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No. 70

CALL TO ORDER

At 4:00 p.m., pursuant to Section 15(h), Rule IV of the House Rules, the Presiding Officer, Rep. Juan Pablo "Rimpy" P. Bondoc, called the session to order.

THE PRESIDING OFFICER (Rep. Bondoc). The session is now called to order.

NATIONAL ANTHEM

THE PRESIDING OFFICER (Rep. Bondoc). All rise for the singing of the Philippine National Anthem.

Everybody rose to sing the Philippine National Anthem.

PRAYER

THE PRESIDING OFFICER (Rep. Bondoc). Let us remain standing for a minute of silent prayer and reflection.

Everybody remained standing for the silent prayer.

THE PRESIDING OFFICER (Rep. Bondoc). The Floor Leader is recognized.

REP. NOGRALES (J.). Mr. Speaker, Happy Valentine's Day! I move that we defer the calling of the roll.

THE PRESIDING OFFICER (Rep. Bondoc). Happy Valentine's Day, Floor Leader!

Is there any objection? (*Silence*) The Chair hears none; the calling of the roll is deferred.

REP. NOGRALES (J.). Mr. Speaker, I move that we defer the approval of the Journal.

THE PRESIDING OFFICER (Rep. Bondoc). Is there any objection? (*Silence*) The Chair hears none; the approval of the Journal is deferred.

REP. NOGRALES (J.). Mr. Speaker, I move that we proceed to the Reference of Business.

THE PRESIDING OFFICER (Rep. Bondoc). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

The Secretary General will please read the Reference of Business.

REFERENCE OF BUSINESS

The Secretary General read the following House Bills and Resolutions on First Reading, Communication and Committee Report, and the Presiding Officer made the corresponding references:

BILLS ON FIRST READING

House Bill No. 4975, entitled:

"AN ACT CREATING THE WEST PHILIPPINE SEA AUTHORITY, PRESCRIBING ITS POWERS AND FUNCTIONS, AND APPROPRIATING FUNDS THEREFOR"

By Representative Yap (V.)

TO THE COMMITTEE ON GOVERNMENT ENTERPRISES AND PRIVATIZATION AND THE SPECIAL COMMITTEE ON WEST PHILIPPINE SEA

House Bill No. 4976, entitled:

"AN ACT AUTHORIZING THE SOCIAL SECURITY COMMISSION TO CONDONE PENALTIES ON DELINQUENT CONTRIBUTIONS AND TO DETERMINE THE MONTHLY SALARY CREDITS, THE SCHEDULE AND RATE OF CONTRIBUTIONS AND THE RATE OF PENALTY ON DELINQUENT CONTRIBUTIONS AND UNPAID LOAN AMORTIZATIONS, THEREBY FURTHER AMENDING REPUBLIC ACT NO. 1161, OTHERWISE KNOWN AS THE SOCIAL SECURITY LAW, AS AMENDED"

By Representative Castelo
TO THE COMMITTEE ON GOVERNMENT
ENTERPRISES AND PRIVATIZATION

By Representative Aglipay-Villar
TO THE COMMITTEE ON WAYS AND
MEANS

House Bill No. 4977, entitled:

“AN ACT DESIGNATING A DULY MARKED
EMERGENCY LANE IN URBAN
THOROUGHFARES AND PRESCRIBING
PENALTIES FOR VIOLATIONS THEREOF
AND FOR OTHER PURPOSES”

By Representative Castelo
TO THE COMMITTEE ON
TRANSPORTATION

House Bill No. 4984, entitled:

“AN ACT PROVIDING FOR THE
ESTABLISHMENT OF BREAST
CARE CENTERS IN EVERY REGION
NATIONWIDE, APPROPRIATING FUNDS
THEREFOR AND FOR OTHER PURPOSES”

By Representative Aglipay-Villar
TO THE COMMITTEE ON HEALTH

House Bill No. 4978, entitled:

“AN ACT PROHIBITING THE USE OF
CELLULAR PHONES WHILE DRIVING
AND PRESCRIBING PENALTIES FOR
VIOLATIONS THEREOF AND FOR OTHER
PURPOSES”

By Representative Castelo
TO THE COMMITTEE ON
TRANSPORTATION

House Bill No. 4985, entitled:

“AN ACT PROVIDING ALL BARANGAY
OFFICIALS, INCLUDING BARANGAY
TANODS, AND MEMBERS OF THE
LUPON NG TAGAPAMAYAPA, A LUMP
SUM GRATUITY PAY EQUIVALENT TO
ONE HUNDRED THOUSAND PESOS
(PHP100,000.00), AND OTHER NON-
MONETARY BENEFITS, AMENDING
FOR THE PURPOSE SECTION 393 OF
REPUBLIC ACT NO. 7160, AS AMENDED,
OTHERWISE KNOWN AS THE LOCAL
GOVERNMENT CODE OF 1991”

By Representative Aglipay-Villar
TO THE COMMITTEE ON LOCAL
GOVERNMENT

House Bill No. 4979, entitled:

“AN ACT DECLARING THE UNDERGROUND
TIPAN CAVE IN THE MUNICIPALITY OF
NAGA, PROVINCE OF ZAMBOANGA
SIBUGAY AS AN ECOTOURISM SITE AND
APPROPRIATING FUNDS THEREFOR”

By Representative Hofer
TO THE COMMITTEE ON TOURISM

House Bill No. 4986, entitled:

“AN ACT ESTABLISHING A CREDIT
ASSISTANCE PROGRAM FOR OVERSEAS
FILIPINO WORKERS”

By Representative Aglipay-Villar
TO THE COMMITTEE ON OVERSEAS
WORKERS AFFAIRS

House Bill No. 4980, entitled:

“AN ACT DEFINING AND PROHIBITING
ELDER ABUSE, PROVIDING PENALTIES
THEREFORE, AND FOR OTHER
PURPOSES”

By Representatives Batocabe, Garbin and Co
TO THE COMMITTEE ON POPULATION AND
FAMILY RELATIONS

House Bill No. 4987, entitled:

“AN ACT CREATING THE MINDANAO
RAILWAYS CORPORATION PRESCRIBING
ITS POWERS, FUNCTIONS AND DUTIES
AND PROVIDING FOR THE NECESSARY
FUNDS FOR ITS OPERATION”

By Representative Aglipay-Villar
TO THE COMMITTEE ON GOVERNMENT
ENTERPRISES AND PRIVATIZATION AND
THE COMMITTEE ON TRANSPORTATION

House Bill No. 4981, entitled:

“AN ACT AMENDING CERTAIN PROVISIONS
OF PRESIDENTIAL DECREE NO. 856,
OTHERWISE KNOWN AS THE □ CODE ON
SANITATION OF THE PHILIPPINES □ AND
FOR OTHER PURPOSES”

By Representative Lanete
TO THE COMMITTEE ON HEALTH

House Bill No. 4988, entitled:

“AN ACT CREATING A NATIONAL MOTOR
VEHICLE SAFETY ADMINISTRATION”

By Representative Aglipay-Villar
TO THE COMMITTEE ON GOVERNMENT
REORGANIZATION AND THE COMMITTEE
ON TRANSPORTATION

House Bill No. 4983, entitled:

“AN ACT EXEMPTING START-UP
ENTERPRISES FROM TAXES ARISING
FROM THE FIRST TWO YEARS OF
OPERATION”

House Bill No. 4989, entitled:

“AN ACT RENEWING THE FRANCHISE GRANTED TO WORD BROADCASTING CORPORATION UNDER REPUBLIC ACT NO. 7485 ENTITLED □ AN ACT GRANTING WORD BROADCASTING CORPORATION FORMERLY FILIPINAS BROADCASTING ASSOCIATION, INC. (AS AMENDED ON JULY 20, 1991) A FRANCHISE TO CONTRUCT, INSTALL, OPERATE AND MAINTAIN FOR COMMERCIAL PURPOSES RADIO BROADCASTING AND TELEVISION STATIONS IN THE VISAYAS AND MINDANAO AND FOR OTHER PURPOSES □ FOR ANOTHER TWENTY-FIVE (25) YEARS FROM THE EFFECTIVITY OF THIS ACT”

By Representatives Del Mar, Abellanosa, Gullas, Caminero, Garcia (G.), Salimbangon, Durano, Cortes, Calderon and Radaza

TO THE COMMITTEE ON LEGISLATIVE FRANCHISES

House Bill No. 4990, entitled:

“AN ACT LEGALIZING THE CULTIVATION OF HEMP AS AN INDUSTRIAL CROP THEREBY ESTABLISHING THE INDUSTRIAL HEMP RESEARCH AND PROVIDING FUNDS THEREFORE”

By Representatives Pineda, Belmonte (R.), Canama, Lopez (B.), Villarin, Bertiz, Montoro, Salon, Uybarreta and Lopez (M.)

TO THE COMMITTEE ON AGRICULTURE AND FOOD

RESOLUTIONS

House Resolution No. 755, entitled:

“RESOLUTION FOR THE COMMITTEE ON INFORMATION AND COMMUNICATIONS TECHNOLOGY TO INVESTIGATE AND EXPLORE, IN AID OF LEGISLATION, THE NECESSARY GOVERNMENT SUPPORT FOR THE BUSINESS PROCESS OUTSOURCING (BPO) INDUSTRY IN ORDER TO EXPAND AND MAXIMIZE THE SECTOR'S PARTICIPATION IN THE INFORMATION TECHNOLOGY ROADMAP OF THE PHILIPPINES INCLUDING THE PROPER DISPOSITION AND TRANSFER OF OLD IT EQUIPMENT”

By Representative Yap (V.)
TO THE COMMITTEE ON RULES

House Resolution No. 756, entitled:

“A RESOLUTION URGING THE HOUSE OF

REPRESENTATIVES TO CONDUCT AN INVESTIGATION INTO THE ACTIONS AND ORDERS UNDERTAKEN BY SECRETARY REGINA PAZ L. LOPEZ OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES IN ANNOUNCING THE CLOSURE AND SUSPENSION OF MINING COMPANIES DUE TO ALLEGED VIOLATIONS OF ENVIRONMENTAL LAWS”

By Representatives Mangaoang and Bravo (A.)
TO THE COMMITTEE ON RULES

House Resolution No. 757, entitled:

“RESOLUTION DIRECTING THE COMMITTEE ON GOOD GOVERNMENT AND PUBLIC ACCOUNTABILITY TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, ON THE INCOMPLETE OR COMPLETE BUT SUBSTANDARD PUBLIC WORKS, INCLUDING SCHOOL BUILDINGS BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) FIRST DISTRICT OFFICE, CATARMAN, NORTHERN SAMAR”

By Representative Daza
TO THE COMMITTEE ON RULES

House Resolution No. 758, entitled:

“A RESOLUTION URGING THE DEPARTMENT OF HEALTH TO ADOPT AND IMPLEMENT RULES ON THE OPERATION OF CREMATORIUMS TO ENSURE THAT SUCH FACILITIES SHALL NOT BE USED TO DESTROY OR CONCEAL EVIDENCES OF CRIMES”

By Representative Uybarreta
TO THE COMMITTEE ON RULES

House Resolution No. 759, entitled:

“RESOLUTION CONGRATULATING FORMER REPRESENTATIVE MARIA RACHEL J. ARENAS OF THE 3RD DISTRICT OF PANGASINAN FOR HER APPOINTMENT AS CHAIRMAN OF THE MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB)”

By Representative Villarica
TO THE COMMITTEE ON RULES

House Resolution No. 760, entitled:

“A RESOLUTION CONVEYING THE SINCEREST CONDOLENCES OF THE HOUSE OF REPRESENTATIVES OF

THE PHILIPPINES TO THE FAMILY OF THE LATE DIOSALINDA LACSAMANA PEREZ, MOTHER OF CONGRESSWOMAN FLORIDA PEREZ ROBES & MOTHER-IN-LAW OF FORMER CONGRESSMAN & NOW SAN JOSE DEL MONTE CITY MAYOR ARTHUR ROBES”

By Representative Ong (E.)
TO THE COMMITTEE ON RULES

House Resolution No. 761, entitled:

“RESOLUTION EXPRESSING THE PROFOUND CONDOLENCES OF THE HOUSE OF REPRESENTATIVES TO THE BEREAVED FAMILY OF MRS. DIOSALINDA L. PEREZ, MOTHER OF REPRESENTATIVE FLORIDA P. ROBES OF THE LONE DISTRICT OF THE CITY OF SAN JOSE DEL MONTE, BULACAN”

By Representatives Alvarez (P.), Fariñas and Suarez

TO THE COMMITTEE ON RULES

ADDITIONAL COAUTHORS

Rep. Erlpe John “Ping” M. Amante for House Bills No. 516, 1858, 1859, 1894, 3858, and 4742, and House Joint Resolution No. 4;

Reps. Rogelio J. Espina, M.D. and Vicente “Ching” S.E. Veloso for House Bill No. 4742;

Reps. Doy C. Leachon and Melecio J. Yap Jr. for House Bill No. 4689;

Rep. Vicente “Kulit” J. Alcala for House Bill No. 1858;

Rep. Estrellita B. Suansing for House Bills No. 3055, 3178, 3301, 3407, 3441, and 4489;

Rep. Manuel Jose “Mannix” M. Dalipe for House Bills No. 421, 4054, 4526, 4742, and 4800;

Rep. Gus S. Tambunting for House Bills No. 1393 and 1395;

Rep. Teodoro “Ted” G. Montoro for House Bill No. 4526;

Rep. Roy M. Loyola for House Bill No. 4742;

Reps. Victor A. Yap, Arnulfo P. Fuentesbella, Francisco Jose F. Matugas II, and Isagani S. Amatong for House Resolution No. 769;

Rep. Edward Vera Perez Maceda for House Bill No. 743;

Rep. Jose Antonio “Kuya Jonathan” R. Sy-Alvarado for House Bills No. 2993, 4700, and 4893;

Reps. Orestes T. Salon, Victor A. Yap, Frederick W. Siao, Alexandria P. Gonzales, Cesar V. Sarmiento, Strike B. Revilla, and Rodolfo T. Albano III for House Bills No. 4106 and 4462;

Rep. Ramon V.A. “Rav” Rocamora for House Bills No. 3683 and 4774;

Rep. Rodante D. Marcoleta for House Bill No. 4903;

Reps. Enrico A. Pineda, Scott Davies S. Lanete, M.D., Conrado M. Estrella III, and Ma. Lourdes R. Aggabao for House Bill No. 2635;

Rep. Ruwel Peter S. Gonzaga for House Bill No. 4174;

Rep. Michelle M. Antonio for House Bill No. 349;

Rep. Eugene Michael B. De Vera for House Bills No. 4107, 4174, 4526, 4689, and 4742, and House Resolution No. 693;

Rep. Manuel F. Zubiri for House Bill No. 2319;

Reps. Lorna C. Silverio and Benhur B. Lopez Jr. for House Bill No. 180;

Rep. Xavier Jesus D. Romualdo for House Bills No. 2476 and 4742;

Rep. Maria Vida Espinosa Bravo for House Bills No. 3456, 3616, 3662, 3663, 3810, and 4620; and

Rep. Paolo Everardo S. Javier for House Bill No. 2771.

COMMUNICATION

Letters dated January 31 and February 9, 2017 of Roger E. Dino, Deputy Director, Office of the General Counsel and Legal Services, Bangko Sentral ng Pilipinas, furnishing the House of Representatives with duly certified and authenticated Bangko Sentral ng Pilipinas issuances, to wit:

1. Circular No. 943 dated 26 January 2017;
2. Circular Letter No. CL-2017-006 dated 25 January 2017;
3. Memorandum No. M-2017-002 dated 18 January 2017;
4. Circular Letter No. CL-2017-007 dated 19 January 2017;
5. Circular Letter No. CL-2017-008 dated 25 January 2017;
6. Circular No. 944 dated 6 February 2017;
7. Circular No. 945 dated 6 February 2017;
8. Circular Letter No. CL-2017-009 dated 26 January 2017; and
9. Memorandum No. M-2017-003 dated 27 January 2017.

TO THE COMMITTEE ON BANKS AND FINANCIAL INTERMEDIARIES

COMMITTEE REPORTS

Report by the Committee on Transportation (Committee Report No. 107), re H.R. No. 779, entitled:

“RESOLUTION EXPRESSING THE FULL SUPPORT OF THE HOUSE OF REPRESENTATIVES TO THE □WESTMINSTER DECLARATION□ AND

URGING THE CONCERNED LAND
TRANSPORT AGENCIES TO FAITHFULLY
IMPLEMENT ROAD SAFETY LAWS”

recommending its approval in substitution of House
Resolution No. 651

Sponsor: Representative Sarmiento (C.)
TO THE COMMITTEE ON RULES

Report by the Committee on Youth and Sports
Development (Committee Report No. 108), re H.R.
No. 784, entitled:

“RESOLUTION CONGRATULATING AND
COMMENDING MARK LOUIE EBALLA
FOR HIS INVALUABLE SUPPORT AS
HEAD COACH OF PARALYMPIAN
JOSEPHINE MEDINA WHO WON THE
BRONZE MEDAL IN THE 2016 SUMMER
PARALYMPIC GAMES HELD IN RIO DE
JANEIRO, BRAZIL”

recommending its adoption in substitution of House
Resolution No. 381

Sponsors: Representatives Estrella and Sambar
TO THE COMMITTEE ON RULES

Report by the Committee on Youth and Sports
Development (Committee Report No. 109), re H.R.
No. 785, entitled:

“RESOLUTION CONGRATULATING
AND COMMENDING PARALYMPIAN
JOSEPHINE MEDINA FOR WINNING
THE BRONZE MEDAL IN THE WOMEN’S
TABLE TENNIS SINGLES CLASS EIGHT
EVENT DURING THE 2016 SUMMER
PARALYMPIAN GAMES HELD IN RIO
DE JANEIRO, BRAZIL ON SEPTEMBER
13, 2016”

recommending its adoption in substitution of House
Resolutions Numbered 337, 342, 349, 355, 361,
378 and 387

Sponsors: Representatives Estrella, Del Rosario,
Sambar, Zamora (M.), Olivarez, Bernos,
Romero and Roa-Puno

TO THE COMMITTEE ON RULES

THE PRESIDING OFFICER (Rep. Bondoc). The
Floor Leader is recognized.

CONSIDERATION OF H.B. NO. 4727

Continuation

PERIOD OF SPONSORSHIP AND DEBATE

REP. NOGRALES (J.). Mr. Speaker, under the
Calendar of Unfinished Business, I move that we
resume the consideration of House Bill No. 4727, as
contained in Committee Report No. 47, as submitted

by the Committee on Justice. For this purpose, may I
ask that the Secretary General be directed to read only
the title of the Bill.

*At this juncture, the Presiding Officer relinquished
the Chair to Deputy Speaker Pia S. Cayetano*

THE DEPUTY SPEAKER (Rep. Cayetano). Is
there any objection? (*Silence*) The Chair hears none;
the motion is approved.

The Secretary General is instructed to read the title
of the measure.

THE SECRETARY GENERAL. House Bill No.
4727, entitled: AN ACT IMPOSING THE DEATH
PENALTY ON CERTAIN HEINOUS CRIMES,
REPEALING FOR THE PURPOSE REPUBLIC ACT
NO. 9346, ENTITLED “AN ACT PROHIBITING
THE IMPOSITION OF DEATH PENALTY IN THE
PHILIPPINES”, AND AMENDING ACT NO. 3815,
AS AMENDED, OTHERWISE KNOWN AS THE
“REVISED PENAL CODE”, AND OTHER SPECIAL
PENAL LAWS.

REP. NOGRALES (J.). Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). The
Floor Leader is recognized.

REP. NOGRALES (J.). The parliamentary status
of the Bill is that it is in the period of sponsorship
and debate. I move that the Chairperson of the
Committee on Justice, the Hon. Reynaldo V. Umali,
be recognized.

REP. UMALI. Thank you.

THE DEPUTY SPEAKER (Rep. Cayetano). The
Chairperson, Congressman Umali, is recognized.

REP. UMALI. Thank you, Mme. Speaker.

We are ready for the interpellation/questions of
those opposed to the Bill.

REP. NOGRALES (J.). Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). The
Floor Leader is recognized.

REP. NOGRALES (J.). I move that we recognize
the Gentleman from KABAYAN Party-List, the Hon.
H. Harry L. Roque Jr., for his interpellation.

THE DEPUTY SPEAKER (Rep. Cayetano). The
Gentleman from KABAYAN Party-List, the Hon. Harry
Roque, is recognized.

REP. ROQUE (H.). Thank you, Mme. Speaker. Thank you, Floor Leader.

Will the distinguished Sponsor yield to a few questions on interpellation?

REP. UMALI. Yes, Mme. Speaker, especially if it would only be a few questions.

REP. ROQUE (H.). Thank you, Mme. Speaker.

Well, I call the attention, Mme. Speaker, of the good Sponsor to Article II, Section 2 of the 1987 Constitution which provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.” My first question to the good Sponsor is, pursuant to Article II, Section 2, does the good Sponsor, Mme. Speaker, believe that a statute enacted by this Congress is necessary before generally accepted principles of international law form part of the law of the land?

REP. UMALI. I believe so, Mme. Speaker, Your Honor, because international treaties, while they form part of the law of the land, are just like any other laws and they are not above the Constitution. The Constitution allows us to reimpose the death penalty on certain conditions or compelling reasons involving heinous crimes. So where the Constitution does not prohibit—as, in fact, it authorizes Congress to reimpose it—then it is a law that will, effectively, amend any treaty entered into by the country, which will only form part of the law of the land.

REP. ROQUE (H.). Mme. Speaker, with all due respect to the good Sponsor, I think the answer given is unresponsive. I will repeat my question.

Quoting Article II, Section 2 of the Constitution which states that the Philippines “adopts the generally accepted principles of international law as part of the law of the land,” my question is: before a generally accepted principle of international law forms part of the law of the land, is an act of Congress necessary pursuant to Article II, Section 2?

REP. UMALI. An act of Congress for what, distinguished ...

REP. ROQUE (H.). Mme. Speaker, my question is, before a generally accepted principle of international law can form part of the law of the land, is it always the case that a statute from Congress should be enacted?

REP. UMALI. That is not necessary because it is the treaty that will go through the Senate and we are not part of the Senate, though we are part of Congress. This treaty after it is—what do you call this—affirmed by the Senate, then forms part of the law of the land.

REP. ROQUE (H.). Well, the answer, Mme. Speaker, is, of course, accurate; it is not always the case that a law is required before a generally accepted principle of international law forms part of the law of the land. In fact, Mme. Speaker, at the end of World War II, this issue arose precisely because leaders of the Japanese Imperial Army were sought to be criminally prosecuted for violations of what are referred to in international humanitarian law, or which in international law are considered as *jus cogens* or being non-derogable.

The issue arose in the Supreme Court: can the respondents be held liable for war crimes under IHL even if at the time the respondents were sought to be held liable for these war crimes, we were neither a party to a treaty nor did we have a statute criminalizing war crimes? And the Supreme Court held first in the case of Yamashita, regarding Yamashita, that in fact neither a treaty nor a law is necessary to prosecute war crimes because all civilized nations have committed themselves to prosecute war crimes as a crime against the international community. It was not until the subsequent case of Kuroda that the Supreme Court finally declared that it is the provision of the Organic Law—which today is Article II, Section 2, otherwise referred to as the “incorporation clause”—that becomes the basis of the criminal prosecution of war crimes even in the absence of a statute or a treaty obligation, because the Organic Law provides that generally accepted principles of international law, including the prosecution of war crimes, form part of the law of the land.

Now, with the answer of the good Sponsor, I will proceed to my next question: Because generally accepted principles of international law form part of the law of the land, what then is the legal basis, Mme. Speaker, of these generally accepted principles of international law to form part of the law of the land pursuant to Article II, Section 2?

REP. UMALI. What is the ...

REP. ROQUE (H.). Legal basis of these internationally accepted principles of international law to form part of the law of the land.

REP. UMALI. I suppose it is Article II, Section 2.

REP. ROQUE (H.). That is correct, Mme. Speaker. In other words, it is the Constitution itself, not international law, that is the legal basis for generally accepted principles of international law to form part of the law of the land, with the caveat that even without the Organic Act, at the end of World War II, the Supreme Court was already of the opinion that even without the incorporation clause, they form part of the law of the land; that pursuant to Kuroda and other cases, the generally accepted principles of international law is law

because the Constitution says so. It is the Constitution that says that these generally accepted principles of international law form part of the law of the land. Just to clarify, it is not because of a statute neither is it because of a treaty, is this not correct, Mme. Speaker?

REP. UMALI. That is correct, for as long as there is no law which is adverse to that generally accepted principle.

REP. ROQUE (H.). With the answer of the good Sponsor, Mme. Speaker, it is safe to conclude that these generally accepted principles of international law are therefore constitutionalized because it is the Constitution that provides for its binding nature. Is this not correct, Mme. Speaker?

REP. UMALI. That is correct but as the Constitution says, it is only a law and it is not a constitutional provision that we are amending in this particular sense.

REP. ROQUE (H.). Let me make a clarification at this stage because I have not actually referred to any particular treaty or law, just to the generally accepted principle of international law. I am not providing or asking for a specific treaty but at this point, I am just clarifying that under Article II, Section 2, it is the Constitution that says that they form part of the law of the land. Is this not correct?

REP. UMALI. That is correct, Mme. Speaker.

REP. ROQUE (H.). Mme. Speaker, we also follow a hierarchy of laws in the sense that some laws are more binding than others, and is it not true, Mme. Speaker, that in our hierarchy of laws, the Constitution is the supreme law of the land as, in fact, if there is any statute that violates any provision of the Constitution, it is the Constitution that shall take precedence, not an ordinary statute. Is this not correct, Mme. Speaker?

REP. UMALI. That is correct, Your Honor, Mme. Speaker.

REP. ROQUE (H.). Now, because generally accepted principles of international law are set to form part of the law of the land, precisely because the Constitution says so, is it not true that this provision of Article II, Section 2 forms part of our Constitution?

REP. UMALI. I do not agree to that. While it may be a provision in the Constitution that generally accepted principles of international law are considered part of the law of the land, they are not specific provisions of the Constitution that enjoy that hierarchy of a constitutional provision.

REP. ROQUE (H.). I am confused, Mme. Speaker, because Article II, Section 2 precisely forms part of the Constitution, and I am merely clarifying the point that because Article II, Section 2 is found in the Constitution and the Constitution is the supreme law of the land, then Article II, Section 2 is also a part of the superior law that applies to the entire territory of the Philippines.

REP. UMALI. Only with respect to recognizing it as part of the law of the land but not directly as a constitutional provision because there is a constitutional provision specific to this which allows the reimposition of the death penalty for compelling reasons involving heinous crimes. This is a direct provision of the Constitution that is now the basis for the authority of Congress to enact a law that will revive or reimpose the death penalty.

REP. ROQUE (H.). My question, Mme. Speaker, does not inquire about the constitutional provision on the death penalty yet. I am only clarifying that Section 2, Article II of the Constitution, since it forms part of the Constitution itself, enjoys supremacy.

REP. UMALI. That is correct insofar as Article II, Section 2, which states that “principles of international law form part of the law of the land”. But then, when we talk of specific constitutional provisions, this is something that cannot be equated to a law that is only considered by Article II, Section 2 as part of the law of the land. It is not a direct provision of the Constitution that cannot be amended.

REP. ROQUE (H.). Well, Mme. Speaker, I will go later on to the provision on the death penalty found in the Constitution but as of now, I think it suffices that the good Sponsor has, in fact, confirmed that Article II, Section 2, as part of the Constitution, naturally enjoys supremacy in our hierarchy of laws.

Now, my next question, Mme. Speaker, is it not that under the principle of *pacta sunt servanda*, treaty obligations must be complied with in good faith, as a generally accepted principle of international law?

REP. UMALI. I agree to that, Mme. Speaker, Your Honor.

REP. ROQUE (H.). In fact, the Supreme Court has time and again ruled that *pacta sunt servanda* constitutes a generally accepted principle of international law and automatically forms part of the law of the land, as in fact we do not have a statute that provides that treaty obligations form part of the law of the land. Congress, up to this date, has not enacted any such statute and it is merely Article II, Section 2 and the decisions of the Supreme Court that provide the legal basis for the binding nature of treaty obligations.

I would like, in fact, to quote, Mme. Speaker, from the leading case of *Tañada vs. Angara* and here, what was sought to be violated, according to petitioners in the case, is a specific provision of the Constitution, a constitutional commitment to favor Filipino interest over foreign interest, which petitioner, former Senator and Member of this august Chamber, Senator Tañada, argued is the legal basis as to why the regime of trade liberalization under the World Trade Organization should be declared as being unconstitutional by the Philippine Supreme Court because it contravenes a literal provision of the Philippine Constitution. But the Court, even if the Declaration of State Policies favored the petitioner, ruled:

By the doctrine of incorporation, the country is bound by generally accepted principles of international law which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda*, international agreements must be performed in good faith. A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties. A State which has contracted valid international obligation is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations taken.

This decision, Mme. Speaker, was reiterated in the recent case of *Magallona vs. Executive Secretary*, which I had the privilege of arguing before the Court, and in this subsequent case, what professor Dean Merlin M. Magallona sought to nullify was a treaty obligation under the UNCLOS, limiting our claim to our territorial seas to 12 nautical miles from our straight baselines, which contravened the expressed declaration in Article I of the Philippine Constitution on the metes and bounds of the Philippine National Territory. Even if the provision of the UNCLOS was clearly in violation of Article I of the Constitution, particularly on the nature of the waters within and between the islands comprising our archipelago as forming part of our internal waters, the Supreme Court, citing *Angara vs. Tañada*, ruled *pacta sunt servanda*, treaty obligations must be complied with in good faith.

Now, Mme. Speaker, I call the attention of the good Sponsor now to the provision of the International Covenant on Civil and Political Rights which we entered into in 1986, duly concurred in by the Philippine Senate, and I call his attention to Article VI, Section 2 of the International Covenant on Civil and Political Rights. I would like to quote Section 2, Article VI of ICCPR, which states:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.

Now, my question is, will the good Sponsor agree that this provision of Article VI, Section 2 does not apply to the Philippines because of Section 19 (1), Article III on the Bill of Rights? This is, of course, the provision which reads, and I quote Section 19 (1),

Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

So, my question again, Mme. Speaker, is it not that Article VI, Section 2 is not applicable to the Philippines precisely because of Section 19 (1), Article III of the 1987 Constitution?

REP. UMALI. Precisely, Mme. Speaker, Your Honor, the imposition of the death penalty has been suspended since 2006, if I recall it correctly, pursuant to RA 9346. That is why no death penalty was imposed and, in fact, all of the death penalty imposed during those times were reduced to *reclusion perpetua*. This is in recognition of this particular international principle. But then, this is not cast in stone because there is also this doctrine of *rebus sic stantibus* that considers a treaty or an international law which forms part of the law of the land no longer obligatory if there is a material change in circumstances, and this is precisely what has been allowed by the Constitution in the reimposition of the death penalty when, for compelling reasons in cases involving heinous crimes, Congress will enact a law that will again authorize the imposition of the death penalty.

So, while we may recognize these laws to be effective, international treaties or international principles of law are to be treated as being in the same class as the laws enacted by Congress. Therefore, if this is a law, then it can very well be amended by Congress, most especially when the Constitution allows Congress to enact a law that will reimpose the death penalty, as provided under our Constitution.

REP. ROQUE (H.). Again, Mme. Speaker, with all

due respect, I believe the answer was not responsive to my question. I will repeat my question, which is very simple. Article VI, Section 2 of the ICCPR says, “In countries which have not abolished the death penalty, it may be imposed only for the most serious crimes.” My question is, when we ratified the ICCPR on October 23, 1986, is it not true that we had already enacted the 1987 Constitution or subsequent to 1986, we had enacted the 1987 Constitution which provides that the death penalty shall not be imposed? Is this not correct as of the time of ratification of the Constitution?

REP. UMALI. That is correct.

REP. ROQUE (H.). That is correct.

REP. UMALI. As I was saying, and I do not know what answer you want, the answer can be found in the Constitution itself that authorizes Congress to reimpose the death penalty. So, you may wish to read the Constitution again, particularly that provision that authorizes us to reimpose the death penalty.

REP. ROQUE (H.). That is correct, because Section 19 (1) also provides that Congress hereafter may provide for it and the word “may” suggests that it is permissive only, it is not mandatory. Is this not correct, Mme. Speaker?

REP. UMALI. That is correct and that is why we found, through the Justice Committee, compelling reasons particularly involving heinous crimes which became our basis for approving the Bill in the Justice Committee. This is the reason we are debating on this on the floor.

REP. ROQUE (H.). So the answer, Mme. Speaker, of the good Sponsor is that pursuant to Section 19 (1), although we have done away with the death penalty, Congress was given the option to provide for it. But my question is, because of the enactment of the 1987 Constitution, although it provided for a permissive provision to reimpose the death penalty, we have already done away with the death penalty and therefore, we are not covered by Article VI, Section 2 of the ICCPR because we have, precisely when we enacted the 1987 Constitution, already abolished the death penalty, with the option for Congress to reimpose it. Is this not correct?

REP. UMALI. That is not correct, Mme. Speaker, Your Honor, because in the case of *People vs. Echegaray* which was cited in the decision in *People vs. Munoz*, and I quote, “A reading of Section 19 (1) of Article III, will readily show that there is really nothing therein which expressly declares the abolition of the death

penalty.” The provision merely said that the death penalty shall not be imposed “unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it ...” and if already imposed, it shall be reduced to *reclusion perpetua*. The language, while rather awkward, is still plain enough, and it is a settled rule of legal hermeneutics that if the language under consideration is plain, it is neither necessary nor permissible to resort to extrinsic aids like the Record of the Constitutional Commission for its interpretation. So, the straight answer is that there is no expressed declaration in the Constitution abolishing it. So, that is also the case in *People vs. Echegaray*, where it is very clear in that decision that the imposition of death penalty was merely suspended and it allowed—and now, we are being allowed by Section 19 (1) of Article III to reimpose it for certain conditions or for compelling reasons involving heinous crimes and that is where we are right now.

REP. ROQUE (H.). Well, I will go to *People vs. Echegaray* in a while. My next question, Mme. Speaker, is whether the good Sponsor is aware that in addition to being a party to the ICCPR, we are also a party to the First Optional Protocol to the ICCPR which recognizes the jurisdiction of the Human Rights Committee, a body composed of eminent experts with a mandate to ensure that countries comply with their obligations under the International Covenant on Civil and Political Rights.

REP. UMALI. Yes, I am aware of that, but that is no reason for us not to be able to enact a law that will reimpose the death penalty pursuant to a direct provision of the Constitution.

REP. ROQUE (H.). Mme. Speaker, since we have ratified the First Optional Protocol to the ICCPR, may I clarify that, precisely, because we are party to this treaty, we have precisely recognized the jurisdiction of the Human Rights Committee to ensure that states-parties to the ICCPR comply with their obligations therein.

REP. UMALI. In fact, that is what we did for quite a while from the time the Constitution was enacted until we reimposed it in 1996—sorry, in 1993 pursuant to RA 9346. So, this is nothing new. What we are doing now is nothing new because we had already reimposed this in RA. 9346—sorry, in RA 7659 in 1993 and therefore, this particular provision had been reinterpreted by the Supreme Court which upheld the validity of RA 7659. So, this is nothing new that we are debating on because this is a matter that had been passed upon already by the Supreme Court.

REP. ROQUE (H.). Mme. Speaker, my only question was, as a party to the First Optional

Protocol, not to the second—I am referring only to the First Optional Protocol recognizing the jurisdiction of the Human Rights Committee—we have recognized the jurisdiction of the Human Rights Committee to ensure that the states-parties comply with their obligations under the ICCPR. That is my only question. I am not asking about the Second Optional Protocol on the abolition of the death penalty, only on the jurisdiction of the Human Rights Committee, Mme. Speaker.

REP. UMALI. The point of this Representation, Mme. Speaker, Your Honor, is that, regardless of whatever protocol, regardless of whatever international principles of law and all treaties that prohibit us from reimposing this, this cannot be above the Constitution and this had been passed upon by the Supreme Court. This had been implemented in 1993, and what we are doing is that this is in accordance with a doctrine called *rebus sic stantibus* that also allows us not to honor a treaty or a protocol and not make these treaties and all protocols obligatory if there is a material change in circumstance, and this is the material change in circumstance that we are talking about, that we are explaining as compelling reasons to reimpose death penalty for heinous crimes.

So, you know, we may endlessly debate on protocol 1, protocol 2, protocol 3, protocol 4, but all of my answers will amount to the same thing—that we are not obliged to honor these protocols and/or treaties because we are allowed by the Constitution no less to reimpose the death penalty pursuant to Section 19 (1), Article III of the 1987 Constitution.

REP. ROQUE (H.). Mme. Speaker, it was a very simple query. I did not get a response.

Under the First Optional Protocol, we have recognized the jurisdiction of the Human Rights Committee. In the case of *Judge vs. Canada*, the Human Rights Committee declared—and the Committee, after all is only the most authoritative body on the interpretation of the ICCPR—that the state, as the Philippines has, that had already abolished the death penalty, may not reimpose the death penalty. Now, my question is, when we ratified this First Optional Protocol, did we not do so willingly, with no threat, intimidation or coercion imposed on the Philippines? I am only talking about the First Optional Protocol. Is this not correct, Mme. Speaker?

REP. UMALI. Before I answer that, as quoted by the distinguished Gentleman, he mentioned the phrase “may not” and so, this is not obligatory on our part and precisely, this is what I am saying—that we are now reimposing it because there are compelling reasons for the reimposition of the death penalty.

REP. ROQUE (H.). I stand corrected, Mme. Speaker, and I will quote verbatim what the Human Rights Committee ruled in *Judge vs. Canada*, that “A state that has abolished the death penalty cannot invoke paragraph 2 of Article VI of the ICCPR.” Meaning, it cannot invoke the provision that the penalty of death may be imposed only for the most heinous crimes in accordance with the law enforced at that time because this provision is only applicable, precisely, to countries which have not abolished the death penalty.

Now, I will move on to my next point which is something that the good Sponsor raised, which is *rebus sic stantibus*, which we agree to as the principle that is recognized and is a valid ground, by way of defense, to a claim that a country had, in fact, violated its treaty obligation. My question now: is the good Sponsor aware of any instance by which any international body or tribunal has declared that to invoke *rebus sic stantibus* is in fact proper?

REP. UMALI. I am not aware of that, but that is a principle of law that is the other side of the principle of *pacta sunt servanda*. Anyway, again, the whole point is, we believe that between a provision of a treaty and a provision of the Constitution, in case of conflict between any provision of a treaty and a provision of the Constitution, the provision of the Constitution should prevail, and that is provided under Section 5 (2) (a), Article VIII of the 1987 Constitution which authorizes the nullification of a treaty when it conflicts with the Constitution.

REP. ROQUE (H.). Mme. Speaker, again, my query is on *rebus sic stantibus*, and while the Sponsor said that he is not aware of any authority or any tribunal recognizing the valid invocation of *rebus sic stantibus*, he is in fact correct because no tribunal in any jurisdiction, whether international or domestic, has in fact declared that a country may be relieved from a treaty obligation by reason of *rebus sic stantibus*; meaning, while the possibility exists, no instance has been recognized as being a valid claim of *rebus sic stantibus*. Is it the position of the good Sponsor that the Philippines will be the first to validly invoke *rebus sic stantibus* when it reimposes the death penalty, Mme. Speaker?

REP. UMALI. If that is the implication of House Bill No. 4727, then so be it. At best or at worst, sanctions may be imposed on the government, but that is all there is to it, sanctions. The whole point is that, when we look at the welfare of the people as our guidepost and we, being Representatives of the people, then we must give priority to whatever is needed in our domestic laws. This is why House Bill No. 4727 has been approved in the Committee

on Justice and is now being presented on the floor for plenary deliberation.

REP. ROQUE (H.). *Rebus sic stantibus*, Mme. Speaker, contemplates a fundamental change in circumstance, so much so that a party or a state should be declared not to be bound by a treaty obligation because the change in circumstance is so fundamental that it cannot be said that a state willingly gave its voluntarily consent to be bound by the provision of a treaty.

My next question, therefore, is, because the Gentleman, the good Sponsor invoked *rebus sic stantibus*, may I inquire, Mme. Speaker, what is this fundamental change in circumstance that must be considered as a justification to treat the Philippines as if it did not become a party to its treaty obligation?

REP. UMALI. I had mentioned four compelling reasons for the imposition of the death penalty and these are, the Committee believes, first, the death penalty is a fitting response to the increasing criminality and killings in the country; second, the death penalty is a measure to restore respect for the laws of the land which, from the looks of it, we had already lost; third, the death penalty is a path to achieving justice, and when I say justice, this is not justice only for the convicts but equal justice for the victims and all other peace-loving citizens; and fourth, we believe that the restoration of the death penalty is geared towards or would lead towards a genuine reform in the Philippine criminal justice system.

Eleven years had elapsed since the death penalty was suspended and from that time on, if I would quote the President himself in one of his speeches, in 2006, just before the suspension of the imposition of death penalty, there were 189 cases involving heinous crimes reported by the Bureau of Corrections. As it stands now, there are about 6,000 or an increase of 3,000 percent in the number of heinous crimes committed and all of them are in jail, in the National Bilibid Prison. In the inquiry that we conducted, we witnessed that many of them are still involved in drug trade even when they are already within the confines of the New Bilibid Prison. These are reasons that we feel have changed the circumstances when we signed the protocol, when we signed the treaty and suspended the imposition of the death penalty in 2006. There will be more reasons, like the involvement of men in uniform, of law enforcers, in crimes being committed in the country today, and we read these in the newspapers, we hear these over the radio, and we watch these on television everyday—all of these killings are coming out in the newspapers.

REP. ROQUE (H.). Mme. Speaker, since it was the Sponsor that brought up *rebus sic stantibus*, my next question is, since 1986 when we became a party to the ICCPR until today, 2017, what data does the good Sponsor have to indicate that there has been a tremendous rise in criminality, taking note that between 1986 when we became a party to the protocol until today, there was a period in time when we reimposed the death penalty. When we did away with the death penalty, were there any data that would prove that, in fact, during the period since 1986 to the time it was first reimposed, that is, the death penalty, there was tremendous increase in criminality or heinous crimes?

Let us begin, Mme. Speaker, with the period from 1986 to the time when the death penalty was reimposed during the term of former Pres. Fidel Ramos, were there data on the rise of criminality, particularly involving heinous crimes?

REP. UMALI. Mme. Speaker, Your Honor, I believe that this question had been asked by previous interpellators and we had answered the same. If I may just reiterate, these data are not necessary for the reimposition of the death penalty as decided by the Supreme Court in *People vs. Echegaray*.

REP. ROQUE (H.). What about the period since we abolished the death penalty during the time of President Arroyo until today, are there data on a tremendous rise in criminality that would result in so fundamental a change in circumstance which the good Sponsor says can be the basis for invoking *rebus sic stantibus*?

REP. UMALI. Let me give a similar answer to a previous question, with a further clarification that these data from the PNP were distributed to the Members. I believe that the distinguished Gentleman should probably look at these data which were distributed by the Committee to the Members of this House.

REP. ROQUE (H.). I wish that these data could be read, for the record, Mme. Speaker, for future generations to judge for themselves the wisdom of reimposing the death penalty. Of course, I recognize that in a representative democracy, laws/policies are adopted on the basis of superiority of numbers, but history dictates that if there is a policy that we wish to introduce, the people have the right to know the basis for these policies. If it is the position of the Sponsor that there has been a fundamental change in circumstance, I wish, Mme. Speaker, that this basis, the alleged increase in criminality, could be made part of the records of our proceedings.

REP. UMALI. We had done so, Mme. Speaker, and I believe that I also had answered those questions. At any rate, let me cite certain points in the case of *People vs. Echegaray*, and I quote:

The imposition of the requirement that there be a rise in incidence of criminality because of the suspension of the death penalty, moreover, is an unfair and misplaced demand, for what it amounts to, in fact, is a requirement that the death penalty first prove itself to be a truly deterrent factor in criminal behavior. If there was a dramatically higher incidence of criminality during the time that the death penalty was suspended, that would have proven that death penalty was indeed a deterrent during the years before its suspension. Suffice it to say that the Constitution in the first place did not require that the death penalty be first proven to be a deterrent. What it requires is that there be a compelling reason involving heinous crimes.

REP. ROQUE (H.). Mme. Speaker, again, I would have preferred that these data form part of our records but for now, perhaps, it is sufficient to state for the record the experience of other countries on the death penalty. For instance, there is published data that in the United States where they still have the death penalty, the data indicated that the states that do not employ the death penalty have much lower murder rates.

According to the North Carolina Department of Justice, in 2012 the murder rate in that state has declined up to eight percent per year since 2006 when the executions stopped in that state. Another data, the 2014 FBI Uniform Crime Report stated that the south of the United States had the highest murder rates despite accounting for over 80 percent of all executions in the US. A study by the New York Times in 2000 indicated that from 1980 to 2000, the homicide rates in states with the death penalty had been 48 to 101 percent higher than in states without the death penalty. The problem in the Philippines, Mme. Speaker, is precisely that we do not monitor these figures at all. That is why one of the recommendations of human rights organizations is to designate an institution in the Philippines that will provide and gather all these data.

Mme. Speaker, let me move on to another point. The good Sponsor also invoked *rebus sic stantibus*—the fundamental change of circumstance—because people are allegedly crying for justice; and that the death penalty will deliver this justice. My question is: is the good Sponsor aware of the conviction rate in this country for murder or extralegal killings during the time when we did not impose the death penalty? Here—there is scientific data available. Is the good Sponsor aware of the conviction rate for murder today?

REP. UMALI. Again, Mme. Speaker, Your Honor, as pronounced in the case of *People vs. Echegaray*, these data are not necessary for us to reimpose the death penalty. The whole point is that, while the good Gentleman mentioned about the data in America, of course, America is America and the Philippines is the Philippines, and these are two different countries, with two different circumstances, and therefore, what applies to America may not necessarily apply to our country.

On a personal note, we cannot wait for all of these data to come in before we reimpose the death penalty, especially in the light of what we read in the newspapers on a daily basis, on what we see on television on a daily basis, and on what we hear over the radio on a daily basis. All of these killings are happening; and of course, after they were convicted and sent to the National Bilibid Prison, still, they enjoy the good life, even kissing Members of Congress whose offices are not even better than theirs, compared to the kubols of these inmates in the New Bilibid Prison. We may rely on all these data but at the end of the day, how can we stomach all these criminality happening in our midst, and argue based on these data over what we witness on a daily basis?

REP. ROQUE (H.). Mme. Speaker, the Parreño Report stated that we have a conviction rate of only one percent for murder in this country, and this was during the time when we did not have the death penalty. So my question is, how will the reimposition of the death penalty improve this one percent conviction rate for murder? The problem is, the one percent conviction rate has to do with the investigation and prosecution of crimes, specifically, of murder. How will the reimposition of the death penalty result in a higher conviction rate for murder than its current one percent?

REP. UMALI. Mme. Speaker, Your Honor, when we talk of reimposition of the death penalty, we are not only talking of the Bill that will reimpose the death penalty. The law itself will not cure all evils.

The good interpellator, Congressman Harry Roque, is talking about sins of the past. These are precisely the reasons we in the Committee on Justice have looked at all four or five pillars of justice and we would like to introduce reforms also in the other pillars of justice so that at the end of the day, we will look at the issue holistically, not only through the reimposition of death penalty. As we speak, the four Subcommittees of the Committee on Justice, namely, on the Enforcement and Investigation Reforms, on Prosecutorial Reforms, on Judicial Reforms and on Correctional Reforms, have conducted as many hearings as they could and they will try to come up with all of the reforms needed for the pillars, as I mentioned, of the criminal justice system.

So, my direct answer is that, again, the statistics will offer no proof that we can achieve or we will be able to address these problems through the reimposition of the death penalty because we do not intend to limit ourselves to the death penalty in being able to respond to all other issues or problems besetting the criminal justice system.

REP. ROQUE (H.). In other words, Mme. Speaker, the Sponsor concedes that in order to improve the conviction rate for murder which is currently at one percent, it is not the death penalty that is the solution or at least, the sole solution. Is this not correct?

REP. UMALI. That is precisely part of my sponsorship speech where I said that the restoration of the death penalty is geared towards a genuine reform in the Philippine criminal justice system. So, it is just a start, and it is only a part of the genuine reforms in the Philippine criminal justice system. It is not the be-all and end-all of the reforms that we are looking at.

REP. ROQUE (H.). So, if it is only a beginning, my next question, Mme. Speaker, is, why did the Sponsor choose the reimposition of the death penalty as the beginning? Should we not address first reforming the pillars of the criminal justice system, the defects therein responsible for this impunity, that is, the one percent conviction rate? Why begin with the death penalty when clearly, the defects in the institutions comprising the criminal justice system are responsible for the fact that no one is punished for murder?

REP. UMALI. Well, the Committee believes that this is a key to the genuine reforms that need to be undertaken, and this is pivotal in the sense that 11 years had elapsed when no death penalty was imposed and there was a 3,000-percent increase in heinous crimes committed by persons that are now incarcerated in the National Bilibid Prison.

REP. ROQUE (H.). I will go to my last point, Mme. Speaker, and that is now the Second Optional Protocol which I will flash on the screen. The Second Optional Protocol was entered into on February 20, 2008. Now, will the good Sponsor confirm that the case of *People vs. Leo Echegaray*, which he had often cited, predated our being a party to the Second Optional Protocol on February 20, 2008 because the judgment in the Echegaray case was decided earlier than 2008? Is this not true, Mme. Speaker?

REP. UMALI. How is that again? Can you please ...

REP. ROQUE (H.). Is it not true that we ratified the Second Optional Protocol, the provisions of which read:

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.
2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Since we ratified this only on February 20, 2008, the decision on Leo Echegaray was promulgated by the Supreme Court prior to our being a party to the Second Optional Protocol to the ICCPR?

REP. UMALI. That is correct, and that is also the time when Republic Act No. 9346, which suspended death penalty, was also in place and therefore, there was no impediment at all to enter into this Protocol because that was the general policy of the national government at that time. But times have changed, that even the President of the Republic has made it a policy to address criminality, to address the problem on drugs and even on corruption, and that is why this Bill was filed as, in fact, this was House Bill No. 1 authored by no less than the Speaker and the good Deputy Speaker who are here present. This is the change in circumstance that has happened since 2016 and that called for this Congress to look into the policy with the view of reimposing the death penalty because of all of these circumstances at present, which is the biggest worry of the Chief Executive and of the country.

REP. ROQUE (H.). In other words, Mme. Speaker, because we became a party to the Second Optional Protocol where we committed that we will not execute anyone, that we will abolish the death penalty, and because we only became a party to this in 2008, this, therefore, did away with the ruling in *Echegaray*. This is a voluntary treaty obligation, contrary to the ruling in *Echegaray* that we can reimpose the death penalty, is this not the case?

REP. UMALI. I believe the dates of this Protocol and even—what is the date of the First Protocol, if I may I ask Congressman Harry Roque?

REP. ROQUE (H.). We became a party to the First Optional Protocol on October 23, 1986. We became a party to the Second Optional Protocol on February 20, 2008.

REP. UMALI. Anyway, while it may be true that the Second Optional Protocol came after the *Echegaray* case, the case also came after the First Protocol. So, as I earlier responded to his query, whichever protocol, first, second, or if there will be any other protocol that will come in, that is subservient to the constitutional provision that authorizes Congress, for compelling reasons involving heinous crimes, to reimpose the death penalty.

REP. ROQUE (H.). Now, Mme. Speaker, will the good Sponsor confirm that there was no threat, force, intimidation imposed on us when we ratified the Second Optional Protocol despite the fact that the jurisprudence in *People vs. Leo Echegaray* already existed? Was there any threat or such threat, coercion or intimidation employed on the Philippines as a state party to the Second Optional Protocol, Mme. Speaker?

REP. UMALI. I am not aware of any but at that particular point in time, there was no need for any threat or intimidation because the national policy then was enunciated in RA 9346 which suspended already the imposition of the death penalty. So, during those times, there were no adversities or any threat or intimidation that would call for the country to enter into this protocol.

REP. ROQUE (H.). Now, much reliance had been traced on Section 19 of Article III on the Bill of Rights as the legal basis for us to reintroduce the death penalty, which provides “Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress, hereafter provides for it.” Now, will the Sponsor concede that the language of the Constitution is permissive but not mandatory?

REP. UMALI. I agree. That is correct, and that is why we need to pass a law before we can effect any amendment to the existing law.

REP. ROQUE (H.). At the same time, will the good Sponsor concede, Mme. Speaker, that the language of Article I, Second Optional Protocol—“No one within the jurisdiction of a State Party to the present Protocol shall be executed.”—is mandatory because of the use of the word “shall.” Is it not the case, Mme. Speaker?

REP. UMALI. That may be true but, again, this is a protocol that is subservient to our Constitution. So, weighing these two—the Constitution and this protocol, I guess, I will have to give way to the Constitution which is a direct provision that authorizes this Congress to reimpose the death penalty by law.

REP. ROQUE (H.). But in the Constitution, the construction—you only rely on that particular form of construction when there is an irreconcilable difference between a treaty obligation or a generally accepted principle such as *pacta sunt servanda*, and the Constitution. Where is that conflict where the language of Constitution is, in the words of Professor Schabas, an eminent commentator on international law, “merely recommendatory,” and the language of the treaty is absolutely mandatory? There is no conflict where one merely prescribes, and the other source of law provides

for no mandatory norm.

In this instance, in the absence of a clear conflict, one must harmonize the provisions of the Constitution and our international obligations, the binding effect of which is also pursuant to the Constitution. Will the good Sponsor not concede that the best way to harmonize is that, while Congress has the permissive option to reimpose the death penalty, as a country we have undertaken a mandatory obligation not to do so.

REP. UMALI. Again, Mme. Speaker, Your Honor, we are comparing apples to oranges—a treaty can never be equal to the Constitution of the Republic and therefore, I would not like to put the protocol in equal footing with the Constitution. Having said so, while it may be mandatory in that protocol for us to oblige with the provisions therein, that protocol remains subservient to the Constitution of the Republic which should be our guidepost, bearing in mind that the welfare of the people should be the primordial interest of the country rather than the interest of international laws or treaties.

REP. ROQUE (H.). I will wrap up, Mme. Speaker, but my absolute last question is: is there a provision in the Second Optional Protocol which entitles the Philippines to withdraw from the Second Optional Protocol?

REP. UMALI. There is none, but that should not stop the country from considering the welfare of the people as our primordial interest in pursuing the provision of the Constitution authorizing Congress to reimpose the death penalty for compelling reasons involving heinous crimes.

REP. ROQUE (H.). So, this is just for the record, Mme. Speaker. The good Sponsor maintains that Congress may violate the Second Optional Protocol and may go ahead, despite its treaty obligation, to reenact the death penalty in its jurisdiction.

REP. UMALI. Mme. Speaker, this provision is like any other law that can be amended by a subsequent law and especially, by a direct, clear and concise provision of the Constitution that allows the reimposition of death penalty, by authorizing Congress to do so, and this is what the Committee on Justice had pursued, and this is what we are debating on. It will be this Body that will make a decision eventually after a debate has been held thereon, and voting will be held for the approval of this Bill on Second and even on Third Reading.

REP. ROQUE (H.). Well, Mme. Speaker, I beg to disagree with many of the responses of the good Sponsor but I would like to make it of record that in this august

Chamber of Congress, when we debated the wisdom of reimposing the death penalty, there were Members of Congress who were of the opinion that because treaty obligations form part of the law of the land pursuant to the Constitution itself, the Philippines must honor its treaty obligation under the Second Optional Protocol to the ICCPR. Let this form part of the records of this august Chamber of Congress.

Thank you, Mme. Speaker. Thank you to the good Sponsor of the Bill. Good afternoon to all of you.

THE DEPUTY SPEAKER (Rep. Cayetano). Thank you, Congressman Harry Roque.

The Floor Leader is recognized.

SUSPENSION OF CONSIDERATION
OF H.B. NO. 4727

REP. NOGRALES (J.). Mme. Speaker, I move that we suspend the consideration of House Bill No. 4727 on Second Reading so we may call the roll.

THE DEPUTY SPEAKER (Rep. Cayetano). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

The consideration of House Bill No. 4727 is hereby suspended.

The Floor Leader is recognized.

ROLL CALL

REP. NOGRALES (J.). Mme. Speaker, I move that we call the roll of Members.

THE DEPUTY SPEAKER (Rep. Cayetano). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

The Secretary General will please call the roll.

The Secretary General called the roll, and the result is as follows, per Journal No. 72, dated February 20, 2017:

PRESENT

Abayon	Aglipay-Villar
Abellanosa	Albano
Abu	Alejano
Abueg	Almario
Acharon	Almonte
Acop	Alonte
Acosta	Alvarez (F.)
Acosta-Alba	Alvarez (M.)
Adiong	Alvarez (P.)
Advincula	Amante
Aggabao	Amatong

Angara-Castillo
Antonino
Antonio
Aragones
Arbison
Arcillas
Arenas
Atienza
Aumentado
Bagatsing
Banal
Bataoil
Batocabe
Belmonte (F.)
Belmonte (J.C.)
Belmonte (R.)
Bertiz
Biazon
Billones
Biron
Bolilia
Bondoc
Bordado
Bravo (A.)
Bravo (M.V.)
Brosas
Bulut-Begtang
Cagas
Calderon
Calixto-Rubiano
Caminero
Campos
Canama
Casilao
Castelo
Castro (F.L.)
Castro (F.H.)
Catamco
Cayetano
Cerafica
Cerilles
Chavez
Chipeco
Cojuangco
Collantes
Cortes
Cortuna
Cosalan
Crisologo
Cua
Cuaresma
Cueva
Dalipe
Dalog
Daza
De Jesus

De Venecia
De Vera
Defensor
Del Mar
Del Rosario
Deloso-Montalla
Durano
Dy
Elago
Enverga
Erice
Eriguel
Ermita-Buhain
Escudero
Estrella
Evardone
Fariñas
Fernando
Ferrer (J.)
Fortun
Fortuno
Fuentebella
Garbin
Garcia (G.)
Garcia (J.E.)
Garcia-Albano
Gasataya
Geron
Go (M.)
Gomez
Gonzaga
Gonzales (A.P.)
Gonzales (A.D.)
Gonzalez
Gullas
Hernandez
Herrera-Dy
Hofer
Javier
Kho
Khonghun
Labadlabad
Lacson
Lagman
Lanete
Laogan
Lazatin
Lee
Limkaichong
Lopez (B.)
Lopez (C.)
Lopez (M.L.)
Macapagal-Arroyo
Maceda
Madrona
Malapitan

Mangaoang	Salo
Mangudadatu (Z.)	Salon
Marcoleta	Sambar
Marquez	Santos-Recto
Martinez	Sarmiento (C.)
Mendoza	Sarmiento (E.M.)
Mercado	Savellano
Mirasol	Sema
Montoro	Silverio
Nava	Singson
Noel	Suansing (E.)
Nogralas (J.J.)	Suansing (H.)
Nogralas (K.A.)	Suarez
Nolasco	Sy-Alvarado
Oaminal	Tan (M.)
Ong (E.)	Tejada
Ong (H.)	Teves
Ortega (P.)	Tiangco
Ortega (V.N.)	Ting
Pacquiao	Tinio
Paduano	Tugna
Palma	Tupas
Pancho	Turabin-Hataman
Panganiban	Ty
Papandayan	Umali
Pimentel	Ungab
Pineda	Unico
Primicias-Agabas	Uy (J.)
Quimbo	Uy (R.)
Radaza	Vargas
Ramos	Vargas-Alfonso
Relampagos	Velarde
Roa-Puno	Veloso
Robes	Vergara
Rocamora	Villanueva
Rodriguez (I.)	Villarin
Rodriguez (M.)	Violago
Roman	Yap (A.)
Romualdo	Yap (M.)
Roque (H.)	Yu
Sacdalan	Zamora (R.)
Sagarbarria	Zarate
Sahali	Zubiri
Salceda	

THE SECRETARY GENERAL. Mme. Speaker, the roll call shows that 221 Members responded to the call.

REP. ATIENZA. Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). With 221 Members responding to the call, the Chair declares the presence of a quorum.

REP. ATIENZA. Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). Congressman Jose “Lito” L. Atienza Jr. is recognized.

REP. ATIENZA. We would like to query: why do we need to make up a number when we have 185 on the floor? That is more than enough to constitute a quorum. So, we were wondering why the Secretariat had to declare 225. Is that right ...

THE DEPUTY SPEAKER (Rep. Cayetano). Two hundred and twenty-one.

REP. ATIENZA. ... when it was not accurate? We may be unofficial, but I have four people counting the Members present on the floor, and the number runs counter to whatever is declared by the Secretariat. This will put our determination of a quorum in question always. So, I reiterate for the record—again, the count conducted by the Secretariat is different from what exists on the floor. We only have 185 and that is more than what is required for a quorum. We are not questioning the quorum, but it was not accurate to say that we have 225 now.

Thank you, Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). Thank you.

The comment of the Honorable Atienza is noted. The Dep. Majority Leader is recognized.

REP. GONZALES (A.P.). Mme. Speaker, I move that we acknowledge the presence of some guests in the gallery.

THE DEPUTY SPEAKER (Rep. Cayetano). Yes, please proceed.

REP. GONZALES (A.P.). We would like to acknowledge the presence of the visitors of the Hon. Ma. Lourdes Acosta-Alba from the Holy Cross High School in Camp Philips, Bukidnon.

THE DEPUTY SPEAKER (Rep. Cayetano). We acknowledge the presence of the guests from the Holy Cross. Welcome to the House of Representatives. *(Applause)*

REP. GONZALES (A.P.). We also have some guests from the Sixth District of Cebu: Atty. Omar Redula, Atty. James Allan Sayson, and Atty. August Lizer Malate, the guests of the Hon. Jonas C. Cortes.

THE DEPUTY SPEAKER (Rep. Cayetano). We welcome the guests from the Sixth District of Cebu to the House of Representatives. *(Applause)*

REP. GONZALES (A.P.). Lastly, we would like to acknowledge the presence of the guests of the honorable Rep. Eric D. Singson: Mr. Alexander Galanga and Lilyann Galanga. They are also guests of the Floor Leader, Rep. Christopher De Venecia.

THE DEPUTY SPEAKER (Rep. Cayetano). We welcome the guests of the Honorable Singson to the House of Representatives. (*Applause*)

APPROVAL OF THE JOURNAL

REP. GONZALES (A.P.). Mme. Speaker, I move that we approve Journal No. 69, dated February 13, 2017.

THE DEPUTY SPEAKER (Rep. Cayetano). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

CONSIDERATION OF H.B. NO. 4727

Continuation

PERIOD OF SPONSORSHIP AND DEBATE

REP. GONZALES (A.P.). Mme. Speaker, I move that we resume the consideration of House Bill No. 4727, and direct the Secretary General to read only the title of the Bill.

THE DEPUTY SPEAKER (Rep. Cayetano). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

The Secretary General is directed to read only the title of the Bill.

THE SECRETARY GENERAL. House Bill No. 4727, entitled: AN ACT IMPOSING THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 9346, ENTITLED "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES", AND AMENDING ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE "REVISED PENAL CODE", AND OTHER SPECIAL PENAL LAWS.

REP. NOGRALES (J.). Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). The Floor Leader is recognized.

REP. NOGRALES (J.). The parliamentary status of the Bill is that it is in the period of sponsorship and debate. I move that we recognize the Hon. Ramon V.A. "Rav" Rocamora of the Lone District of Siquijor for his interpellation.

THE DEPUTY SPEAKER (Rep. Cayetano). The Honorable Rocamora is hereby recognized. We also recognize the Sponsor to continue defending the measure.

REP. ROCAMORA. Good afternoon, Mme. Speaker. Happy Valentine's!

I would like to ask the proponent of House Bill No. 4727 if he will allow this Representation to interpellate him.

THE DEPUTY SPEAKER (Rep. Cayetano). We will recognize first Congressman Veloso, being one of the cosponsors, to defend the measure.

REP. VELOSO. Willingly, Mme. Speaker.

REP. ROCAMORA. May I proceed then?

THE DEPUTY SPEAKER (Rep. Cayetano). Please proceed.

REP. ROCAMORA. I have only one basic question that I will address to the proponent as well as to the Body this afternoon. My question is this: are we morally sure that our criminal justice system is competent to handle the reimposition of the death penalty?

Before the proponent answers my question, may I be allowed to state my side on the issue, and as well as the grounds therefor. To reimpose or not to reimpose the ultimate penalty of death, that is a question that the whole nation is now facing. Allow me to lay down a bird's eye view of this issue. The proponents of the reimposition of the death penalty, in essence, rely on two grounds for its justification: first, the need for a deterrent to end the rising rate of criminality; and second, retribution, the belief that it is a requirement for justice to be satisfied.

In disagreement to this proposal, we the opponents rely on a number of grounds that range from moral, legal and practical positions. Thus, we subscribe to Pope Francis' declaration that the inviolability of life extends to the criminal. On the other hand, we put to light the legal infirmity of House Bill No. 4727 as it fails to comply with the requirements of the Constitution before the death penalty may be reimposed. This Representation on the other hand would want to focus on the practical position that our criminal justice system is flawed and is not ready for the reimposition of the death penalty.

To quote Congressman Edcel Lagman: "While no time is right and ripe for pushing for the reimposition of the death penalty, now is the worst of times to enact the revival of capital punishment."

So that, even granting that the proponents of the death penalty are correct in claiming that it is a

deterrent—which it is not—or that retribution is an indispensable element of criminal justice—which, again, it is not—still, we cannot reimpose the death penalty now. The finality of death demands that consequently, because of this irreversible nature of the death penalty once implemented, we cannot afford to make mistakes. An error in its imposition will result in double injustice: first, the victim will not have his or her closure of having the ones responsible for the crime punished; and second, we put to death an innocent man.

We definitely cannot afford to make mistakes. Yet, we do commit mistakes. No less than the Supreme Court, in *People vs. Mateo*, G.R. No. 147678-87, admits that 71.77 percent of decisions of the trial courts meting out death penalty were erroneous. In a scale of four, less than one is correct and the rest were wrong. We do not only commit mistakes, but we have a judicial system where, between 2012 and 2016, 16 judges and one Sandiganbayan justice were dismissed for acts unbecoming of officers of the court. In the same period, 14 judges were suspended, 101 fined, 21 reprimanded, and 31 were admonished. Since 2010, 116 court personnel were dismissed, 227 were suspended, 240 were fined, 31 had their benefits forfeited, 221 reprimanded, 42 were admonished, and three were censured.

Now, should we take comfort that the High Court was able to correct these erroneous decisions and that these misfits in the Judiciary were found and penalized? Surely not. The fact that so much corrections had to be made and numerous dismissals and suspensions had to be meted out only showed that there is a patent or manifest flaw in our judicial system. This flaw is conducive to sending an innocent person to the gas chamber.

Any self-respecting lawyer knows that the best venue to determine the truth is the trial courts. This is so as the trial court judge is in a position to personally observe the demeanor of witnesses. This is important because criminal cases are invariably decided on the basis of testimonial evidence. If our trial courts, having this advantage, still commit a substantial number of errors, what more with the higher courts that, in review, will rely only on TSNs or transcripts of stenographic notes?

What has been shown so far are the shortcomings of the Judiciary, which is only a part of the five pillars of the criminal justice system. The latter is composed of 1) the community; 2) the law enforcement; 3) the prosecution; 4) the courts; and 5) the correction. They are to function like links to form a chain.

I will not endeavor to emphasize the role of the community in fighting crimes, but allow me to state that we need to change our values. Let me give an example of our inverted sense of values: If a corrupt government official is able to escape prosecution, we would say “Bilib talaga ako sa taong ito, ang galing.” In a more civilized society, if you are known to have stolen one peso from the coffers of the government, no one will

invite you to dinner.

The second pillar: the law enforcement arm. What is the state of our law enforcement agencies? The Korean incident that happened at the very seat of our main enforcement agency, the PNP, speaks for itself. There is also its inability to enforce the law on account of lack of logistical support and training. In frustration, they tend to go to shortcuts and quick fixes, thus, the extrajudicial killings and evidence planting. In my experience as a Public Prosecutor for 24 years, I can state for a fact that 60 percent or more of drug cases were trumped-up and based on planted evidence. In my stint as a Prosecutor in Cebu City, I was the first to convict a so-called “drug queen,” only to find out from my witnesses later that the evidence was planted. When I told the judge of this fact, he said, “That was the evidence given to you by the police, and that was the evidence you presented to me. We cannot be more popish than the Pope.”

True, a target for evidence-planting could really be involved in the drug trade, but planting evidence runs counter to the basic tenet of our justice system that a person is presumed innocent until proven otherwise. This practice is anathema to the imposition of the death penalty.

Third pillar, the prosecution. As shown earlier, prosecutors are dependent on evidence gathered by the law enforcement agencies. These are evidence that, from my experience and as exemplified earlier, leave much to be desired. This is one of a number of rooms for improvement in the prosecution arm. To alleviate this issue, the prosecution arm should be complemented by an in-house investigating force that gathers additional or more competent evidence.

Having discussed the shortcomings of the Judiciary, let me proceed to the fifth and last pillar of our criminal justice system, the correctional arm. Again, we need not belabor the poor state of our prison system. It is argued that with mere imposition of life imprisonment, the convict will not truly be made to answer for his crime as our detention facilities allow him to enjoy the amenities of the world outside. I say in reply to this that it is not the penalty but the implementation of the law that is wanting. It is therefore evident that there is a serious flaw in our justice system and that there is a need to address the same. No less than death penalty proponent, Congressman Rey Umali, said, and I quote:

What we have is a system-wide problem as we are already knee-deep into the quicksand. Instead of doing piecemeal legislative measures, what we need is to reengineer the criminal justice system of the Philippines. We need a comprehensive and holistic approach in addressing the problems of our criminal justice system.

By first addressing this issue, we then likewise address this perceived rise in criminality. A competent criminal justice system is the best deterrent to criminality because it assures certainty of arrest, prosecution, conviction and service of sentence. Granting, without admitting, that the reimposition of the death penalty is an option to deter criminality, a competent justice system is as well another course to quell criminality. Death is the ultimate form of penalty and should not be resorted to when there is another option. This fact even goes into the legality of the Bill under consideration. When the Constitution requires “compelling reasons” to reimpose death penalty, it means it is compelling as there is no other recourse to address the issue. But we now see that reengineering our judicial system is indeed an option.

Let me restate my query. Are we morally certain that our criminal justice system can handle the reimposition of death penalty? Again, for reasons stated, I say it is not. For us to reimpose the death penalty, whether mandatory or optional, would be like handing a child a matchbox to play with when we know he is incapable to handle fire.

REP. VELOSO. May I now respond, Your Honor. The Gentleman from Cebu raised three points: deterrence, reform, ...

REP. ROCAMORA. Siquijor.

REP. VELOSO. My apologies, Your Honor.

REP. ROCAMORA. No problem.

REP. VELOSO. The Gentleman from Siquijor raised four points: deterrence, reform, Pope Francis, percentage of conviction. Meaning, there are a lot of overturned cases.

Let me first address, Mme. Speaker, the issue of deterrence of reforms. In the case of *People vs. Echegaray*, a 1997 ruling, the Supreme Court said:

The abolitionists in Congress insisted that all criminal reforms first be pursued and implemented before the death penalty be re-imposed in case such reforms prove unsuccessful. x x x The imposition of the requirement that there be a rise in the incidence of criminality because of the suspension of the death penalty, moreover, is an unfair and misplaced demand, for what it amounts to, in fact, is a requirement that the death penalty first proves itself to be a truly deterrent factor in criminal behavior. If there was a dramatically higher incidence of criminality during the time that the death penalty was suspended, that would have proven that the death penalty was indeed a

deterrent during the years before its suspension. Suffice it to say that the Constitution in the first place did not require that the death penalty be first proven to be a deterrent; what it requires is that there be compelling reasons involving heinous crimes.

These are matters, Mme. Speaker, that are addressed in House Bill No. 4727.

On the matter of percentage of conviction, a while ago, the Honorable Harry Roque pointed out that 99 percent of the cases were overturned by the Supreme Court and that only one percent conviction was sustained. This to me is proof enough that the judicial system we have is working. Let me explain. If 70 percent is good enough to allow us to be members of the bar, if 68 percent popularity rating is very good in the case of President Duterte, how can 99 percent be a failure?

Let me point out in the case of Pope Francis—I really do not want to belabor this as I do not like to quarrel with my own church—let me just point out, Mme. Speaker, that the Council of Trent, a matter which you can just get from the Internet, already published the mandate of Pope Pius V. The commandment “Thou shalt not kill” does not apply to five instances. It does not apply to the killing of an animal; it does not apply to the killing by a soldier in a just war; it does not apply to a death by accident; it does not apply to killing in self-defense; it does not apply when the death is ordered by a civil magistrate. According to Pope Pius V, and I quote:

Again, this prohibition does not apply to the civil magistrate, to whom is entrusted power of life and death, by the legal and judicious exercise of which he punishes the guilty and protects the innocent. The use of the civil sword, when wielded by the hand of justice, far from involving the crime of murder, is an act of paramount obedience to this commandment which prohibits murder. The end of the commandment is the preservation and security of human life, and to the attainment of this end the punishments inflicted by the civil magistrate, who is the legitimate avenger of crime, naturally tend, giving security to life by repressing outrage and violence. Hence these words of David: “In the morning I put to death all the wicked of the land; that I might cut off all the workers of iniquity from the city of the Lord.”

By the way, Mme. Speaker, during the deliberations of the Constitutional Commission, and this was quoted in *People vs. Echegaray*, the esteemed Bishop Bacani was quoted by the Supreme Court, and I would like to have this on record, Mme. Speaker: on page 5 of the Supreme Court ruling in *People vs. Echegaray*, here

Bishop Bacani admitted that the penalty of death is a delegated authority from God:

BISHOP BACANI. x x x At present, they explicitly make it clear that the Church has never condemned the right of the State to inflict capital punishment.

MR. PADILLA. x x x So it is granted that the State is not deprived of the right even from a moral standpoint of imposing or prescribing capital punishment.

BISHOP BACANI. Yes. What I am saying is that from the Catholic point of view, that right of the State is not forbidden.

MR. PADILLA. In fact x x x we have to accept that the State has the delegated authority from the Creator to impose the death penalty under certain circumstances.

BISHOP BACANI. The State has the delegation from God for it to do what is needed for the sake of the common good, but the issue at stake is whether or not under the present circumstances that will be for the common good.

MR. PADILLA. But the delegated power of the State cannot be denied.

BISHOP BACANI. Yes, the State can be delegated by God at a particular stage in history, but it is not clear whether or not that delegation is forever under all circumstances.

MR. PADILLA. So this matter should be left to the legislature to determine, under certain specified conditions or circumstances, whether the retention of the death penalty or its abolition would be for the common good. I do not believe this Commission can *a priori*, and as was remarked within a few days or even a month, determine a positive provision in the Constitution that would prohibit even the legislature to prescribe the death penalty for the most heinous crimes, the most grievous offenses attended by many qualifying and aggravating circumstances.

In a nutshell, Mme. Speaker, let me just point out that it was Fr. Bernas who espoused the idea that the death penalty be abolished; but in the end, upon votation, it was agreed upon that on compelling reasons, heinous crimes, as determined by Congress, can be punishable by death. I hope that answers the point of my colleague and esteemed friend from Siquijor.

REP. ROCAMORA. Allow me to say something about the citation made by the proponent on the declaration of Pope, was it Pope Pius?

REP. VELOSO. Pope Pius V po, Council of Trent. The mandate of Pope Pius V was for the bishops to spread this, especially on the exceptions to the commandment.

REP. ROCAMORA. Is it not that this was declared five centuries ago?

REP. VELOSO. Mme. Speaker, it was explained to me by a lawyer in Cebu—the lawyer of the Church in Cebu, so he claims—that the Council of Trent is not a mere mandate of a Pope, so, that cannot just be overruled by any declaration of Pope Pius. Besides, let me point out, Mme. Speaker, that if we really have to be legalistic about it, as we are supposed to be so, Article II, Section 6 of the Constitution mandates that “The separation of Church and State shall be inviolable.” So, it is not the concern of the Church whether or not we should pass the death penalty law here. Let me also add to that, Mme. Speaker, especially that there had already been a lot of arguments that centered on treaties.

When I was a law student, I used the Political Law books of Martin, and of Tañada and Carreon. According to Martin, 1967 edition, page 217, quoting *Geofroy vs. Riggs*, 133 US 266, he said, again, quoting US jurisprudence, that the treaty-making power of the President is subject to the implied restriction that nothing can be done under it which changes the Constitution of the country or robs a department of the government or of any of the states of its constitutional authority.

In fact, when I was a student, I was taught that the treaty only has the weight of the statute. It cannot amend the Constitution. Well, here, let me give an example. If, for example, we have a President who is so loyal to the ASEAN and the ASEAN member-countries agreed that Parliament/Congress be unicameral; and the President signs a treaty saying that the Philippines should only have a unicameral form of legislature, this is ratified by the Senate and it says in the treaty that the Lower House should be abolished, would that treaty prevail over Article VI of the Constitution? Certainly not!

REP. ROCAMORA. Mme. Speaker, with due respect to the proponent, may I be allowed to remind him that his answer is counted in my time. So, if possible, his answers should be limited to the issues raised in the interpellation. I never raised the issue about treaties.

REP. VELOSO. Well, I was just trying to be more emphatic, Mme. Speaker. I would plead that 15 minutes be given more to the Gentleman from Siquijor.

REP. ROCAMORA. Let me just touch on your statement regarding the separation of Church and State. The separation of Church and State, actually, is just

limited to the non-establishment of a state religion, as well as the prohibition on government funds to be used for religious purposes.

I do not think it has any relation to the issue at hand.

REP. VELOSO. Can I respond?

REP. ROCAMORA. Yes.

REP. VELOSO. We can have a one-day debate on that, Mme. Speaker, but unfortunately, I doubt if our colleagues here will have the ...

REP. ROCAMORA. Mme. Speaker, as I had earlier stated, regardless of whether the proponents are correct in saying that the death penalty is a deterrent or as retribution, it is part and a requirement of justice to be satisfied. My point is this. This is not the time to reimpose the death penalty on account of the state of our criminal justice system.

As I had stated, we cannot afford to make mistakes. Death, as the ultimate penalty, should not be resorted to when there is an option, and it appears that reengineering our criminal justice system, to quote Representative Umali, is an option. So, if there is another option, it really goes into the constitutional requirement of compelling reason. Why? One is not compelled to do a certain recourse when there is another one that can be availed of. In this case, there is another recourse that the state can avail of, which is the revamp of our criminal justice system.

REP. VELOSO. Again, Mme. Speaker, that is not an issue of first impression that was raised in the case of Echegaray that was disposed off by the Supreme Court saying, "Suffice it to say that the Constitution in the first place did not require that the death penalty be first proven to be a deterrent. What it requires is that there be a compelling reasons involving heinous crimes." These are the only two requirements, Mme. Speaker, in Article III, Section 19 (1).

REP. ROCAMORA. Yes.

REP. VELOSO. It is bad for us to be injecting any other requirement, Mme. Speaker.

REP. ROCAMORA. Yes, Mme. Speaker, but I would like to ask the proponent on his concept regarding this statement, "compelling reason"? What is required for it to be considered as a compelling reason?

REP. VELOSO. Mme. Speaker, let me just point out that House Bill No. 4727 is a reiteration of Republic Act No. 7659 which was held by the Supreme Court to be

constitutional. In fact, Republic Act No. 8177 repealing it had to be passed, in order that the death penalty may no longer be imposed as a penalty for heinous crimes.

REP. ROCAMORA. This decision was given years ago, and when we talk about compelling reasons, reasons change day to day. So, there is really a need for us to determine if there is a compelling reason to reimpose the death penalty. To me, since there is another option, then, we should have resorted to death as being the ultimate penalty. Would you not agree, Mme. Speaker?

REP. VELOSO. Mme. Speaker, Section 2 of House Bill No. 4727 speaks of the Declaration of Policy. I do not have to read that again, but the honorable Gentleman from Siquijor is saying that situations have changed. Yes, Mme. Speaker, it has changed for the worse, if not for the worst.

In my time, when I was a student of law in Ateneo, the example of a heinous crime then, in 1969 to 1971, was the Maggie dela Riva case. Today, oh my God, we have the Scully video, the case of Margallo, where 11 children were killed by perverts. Imagine that. I would not repeat how it was described in that video. Suffice it to say, that the crimes being committed nowadays are graver than those committed a decade or two decades ago. Even the case of Jee Ick-joo, imagine a police officer who has been entrusted to protect the life of that Korean businessman, his greed for money, abducted the Korean businessman and killed him on the same day, leaving no traces, Mme. Speaker, of the crime. They burned the body to convert the body to ashes and then flushed the ashes. This, to me, Mme. Speaker, and the news day-in and day-out, would tell us that if there is any time that death should be imposed as a penalty, it should be now.

REP. ROCAMORA. As I had maintained, whether or not there is this perceived rise in criminality, whether or not the death penalty is a deterrent, and whether or not retribution is needed, being part of the justice required, it is immaterial to me. As I had said, it is not time to reimpose the death penalty on account of the fact that we have a flawed criminal justice system and considering the finality of death, we cannot afford to commit mistakes and yet, as I had stated, we have been committing mistakes.

REP. VELOSO. The Supreme Court, Mme. Speaker, disagreed with the proponents then—the opponents then of Republic Act No. 7659—saying, "The abolitionists in Congress insisted that all criminal reforms be first pursued and implemented before the death penalty be reimposed in case such reforms prove unsuccessful." The Supreme Court said, "This is an unfair and a misplaced demand." I do not have to repeat that pronouncement of the Supreme Court, Mme. Speaker. Besides, Mme. Speaker, the Justice Committee

is approaching the problem, not on a one-way effort, but we are coming up with judicial reforms, which I am chairing, Mme. Speaker. To address the problem of the Gentleman from Siquijor, I am coming up with a legislation that would forego preliminary investigation as it is being duplicated through judicial determination nowadays.

A criminal complaint may be filed with regular courts—MTC, RTC—and it is the court that will have to determine if there is a probable cause. Upon determination that there is a probable cause, then a warrant of arrest may be issued, pre-trial can proceed, and a trial on its merits can proceed thereafter, Mme. Speaker. This, as I said, is not a be-all approach. We are coming up with a lot of legislations that would address the problems we have on heinous crimes.

REP. ROCAMORA. Unless there are clear data on this rise in occurrence of criminality, specifically heinous crimes, because this is the very subject of this debate, is it not possible that these crimes had been there all along except that, because of the modern media now, they are being sensationalized and are made known to the public? We should remember that sporadic sensationalism of crimes does not constitute compelling reasons. These crimes are once-in-a-blue-moon crimes that happen at random.

REP. VELOSO. Mme. Speaker, nothing is impossible under the heat of the sun, so it is said. But this is also what I heard, Mme. Speaker, speaking of media because in Asia, particularly Southeast Asia, it is only the Philippines that does not penalize heinous criminals with death. Exporters have drugs, manufacturers have drugs, prohibited drugs flock to the Philippines and they, in fact, have been spending a lot coming up with campaigns to oppose death penalty.

Well, as the Gentleman from Siquijor has said that it is immaterial, that is not an argument speaking of Section 19 (1), Article III of the Constitution. Only two matters concern this honorable Body—compelling reasons, heinous crimes. We all have them in House Bill No. 4727, Mme. Speaker.

REP. ROCAMORA. Let me summarize then my argument. Considering the finality of death, we cannot afford to commit mistakes. So we need a criminal justice system, not a perfect one because there is no such thing as a perfect criminal justice system, but at least, a system that does not commit errors at the rate of 71.77 percent. This flaw in our criminal justice system is conducive to convicting innocent individuals. There is a need to revamp our criminal justice system and when we do so, then we create an assurance that the criminals will be arrested; there is a certainty that criminals will be arrested, prosecuted, convicted, and made to serve

sentence. This is an option for the State. If there is such an option, then, where is the compelling reason ...

REP. VELOSO. Mme. Speaker.

REP. ROCAMORA. ... for imposing the death penalty?

REP. VELOSO. Mme. Speaker, it is unfortunate that the compelling reasons that we see, can hardly be seen by the Gentleman from Siquijor. The best argument so far that had been raised was that the poor will suffer death while the rich will go scot-free because the poor can hardly hire lawyers.

Mme. Speaker, let me just point out that the poor has 20 lawyers: first, the PAO, and the PAO already has skilled lawyers. Number two, the RTC. Believe me, Mme. Speaker, when it comes to conviction of death, it becomes a question between God and the judge. The moment the RTC convicts the accused, that decision is automatically appealable to the Court of Appeals. The Court of Appeals has three justices in each division, and these justices will really take a hard look at the facts of the case before they sign a warrant of death, and an affirmation of conviction of the death penalty is automatically appealable to the Supreme Court. The Supreme Court has 15 justices. Each and every justice at the Supreme Court will really take a hard look because an error there becomes his error where he has to be accountable to God. In sum, Mme. Speaker, the accused has 20 lawyers who will take a look at his case, who will see to it that he is acquitted if he is found innocent; and of course, minus the PAO lawyer, the 19 judges and justices will see to it that, he is convicted, with death, if he is found guilty.

REP. ROCAMORA. Thank you for supporting our stand against the death penalty by saying that it is against the poor but as I had stated, although there are a number of grounds that we are proposing against the death penalty, I wanted simply to limit myself to the fact that we have a flawed justice system and that in this flawed justice system, mistakes are committed, and considering again the finality of death, we cannot afford those.

REP. VELOSO. I made, Mme. Speaker...

REP. ROCAMORA. It is true that these number of cases were corrected but it does not bring comfort to me because we are talking of a system where there is so much error. That means there is really something wrong with our system and that there is a need to address the same because as it is, this is a system conducive to convicting the innocent and bringing him to death.

REP. VELOSO. Mme. Speaker, I did not say that I agree that House Bill No. 4727 is anti-poor. I expressly explained my reasons that it is not anti-poor but, again, on the matter of reforms, the Supreme Court said: “Suffice it to say that the Constitution in the first place did not require that death penalty be first proven to be a deterrent”—to be dependent, rather, on reforms—but “What it requires is that there be compelling reasons involving heinous crimes.”

REP. ROCAMORA. Let me just reiterate that when we speak of a compelling reason, it means that we have no other recourse. Death as the final or ultimate form of penalty should not be resorted to when there is another option that takes away the requirement of compelling reason, because there is another option.

REP. VELOSO. Again, Mme. Speaker, I do not have to be arguing, again, on what I had earlier stated—the ruling of the Supreme Court in the Echegaray case is quite clear on the matter.

REP. ROCAMORA. That is all, Mme. Speaker. We have no further questions.

REP. VELOSO. Thank you, Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). The Floor Leader is recognized.

REP. GONZALES (A.P.). Mme. Speaker, may we acknowledge the presence in the gallery of the important guests of the honorable Speaker Pantaleon D. Alvarez and the honorable Deputy Speaker Raneo “Ranie” E. Abu. They are Adm. Ernesto Enriquez, the AFP Deputy Chief of Staff for Reservists; Brig. Gen. Noel Buan, Medal of Valor awardee; and AFP J9 staff, Commander Amorado, Colonel Lopez and Colonel Rodil. (*Applause*)

THE DEPUTY SPEAKER (Rep. Cayetano). We welcome our guests in the VIP gallery to the House of Representatives.

REP. GONZALES (A.P.). May we also acknowledge the presence of the guests of the Hon. Tomasito “Tom”

S. Villarín. There are about 300 members of different organizations to witness the plenary debates and they are members of the iDEFEND; Association of Major Religious Superiors of the Philippines; Agustinian Missionaries of the Philippines; Carmelite Missionaries; Canossian Daughters of Charity; Franciscan Sisters of the Immaculate Conception; Religious of the Good Shepherd; Religious of the Virgin Mary; Agustinian Sisters of Our Lady of Consolation; Adamson University; Society of Jesus; Siervas de San Jose; Lay Josephines; and the Holy Family School of Quezon City. (*Applause*)

THE DEPUTY SPEAKER (Rep. Cayetano). We welcome our guests to the House of Representatives.

SUSPENSION OF CONSIDERATION OF H.B. NO. 4727

REP. NOGRALES (J.). Mme. Speaker, I move that we suspend the consideration of House Bill No. 4727.

THE DEPUTY SPEAKER (Rep. Cayetano). Is there any objection? (*Silence*) The Chair hears none; the motion is approved.

The consideration of House Bill No. 4727 is suspended.

ADJOURNMENT OF SESSION

REP. NOGRALES (J.). Mme. Speaker, I move that we adjourn the session until tomorrow, Wednesday, February 15, 2017, at four o’clock in the afternoon.

THE DEPUTY SPEAKER (Rep. Cayetano). Happy Valentine’s to everyone. Happy Valentine’s to the Floor Leader.

REP. NOGRALES (J.). Happy Valentine’s, Mme. Speaker.

THE DEPUTY SPEAKER (Rep. Cayetano). The session is adjourned until tomorrow at four o’clock in the afternoon.

It was 6:23 p.m.