a foreign nation. She observed that Section 3(a) of the bill defines human rights violations as limited to acts or omissions, as enumerated thereunder, that were committed from September 21, 1972 to February 25, 1986. She asked whether it was possible that even prior to the declaration of martial law, violations of human rights were already being committed by the Marcos regime. She argued that limiting the coverage of the Act might unduly discriminate against other victims of human rights violations.

In reply, Senator Pimentel believed that human rights violations committed from the time of the suspension of the privilege of the writ of

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habeas corpus on August 21, 1971 up to the declaration of martial law should also be covered by the bill. In particular, he cited the case of Angel Baking, a communist leader, who served his sentence after being convicted under the Anti-Subversion Act and then jailed again on the basis of the suspension of the privilege of the writ of *habeas corpus*. He disclosed that Mr. Baking, an intellectual, deplored the fact that many of his colleagues gave up the fight at the slightest sign of a crackdown and applied for amnesty.

Senator Defensor Santiago said that an amendment to that effect would be meritorious if a certain pattern of presidential acts leading to the declaration of martial law could be established. She noted that Mr. Baking, a writer, was once the editor-in-chief of the *Philippine Collegian*. She stressed that Mr. Baking's family is entitled to compensation.

Relative to Section 3(b), asked on the basis for fixing the date of one month after February 25, 1986, Senator Pimentel stated that there really is no need to circumscribe the right of the human rights victims in filing their compensation claims even if, for instance, the violations were committed on the day Mr. Marcos was ousted from office. Senator Defensor Santiago stated that she would propose an amendment to the said provision.

Adverting to Section 5, Senator Defensor Santiago believed that the phrase "even if the said judgment has not yet become final and executory" on line 4 goes against the Rules of Evidence. If the judgment has not yet become final and executory, she reasoned that there is no conclusive proof that a person was a victim of human rights violation because the judgment can still be overturned by a higher or superior court, in which case, the judgment cannot be used as basis for awarding compensation.

Senator Pimentel agreed, stating that a judgment that is not final and executory does not have a binding effect on anyone. He commented that by legislative fiat, the Congress is already making the judgment enforceable. He noted that the wording of the provision could still be refined. Senator Defensor Santiago said that she would try to propose an amendment to the provision at the proper time.

As regards Section 10, *Transfer of Funds*, Senator Defensor Santiago queried whether the total compensation for all human rights victims shall be limited to the amount of US\$200 million. Senator Pimentel affirmed that this is the intent of the bill; however, he stated that the provision could be worded in such a way that future actions shall not be barred if the concerned individuals could clearly establish that they were indeed victims of the atrocities of the martial law regime and therefore entitled to compensation. He added that the right to claim compensation should not be circumscribed by time, and the amount to be awarded to victims should not be limited to \$200 billion.

Apropos Section 12, *Human Rights Claims Board*, Senator Defensor Santiago asked what the basis was for choosing the NGOs whose representatives shall sit in the board. In reply, Senator Pimentel explained that the seven NGOs mentioned in the bill, namely, Task Force Detainees of the Philippines (TFDP), Association of Major Religious Superiors (AMRSP), National Secretariat for Social Action, Medical Action Group (MAG), Free Legal Assistance Group (FLAG), Movement of Attorneys for Brotherhood and Integrity (MABINI), and Protestant Lawyers League of the Philippines (PLLP) actively espoused the cause of the detainees and victims of human rights violations. However, he clarified that representation in the board should not be limited to these NGOs if there are other qualified groups.

On Section 15, *Powers and Functions of the Board*, Senator Defensor Santiago asked whether the decision of the board is appealable, final or subject to review and if so, by what tribunal. Senator Pimentel replied that the board is supposed to be attached to the Commission on Human Rights which he assumed would reevaluate any findings; besides, he said, the discriminated person could go to court which is a tedious process. He suggested that a simplified method be provided so that a discriminated person could avail himself of remedies.

With respect to Section 16, *Determination of Award*, Senator Defensor Santiago wondered if the point system is a correct prioritization of the degree of pain and injury inflicted on the victims. She asked to be clarified if the point system

means that there shall be a period for filing a claim, after which, no other claim shall be entertained. Senator Pimentel replied that the period for filing claims is indicated in the other provisions. On the points being granted to the claimants, he stated that if the life of the person was taken away, it ended everything for him including pain, therefore, his heirs should be entitled to a greater compensation; on the other hand, a victim of torture has a lease on life although he carries the psychological trauma of having been subjected to indignities and sufferings. He suggested that an easier process be looked into where the points could be given to the victims, giving the highest points to those who died.

Asked if the compensation, in an amount to be determined by the Board, would be released to all claimants simultaneously after all claims and points shall have been collated or if the system would be similar to the process of filing claims in GSIS, SSS and the like, Senator Pimentel replied that payment on a case-to-case basis would probably be the most expedient way of doing it.

Senator Defensor Santiago stated that as she understood it, the amount of compensation that a claimant shall be entitled to would be determined by: 1) collating and adding all points awarded to all claimants; 2) dividing the total amount of \$200 million by the total number of points previously determined; and 3) multiplying the amount by the number of points awarded to each claimant. She believed that the \$200 million would be limited to those claimants who filed a claim prior to the determination of the amount of compensation and so other claimants would no longer have any money to get. Senator Pimentel said that the procedure should be clarified and simplified.

Senator Defensor Santiago observed that there are other types of human rights violations like rape and other sexual abuses that are not included in the point chart. Senator Pimentel agreed as he suggested that in Section 16(b), for instance, after the word "tortured," some specific examples could be cited. He invited Senator Defensor Santiago to put another classification in the bill.

As to Section 18, *Roll of Victims*, which states that victims who opted not to collect

compensation shall be given recognition by enshrining their names in a roll of human rights victims prepared by the board, Senator Defensor Santiago queried why the names of those who opted to collect monetary compensation would not be included in the roll. Senator Pimentel replied that at the proper time, the provision would be deleted.

Senator Defensor Santiago posited that there should be a historical memorial that could serve as a deterrent against dictators like those memorials for the victims of the Holocaust and the American soldiers who died in combat. Senator Pimentel informed the Body that in Breendonk, Belgium, the names of the victims of the Gestapo during the Nazi occupation are enshrined in a museum.

In closing, Senator Defensor Santiago remarked that she expected to see the name of Senator Pimentel on the roll.

INTERPELLATION OF SENATOR LIM

At the outset, Senator Lim asked whether human rights victims include persons who died in defense of their country during the Marcos regime, and whether they are also entitled to compensation. Senator Pimentel replied in the negative, explaining that victims who died defending their country are compensated in another way.

Asked if those who were killed by the enemies of the government could not be considered human rights victims based on the definition of the Human Rights Commission, Senator Pimentel replied that while those victims should be compensated, they should not be classified as victims of martial law who are the focus of the bill. He suggested that a different bill be crafted so that those who died in defense of their country and of freedom, especially those subjected to brutality by the enemies of the state, could be given greater compensation.

Senator Lim opined that there is some kind of discrimination in the bill as he pointed out that the government is only giving a small amount to those killed in the line of duty.

Senator Pimentel stressed that dying for his country is part of the obligation of a soldier, a

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sacrificial demand imposed upon him by his profession. He clarified that he was not against compensating those who died in the line of duty that a separate bill could address.

Senator Pimentel wondered how a civilian who was detained and tortured during the martial law era could be at par with a soldier who was tortured by the enemies of the state like the NPAs and Moro rebels as the civilian is not paid by the government and may have been caught in a situation precisely because of the abuse of those in power. He stressed that the Fund is being set up to recompense those who were abused by the State under martial law. He conceded that those who had been abused by other parties deserve compensation but such compensation may not necessarily come from the proposed Fund which is circumscribed by certain circumstances.

Senator Lim clarified that he was also referring to innocent civilians especially in far-flung barrios, who were caught in the crossfire between government soldiers and enemies of the state and who were subjected to different kinds of torture.

Believing that one's patriotism is priceless, Senator Lim expressed his highest respect for Senator Pimentel who was incarcerated during martial law but is giving up claims to any financial compensation. Senator Pimentel, in turn, recalled that at the height of the Marcos' power, then police Colonel Lim also showed his love of country when he refused to receive incentives offered by presidential daughter Imee Marcos for serving as her personal bodyguard.

Senator Lim adverted to the case of businessman Dr. Vicente Tan and his wife, who were also victims of human rights violations during martial law. He disclosed that the couple were incarcerated in Fort Bonifacio for three-and-a-half years without charges and were compelled to sign papers transferring all their multimillion peso assets, including a bank, choice properties in Tagaytay and Bel-Air, to certain personalities as a condition for their release. He asked how the point system would apply to Dr. Tan's case so that he could be compensated for the injustice he suffered.

Senator Pimentel adverted to Section 16(d) of the bill which gives 1 to 2 points to victims of economic harassment and if combined with detention -- 2 to 4 points -- would result in a higher financial compensation. He believed that it would be more difficult to prove cases of "economic harassment" because unlike torture victims who have visible physical scars and fellow victims to substantiate their claim, victims of economic harassment lack more tangible proofs. However, he expressed willingness to accept an amendment outlining a system of proportionate compensation to victims like Dr. Tan. He added that some people like the family of the late Senator Benigno Aquino Jr. and Senator Joker Arroyo do not put a price on their love for freedom and democracy, thus, they would not claim any compensation from the Marcos wealth.

Asked whether the recovered Marcos wealth was also be intended to support farmers, Senator Pimentel explained that US\$200 million of the \$640 million returned by the Swiss government would fund the implementation of the Comprehensive Agrarian Reform Law. He disclosed that the 10,000 class suit plaintiffs who were awarded by Judge Real of Hawaii US\$1.8 billion from any recovered assets of the Marcos family had attempted to get the entire US\$640 million awarded to them.

Senator Lim wondered whether the balance of the \$640 million could be used to establish one university and one hospital for each of the major islands of the country -- Luzon, Visayas and Mindanao -- so children of indigent parents can get free education and indigent patients can get free hospitalization.

However, Senator Pimentel expressed the view that it would be easier to course funding through existing universities, colleges and hospitals instead of spending for the construction of costly new facilities. He proposed that the Fund be used to subsidize existing hospitals which would give free medical services to indigent patients, and existing schools which would give support to poor students.

Senator Lim opined that these existing facilities should be fully rehabilitated or upgraded

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like St. Luke's Hospital or the Makati Medical Center where indigent patients could also receive free medicines. He noted that although poor patients can avail themselves of free medical examinations in government hospitals, they are unable to purchase the prescribed medicines.

INTERPELLATION OF SENATOR OSMEÑA

Adverting to page 2 of the bill, Senator Osmeña asked why it was necessary to mention the Swiss Federal Supreme Court decision in the declaration of policy, saying that it might be misconstrued that the Philippine legislature passed a law because of the Swiss court's decision.

Senator Pimentel explained that if the \$640 million had not been identified as part of the Marcos wealth and sequestered by the Swiss authorities, the Philippine government would not have been able to touch it. He recalled that as then chairman of the Blue Ribbon Committee, he spent a good deal of time trying to track down the whereabouts of the Marcos wealth but the Committee often faced a blank wall because layers upon layers of legal devices hid the wealth. He noted that this is the first time in the history of the government's search for the Marcos wealth that a government of another state, in this case, Switzerland, has actually cooperated. He expressed the view that the provision merely acknowledges the action of the Swiss government. But he expressed no objection to deleting the reference thereto during the period of amendments because, as noted by the Chair, the declaration of policy is well enunciated on lines 4 to 11 of page 2.

On a related matter, Senator Osmeña disclosed that he was one of the 9,539 class suit claimants who were awarded \$1.8 billion by Judge Manuel Real of Hawaii as he was among those who helped identify the Marcos assets in New York, Hawaii, California, and Pennsylvania which consist of mansions, townhouses and buildings. He said that when he, together with the late Sen. Raul Manglapus, and others filed the case 18 years ago, he intended to use any award to send to school the children of those who were jailed with him; since those children have all since graduated, he decided nine years ago that the compensation should go to the Free Legal

Assistance Group founded by Ka Pepe Diokno which to this day continues to offer pro-bono services to victims of human rights violations. He asked whether Section 4, which mentions the class suit plaintiffs, would be looked upon by the Hawaii U.S. District Court as having fulfilled the award phase of its decision.

Senator Pimentel expressed the view that no incompatibility exists between the cited provision and the Hawaii decision because the government is willing to give those claimants what is due them pursuant to law and not as dictated by a foreign court judgment. But he affirmed that it is possible to go after the Marcos estate based on the Hawaii decision which speaks of any asset of the Marcoses.

Relative thereto, Senator Osmeña inquired whether the lawyers who obtained the Hawaii decision would be entitled to lawyers' fees if the 9,539 persons in the class suit are awarded compensation. Senator Pimentel replied that lawyers are paid by their clients and, presumably, some kind of an arrangement has been made between the lawyers and the plaintiffs.

Senator Osmeña noted that in the United States, the award is given and administered through the courts and lawyers take their cut in fees before the compensation is distributed to the persons named in the class suit. He opined that it might be very unseemly for the Philippine government to satisfy a U.S. judgment through a law enacted by the Philippine Congress even as he believed that the matter of lawyers' fees should be between the clients and their lawyers. Senator Pimentel affirmed that nothing in the bill would give rights to the lawyers to collect.

Adverting to Section 16(d), Senator Osmeña asked whether the economically disadvantaged wife and children of a detained person would be considered victims. Senator Pimentel replied that the intention of the law is to compensate only one member of the family who was directly harassed, tortured or detained under martial law. He conceded that the maids of Senator Osmeña's family who were also rounded up and detained for five years at the time he was detained at Fort Bonifacio would fall under one of the

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categories in the bill. He expressed the view that the compensation due to the families is subsumed into that of the detainee who had suffered directly. He believed that under Section 16(d) of the bill, the victims would have to prove that they were harassed and economically disadvantaged through the mental anguish of the detainee and the economic suffering of his family. He suggested putting categories "A," "B," "C," and "D," for instance, to guide the Board in determining compensation.

To the suggestion to delete the provision which involves a difficult mathematical computation so that the board would not be overwhelmed in its task as it might take years to complete the list of all victims before the numerical formula could work, Senator Pimentel replied that the intention is to put some guidelines for the board to follow so that it would not be arbitrary in determining the amount of compensation for the martial law victims. But he expressed willingness, at the appropriate time, to clarify and rephrase the provision in layman's term.

Pursuing the suggestion of Senator Pimentel, the Chair asked when the board would be able to categorize all the victims among whom the \$200 million would be divided. Senator Pimentel replied that the procedure for processing the claims would have to be spelled out in the implementing rules. He invited the Body's attention to Section 19 which states that the board shall complete its work within one year from the approval of the implementing rules.

Rather than putting the onus on the board, Senator Osmeña proposed that those who have not applied within one year be disqualified from applying as he expressed doubt that the board would be able to finish its work within one year.

Senator Pimentel agreed to the observation, noting that to date the PCGG which was initiated in 1986 is still searching for the owners of the properties it has sequestered. He expressed the view that the work of the board would be complicated unless the provision is clarified.

Senator Osmeña pointed out that the bill should ensure against false claimants because anybody

could claim that he had a band of guerillas and that he should be entitled to benefits.

On the query of Senator Osmeña if it would be possible to identify the torturers, Senator Pimentel expressed amazement that young, low-ranking officers who tortured victims during the martial law period are now occupying high positions in the military establishment. He asserted that one of the assignments of the board should be to identify the torturers who caused so much pain. It is time, he stressed, that the national psyche was cleansed and if it must, the Philippines should follow the example of the South African Truth and Reconciliation Commission.

Senator Osmeña informed that Body that Senator Magsaysay filed a resolution calling for the establishment of a truth commission that, hopefully, the Members would support. He recalled that the chief *berdugo* of then President Marcos, General Ver, was given military honors when he was buried in Sarrat, Ilocos Norte. He decried that no one seems to be taking blame for what happened during the martial law years as he stressed that somebody has to pay.

INTERPELLATION OF SENATOR ANGARA

Senator Angara opined that the bill would be an innovative way of closing an unhappy chapter in the nation's history; however, he said that in the process, the Senate should guard against opening new wounds. He pointed out that in the case of South Africa, the Truth and Reconciliation Commission identified the torturers, asked them to confess, gave them an amnesty, and gave the victims reparations that were drawn from the general appropriations. He stated that South Africa closed a chapter in its history but did not open new wounds by prosecuting the violators. On the other hand, he pointed out that Argentina repealed the amnesty laws that gave immunity to the members of the military junta and allowed their persecution for human rights violations. However, he noted that the bill simply seeks to compensate the victims without addressing the issue of who tortured them.

Senator Angara stated that he brought up the issue so that when the Members vote on the

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measure, any lingering doubt should have been answered. In response, Senator Pimentel agreed that indeed, there has to be an end to the dark years of the martial law regime in the minds and recollections of the people. He stated that while he was not tortured during his incarceration, as he recalled the victims moaning in pain, the recollection is more painful and real than when the incident happened. Moreover, he agreed that in putting an end to a chapter in the nation's history, the experiences of other countries should be looked into. He observed that in the case of Chile, Augusto Pinochet was stripped of his immunity and had been charged for human rights violations. He opined that the culture of the South Africans is more akin to that of the Filipinos -- they tend to forgive and forget after the harrowing incident had passed. He recalled that when the military was rounding up his colleagues at the onset of the marital law regime, a friend from the Constitutional Convention told him that it was all right as long as he was not arrested. He said that this is a sad commentary on the psyche of the Filipinos who do not seem to mind as long as they are not the ones being oppressed.

Asked how the Senate could put flesh to the suggestion -- whether as part of the bill or the subject of a separate bill, Senator Angara replied that it should be done in the instant bill because there is no better occasion than now when the Senate is trying to recall and close the memory of martial law. He observed that many presidents have attempted it but failed; this time, the Congress could close a chapter in the nation's history so that the Filipinos could begin to look forward instead of backward.

As regards the South African experience, Senator Angara believed that its approach was more humanitarian than the South American approach which has stirred so much controversy because those responsible for the torture were prosecuted. Senator Pimentel gave assurance that he would exhaust every opportunity to insert the concept in the bill.

INTERPELLATION OF SENATOR GORDON

Initially, Senator Gordon congratulated the authors of the bill for trying to do justice to victims of human rights abuse.

Asked whether a provision could be placed in the bill that would hold accountable those who participated directly or indirectly in the torture, Senator Pimentel replied that this is the ideal thing to do but procedurally, he noted that it would take time to identify these people many of whom are still in active military service. He stated that while reading a book on martial law a few days ago, he noticed that many of the people identified by Amnesty International are now occupying high positions in the military establishment. Acknowledging the difficulty of documenting the incidents of torture, he suggested inserting a provision in the bill that would task the board to identify the perpetrators of torture without being circumscribed by deadlines.

Senator Gordon asserted that this is the opportune time for the victims to gather and present evidence and thereafter, forever hold their peace. Senator Pimentel stated that one prominent victim of human rights abuse is Dodong Nemenzo who was brutally manhandled during his incarceration.

Senator Gordon disclosed that during the initial days of martial law, the military detained his mother in Camp Olivas for no apparent reason, so he and Ed Angara, with the help of then Defense Minister Enrile, had to secure her release.

For the record, Senator Pimentel acknowledged the acts of kindness that then Minister Enrile extended to a lot of people who otherwise would have been further abused. Considering that martial rule had been imposed, he stated that even the defense minister did not have much elbowroom.

Adverting to the Berlin wall monument, Senator Gordon asked whether it would be better to put up a permanent monument in Intramuros, for instance, to honor all the victims of human rights abuse. Senator Pimentel stated that this could be added to the task of the board.

On a point of information, Senator Gordon stated that there are conflicting claims to the site in Tuba where an edifice to the memory of then President Marcos was constructed. He pointed out that the PCGG should settle the issue. On the matter of documenting the human rights abuse

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cases, he stated that he did not want to overburden a government entity that is going to investigate and settle the claims.

Proceeding to another matter, Senator Gordon reminded the Body that the claims of the veterans have not been paid up to this day. He lamented that despite the approval of Senator Biazon's bill, several complaints reached him that even as Filipinos are fighting for the veterans to get compensation from the American government the Philippine government itself has not paid the veterans their compensation. Senator Pimentel affirmed that PVAO funds have also been misused in many ways, even the educational scholarship grants for the veterans' children. Despite the documentation of the complaints two years ago, he lamented that no perceptible effort has been made by PVAO officers to solve the problem.

Senator Gordon stressed that the Body must demand accountability from the Human Rights Claims Board to ensure that it would do its job.

INQUIRIES OF SENATOR OSMEÑA

Asked by Senator Osmeña what sort of allowance could be given to ex-detainees who have left the Philippines and have no families here, and how the families of those who are already dead could be tracked down, Senator Pimentel said that aside from asking the help of their friends in the Philippines, the embassies could track them through contacts with the Filipino communities abroad. He affirmed that the initial application should be made before the board in the Philippines but their friends or fellow detainees could be given time to locate their families, after all, the records could always be validated.

Replying to further query, Senator Pimentel opined that the total length of incarceration would get higher points than the number of times a detainee was arrested. He added that the degree of a detainee's suffering would also be taken into consideration.

Senator Osmeña proposed prohibiting the creation of a J-6 (comptroller general) office in the board. Senator Pimentel agreed.

MANIFESTION OF SENATOR PANGILINAN

Senator Pangilinan said that a number of senators have made reservations to interpellate on the bill in the next session.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1745

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

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 6:09 p.m.

RESUMPTION OF SESSION

At 6:10 p.m., the session was resumed.

COMMITTEE REPORT NO. 2 ON SENATE BILL NO. 1833

(Continuation)

Upon motion of Senator Flavier, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1833 (Committee Report No. 2), entitled

AN ACT TO STRENGTHEN THE UNIVERSITY OF THE PHILIPPINES AS THE NATIONAL UNIVERSITY.

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

Thereupon, the Chair recognized Senator Pangilinan, Sponsor of the measure, and Senator Roxas for the continuation of his interpellation.

INQUIRY/POINT OF INFORMATION OF SENATOR OSMEÑA

Asked by Senator Osmeña whether the meeting at 6:30 that evening would push through, the Chair replied in the affirmative. However, It

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informed the Body that the caucus proposed for the next day might be reset to give the senators more time to finalize the recommended legislative agenda.

Senator Osmeña informed the Body that three to four important hearings, including one on the sin taxes, are scheduled the following day.

INTERPELLATION OF SENATOR ROXAS

At the outset, Senator Roxas recalled that in his previous interpellation, he discussed the custodianship over assets referred to in Section 20(c) of the bill that grants powers to the Board of Regents to undertake generally commercial or business decisions with respect to these assets. He believed that the University's dual mandates, on one hand, to educate which parenthetically means to spend, and on the other hand, to preserve and/or enhance the value of its assets, might in fact conflict. He informed the Body that he had received certain information which he requested from U.P.

At this juncture, Senator Roxas adverted to the letter of the U.P. leadership which stated that the U.P. does not have a history of commercial undertakings as it has been largely a passive rentier, and at the same time, discussed the general procedures it follows when considering business or lease transactions. He asked whether these business parameters are embodied in an operations manual.

Senator Pangilinan explained that the Board itself, following consultations and deliberations, puts together the terms of reference for whatever business arrangements it enters into, guided by COA rulings or requirements.

Senator Roxas expressed hope that U.P. has a much more elaborate process in deciding issues like entering into long-term leases and joint ventures agreements because while it envisions to operate like a board of directors of a corporation, there is a difference because the latter is accountable to shareholders.

Senator Pangilinan informed the Body that the U.P. Board operates in the context of the academic community which has organized sectors: the faculty; the nonacademic personnel;

the students, the largest sector; and the alumni. With his experience as a member of the Board, he said that he could attest that any policy that comes from the Board cannot escape the scrutiny of the academic community. He informed the Body that the sector directly affected by the decisions of the Board is very vigilant and active in petitioning the Board about its concerns and particular positions. He said that the Board listens almost on a daily basis to passionate debates of competing interests. In fact, he recalled that after U.P. President Angara's term ended, he was hospitalized for an ailment because of his grueling experience -- six years replete with criticisms and opposition to proposed Board measures.

Senator Pangilinan stated that it would be difficult to compare a private corporation or government-owned and controlled corporation with U.P. because there is a world of difference. For instance, he said, the selection of the University President goes through a tedious, rigorous, democratic consultation process. He stated that in the case of GOCCs, there is no rigorous and democratic consultation process, thus, there is no transparency which gives rise to problems because the president is not accountable for his acts. As regards the comparison in terms of policy-making and leadership selection between a corporation and the U.P. Board, he said that it is like comparing apples to oranges.

Senator Roxas pointed out that as provided for in the bill, the highest policy-making body of U.P. is the Board whose acts are subject only to COA review, and in the exercise of its powers with respect to contracts and the like, as cited in Section 20(c), the mechanisms and arrangements thereof shall be cognizant of the environment and shall not be in conflict with the University's academic mission. He pointed out that, on the other hand, the ultimate check and balance in a corporation is the ratification of the acts of the Board by the shareholders. In the case of U.P., he asked if the shareholders are the organized sectors that are represented in the Board.

Senator Pangilinan replied in the affirmative, adding that unlike the GOCCs, the University has to annually go to Congress for its budget. This, he said, is an opportunity for Congress to check the affairs of the University and if there are

controversial issues, the ever vigilant media would report them. He stated that during the budget deliberations the University could explain these issues. He mentioned that the Senate and the House have representatives in the U.P. Board; moreover, the vigilant academic community provides an internal check on the Board's acts. He stressed that in almost 100 years, U.P. has had no major controversial issue related to corruption. He believed that there is a built-in, inherent check from Congress that deliberates on the University's budget to the academic community that scrutinizes every policy the Board proposes.

Senator Roxas noted that although there has been no corruption issue in the U.P. history, he was concerned about its future. The U.P. charter, he pointed out, is almost 100 years old and it is possible that a long period of time may pass before it is reviewed again.

Senator Roxas cited the science and technology park that U.P. is presently contemplating from which it expects to generate P375 million. Specifically, he asked about the value U.P. annually placed on the 25.5 hectares of leaseable land. Senator Pangilinan replied that the value is P324 per square meter.

Senator Roxas contended that the P324 was the expected revenue from the asset, so there is a need to find out whether the amount is a good or a bad rate or if it is within the market norms. Senator Pangilinan said that the amount was based on the recommendation given by an independent appraiser; however, the information on how much it exactly costs was not given. He gave assurance that Senator Roxas would be provided the exact amount.

Senator Roxas asserted that U.P. came to Congress to ask for powers to transact land whose worth cannot be determined. He expressed concern that because the Board has not applied independent judgment and depended on the appraiser, there is no way of knowing whether the P324 is a viable, realistic amount that could be obtained for the property. Senator Pangilinan countered that the independent appraiser would provide the market rate if the property is sold.

Asked if the property can be leased at P324 per square meter, Senator Pangilinan replied in the affirmative.

Senator Roxas disclosed that the present construction cost of the Northgate Cyber Park, the model of the U.P. science and technology park, is P18,000-P20,000 per square meter and the Eastwood high-rise, P30,000 per square meter. He asserted that given the construction cost and the assumed rental rate of P324 per square meter, along with the 80%-20% share between the developer and U.P., the project would fall apart because the numbers do not add up. He added that there is no system in place that would convince him that the Board should be given the power to transact. He stated that all the numbers – the P324 rental per square meter of 25 hectares, the 30% common use service area (CUSA) and 70% usable area, the 80% - 20% share – all came from U.P., while the P20,000 per square meter construction cost for the S&T park came from the developers who have undertaken similar projects. The project could only be viable if U.P. values its property at P5,000 per square meter, he said.

Senator Pangilinan reasoned that in this transaction, U.P. would only be providing undeveloped land and the rest would be provided by the developer.

At this juncture, Senator Osmeña inquired if the P324 rental payment is for the lease of the land. Senator Pangilinan replied in the affirmative.

Senator Osmeña sought clarification on why there is an assumed sharing when U.P. would contribute the land. According to Senator Roxas, the presumption was that U.P. would contribute the land and value it at 20% of the total project cost, while the developer would contribute the cash and construct the structure and, thus, would receive 80% of the revenue. He said that tenants would be charged P324 per square meter and U.P. would get a share of the revenue. He pointed out that the calculation would not be P324 multiplied by 25 hectares, but P324 multiplied by the built-up number of square meters according to the project study that U.P. submitted.

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Senator Osmeña asserted that U.P. is getting the short end of the stick by exposing itself to market risk when it has no experience in real estate development. He also asked how many years U.P. has agreed to tie up with the developer. Senator Roxas replied that the lease is limited to a maximum of 25 years.

Senator Osmeña also noted that the estimated value of the U.P. property is P20,000 to P25,000 per square meter which should be the starting point, so that if the build-up area for low-rise development is about 60% maximum or 150,000 square meter multiplied by 2, then the common area would be 300,000 square meters. He pointed out that at P20,000 per square meter, the U.P. property is worth roughly P6 billion so the ratio should be 50:50 and not 80:20.

Senator Roxas stated that the assumed split of 80:20 between the developer and U.P. indicates that U.P. would only get P7,000 per square meter.

At this point, the Chair said that Senator Roxas' concern was on the prospective commercial transaction that the Board, which has been granted broad powers under Section 20 (c), wants to enter into. It stated that at the proper time, some amendments could be inserted in the bill to safeguard against transactions that would be disadvantageous to the University.

Senator Roxas stated that the U.P. leadership should take the first crack at preparing the amendments to its operating procedures. On another matter, he said that according to the information given to him by U.P., of the P4.5 billion in total national government subsidy by service category, P2.2 billion would be used for the advancement of higher education. He asked whether this would correspond to the budget for teaching courses that are not necessarily "missionary" in nature. Senator Pangilinan replied in the affirmative.

Senator Roxas pointed out that with a P2.2 billion subsidy and 53,000 students, each student receives P40,000 per year or about P21,000 per semester, or about P1,000 per unit. He said that P1,000 plus P300, which is the highest that a student of an undergraduate degree pays per unit, is commensurate to the tuitions of

universities like UAP, Ateneo, La Salle. As regards the students who come from millionaire families who are enrolled in U.P., he asked whether the policy of allowing these students to avail themselves of the subsidy would be changed.

Noting that there are nine levels of income in the tuition fee program, Senator Pangilinan stated that U.P. is contemplating the addition of another bracket wherein full payment would be required of the student.

On the suggestion that the subsidy be converted to a student loan at no interest or at a subsidized rate that may be given to an individual who has entered U.P., to be repaid after he/she has found gainful employment, Senator Pangilinan said that U.P. has an existing student loan program although it requires the student to pay his loan before the end of the semester, or before he graduates. The University, he said, could look into the particular approach to provide the students some leeway.

Senator Roxas stated that if the State would allocate P4 billion to educate students, the return to the State would depend on the productivity of the graduates once they are employed. However, he said that if the money would be loaned to the students, there would be students who would be quite successful and would be able to repay the loan over 20 to 30 years and the money could be used by subsequent generations of U.P. students. He asked whether the University has looked into this arrangement.

Senator Pangilinan informed the Body that the experience of GASTPE has been horrible because students could not repay government loans or assistance. There is a problem, he pointed out, with respect to managing the program and ensuring that there is proper networking to be able to provide gainful employment to graduates and secure the necessary arrangement so that the loans could be paid back. He agreed that the loan and scholarship programs should be looked into.

In reply to further query, Senator Pangilinan said that during the budget deliberations, questions could be raised as to how U.P. has progressed in this endeavor.

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SUSPENSION OF SESSION

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

It was 6:59 p.m.

RESUMPTION OF SESSION

At 7:01 p.m., the session was resumed.

REQUEST OF SENATOR OSMEÑA

Senator Osmeña requested that he be furnished with a copy of the proposed development plan.

**SUSPENSION OF CONSIDERATION
OF SENATE BILL NO. 1833**



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

ADJOURNMENT OF SESSION

Upon motion of Senator Flavier, there being no objection, the Chair declared the session adjourned until three o'clock in the afternoon of Tuesday, November 16, 2004.

It was 7:01 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
No 

Approved on November 16, 2004