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May 8, 1974

MEMORANDUM

TO: Ambassador F. Haydn Williams cc: Marcuse ✓
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FROM: Herman Marcuse
Office of Legal Counsel

SUBJECT: Limitation of land transfers in the Marianas

The memorandum of February 20, 1973 re: Powers of Marianas to limit transfers of land to persons of Marianan ancestry, a copy of which is attached, concluded that carefully and properly drafted legislation designed to protect the land holdings of an indigenous and economically underdeveloped population was likely to withstand attacks based on constitutional grounds. The purpose of this memorandum is to explore (a) whether such legislation would be desirable and (b) whether the United States should push it if the Mariana delegation fails to do so.

I.

Desirability of Legislation

The principal limitation on the alienability of land envisaged in the Marianas would be to prohibit the transfer of land to persons not of Marianan ancestry. The term "Marianan ancestry" probably would include those Carolinians who settled in the Marianas prior to and shortly after World War II.

A. Limitations on the free alienability of land unquestionably have economic drawbacks. The inability to sell land to any willing purchaser, and the inability of any capable entrepreneur to acquire the title to land may have an adverse effect on the development of the local economy. Outsiders may be reluctant to invest funds in the Marianas if they cannot acquire title; where property is held under leases there is little incentive for proper

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upkeep toward the end of the term. The local population would also suffer some disadvantage from prohibition on sales to outsiders. As Herman Guerero pointed out, an outsider could probably pay more for land in the Marianas than a Marianan. Similarly, a Marianan may have difficulties in obtaining a loan secured by a mortgage, if in the case of a foreclosure the bidding on the property is limited to persons of Marianan ancestry.

B. The economic development of the Marianas, however, is of little value unless it is shared by the population as a whole. Nothing would be gained and all lost, if the development of the Marianas had the effect of creating a few millionaires, regardless of whether foreign or local, and left the vast majority of the population a landless proletariat, or, to use the more polite language of Jim Leonard, the Economic Adviser for the MPSC, if the Marianas, especially Saipan, became "urbanized." The demoralizing effect of this kind of economic development has become evident in Guam, the Virgin Islands, Hawaii, and all over the United States with respect to the Indians. It would appear wise to prevent the native population from disposing of their landholding to outsiders, and also to insiders, such as Joe Tenorio, if the latter already own a disproportionate amount of land.

C. A troublesome aspect is the ease with which prohibitions on the transfer of land can be evaded by the use of local strawmen or of corporations. Even a long-term lease has the effect of driving the owner from his land, and the rent may be inadequate to give him the social and economic status and security he enjoyed while he was in actual possession of the land. Legislation designed to protect the landholdings of persons of local ancestry therefore is of little value unless there is a strong will to police it effectively.

D. A point of particular importance in the Marianas is the circumstance that only a very small percentage of the land is held privately; 90-95% of it consists of public

land, most of which will be in the control of the Government of the Marianas. This raises a factual problem which I am not qualified to answer. The issue is whether the goal of protecting the land of the native population can be satisfied by restricting the alienation of land to land which is now in the private sector, or whether the same-- or possibly less stringent limitations--*/ must also apply to the disposition of public lands.

In this connection, reference may be made to the Hawaiian Home Lands legislation which provides that certain public lands may be leased only to "native Hawaiians" and which places limitations on the amounts of land which may be leased to any lessee. It is not certain whether those limitations should necessarily also apply to the Marianas. In all likelihood the situation in the Marianas is still far removed from the critical stage it has reached in Hawaii; hence, it may be possible that it is not necessary to apply the same drastic remedies.

II.

Procedure

This part of this memorandum deals mainly with questions of strategy. Assuming that it is desirable to enact some kind of legislation designed to protect the landholdings of persons of Marianan ancestry, the question is whether we should leave the initiative entirely to the MPSC or whether the United States is sufficiently interested in this problem to take the initiative in full or in part.

It would appear desirable to give the MPSC an opportunity to propose this legislation if only because--as shown above--such laws can work only if properly policed. Harold Willens has indicated at times that this is the internal problem of the Marianas and none of our business.

*/ There may be less objection to the sale or lease of public lands to non-Marianans, if the land requirements of the Marianans themselves have been amply met.

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Whether the MPSC will actually push such proposal is questionable. Dr. Palacios and Joaquin Pangelinan seem to favor it. Others seem to be indifferent if not hostile in view of their laissez faire attitude.

Actually the United States has a strong interest in seeing to it that the people of the Marianas do not lose their land and become a landless society of waiters and chambermaids, while a few "enterprising" citizens, to use Dr. Palacios' words, and foreign investors become millionaires. That mistake has been made in Guam and the Virgin Islands and Hawaii, with the result that they have become slums as far as the local population is concerned. Thereafter the United States had to assume the responsibility to bail them out financially and to pass corrective legislation. On Guam the same people who sold their land now put pressure on the United States to make military land available to them. Any development which tends to make the local population landless will sooner or later become a problem for the United States.

The question of Marianan landholding therefore is not an internal problem of the Marianas. If they do not raise it we must do so; if they bring it up we should see to it that the legislation, or at least the framework thereof, will be adequate.

Attachment