COMMITTEE ON GOVERNMENTAL INSTITUTIONS

October 22, 1976

REPORT TO THE CONVENTION OF THE
COMMITTEE ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number 1: Washington Representative

The Committee on Governmental Institutions recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to a resident representative to the United States (Washington representative) to represent the people of the Commonwealth.

The Committee believes that the interests of the Northern Marianas people would be well served by creating the office of Washington representative in the Commonwealth Constitution. The Committee's proposed article provides in five sections for the office of Washington representative and specifies his duties, method of selection, term of office, qualifications, and compensation.

The first section of the proposed article establishes the position of representative, provides that he shall be elected, and requires the governor to certify his selection promptly.1/

The second section provides that the representative has a term of two years. This period could, however, be

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1/ The Covenant requires such certification. COVENANT, art. IX, § 901.

lengthened to no more than four years if the people so direct in an initiative.

Section 3 requires that candidates for election as representative possess certain qualifications. First, candidates must be qualified voters. Second, the representative must be a United States citizen or national. Third, the representative must be at least 30 years old. Fourth, only persons domiciled and residing in the Northern Marianas for ten years immediately preceding election day would be eligible to run for representative. Fifth, a person convicted of a felony in the Commonwealth or in the United States who is not a recipient of a full pardon would be precluded from candidacy.

Section 4 requires the representative to report annually to the governor and legislature of the Commonwealth regarding the performance of his official duties.

Section 5 requires the legislature to afford adequate compensation to the representative. The section also provides that the representative's salary may not be changed during his term of office.

The Committee's reasons for recommending these provisions are detailed below:

1. Constitutional Treatment. The Committee believes that the office of representative warrants constitutional treatment. Such a Washington representative could perform many important tasks. These would include urging

United States officials (both executive and legislative) to extend the provisions of desirable legislation to the Northern Marianas and to exclude the Commonwealth from the scope of undesirable legislation. In addition, the representative could seek the expansion of federal benefits afforded the Commonwealth. The representative would also have the duty of monitoring the political relationship between the United States and the Commonwealth.

Because of the importance of the office, the Committee desires to ensure that it is promptly created. Merely authorizing the legislature to create the position would not accomplish this objective, since political pressures or other extraneous considerations might interfere with the formation of the office. Moreover, as an integral element in the structure of the Commonwealth government, the office of Washington representative should be dignified by Constitutional authorization.

2. Duties. The representative will be serving in Washington as the representative of the Commonwealth. The Committee feels that it is appropriate to require the Washington representative to report annually to the governor and the legislature. This report should summarize his actions on behalf of the Commonwealth during the preceding year and identify any major questions which might require attention during the next year.

The draft constitutional language proposed by the Committee provides for the representative to represent the Commonwealth in the United States and to perform such related duties as are provided by law. The Committee rejected the approach of trying to specify all the duties of the representative, concluding that any effort at specificity might be limiting and therefore undesirable. The general language endorsed by the Committee would afford the Commonwealth legislature flexibility in defining the functions of the representative and in shaping those functions to the changing needs of the Commonwealth. Such an approach has an additional advantage: if the Congress decides in the future to grant the Commonwealth a non-voting delegate in the United States House of Representatives, the representative could assume that responsibility without the necessity of amending the Constitution.

3. Method of Selection. The Committee recommends that the representative be popularly elected. The representative's principal obligation will be to communicate the needs and views of the Marianas people to the federal government. The Committee believes that an official directly elected by the people would respond with greater sensitivity to their wishes. The Committee also concluded that an elected representative would command greater respect among members of the United States Congress than would an appointed

representative. The representative's popular mandate, therefore, would contribute to his understanding of the problems of the Northern Marianas, his capacity to translate that understanding into action by the federal government, and achievement of the objective of eventually having a non-voting delegate in the United States Congress.

4. Term of Office. The Committee is convinced that a two-year term of office would best enable the people to monitor the representative's performance. A term of this duration would comport with the tenure granted members of, and non-voting delegates to, the United States House of Representatives.

The Committee recognizes, however, that a longer term might prove to be more appropri te after some initial experience with the office. In order to provide flexibility, the attached article would permit the voters by initiative to increase the representative's term to a four-year period.

The Committee recommends against restricting the number of terms which the representative can serve. This recommendation reflects the Committee's desire not to deprive the Commonwealth of the services of an effective representative and its awareness of the importance of seniority in the official life of the federal government.

5. Qualifications. The Committee is persuaded that requiring the representative to be at least 30 years of age will increase the likelihood that the Northern Marianas will obtain a mature and knowledgeable advocate in Washington. The Committee does not believe that such a minimum age limitation would seriously limit the Commonwealth's ability to elect a highly qualified representative. The Committee does, however, believe that setting a maximum age (such as 65) above which no person would be eligible to run for representative might have that effect.

Providing that the representative must be domiciled in and a resident of the Commonwealth for ten years immediately before his election would, in the Committee's view, ensure that the representative will be thoroughly familiar with the concerns of the Northern Marianas people. The Committee further recommends that only qualified Northern Marianas voters be eligible for election as Washington representative.

6. Compensation. The Committee believes that it is necessary to guarantee the Washington representative adequate compensation in order to attract qualified candidates for the office. The Committee further believes that the representative's salary should not be changed during his or her term of office, so as to insulate the representative from improper political pressures.

7. Open Issues. The Committee is still considering some aspects of this proposed provision. Four matters are outstanding at the moment:

a) The Committee is awaiting a report by counsel regarding the validity of a possible requirement that the representative be born in the Northern Marianas.

b) The Committee has postponed any decision concerning the details of the initiative that would determine whether to increase the length of the representative's term. The Committee believes that these details should conform, if possible, to the procedures for initiative being considered by another committee of the Convention.

c) The Committee also is deferring decision on the mechanisms (recall or impeachment) available to remove an unsatisfactory representative until these subjects can be explored in more detail with reference to all officials of the executive, legislative and judicial branches of government.

d) The Committee has delayed recommending how a vacancy in the office of Washington representative should be filled. The Committee prefers to resolve this issue when it decides on proposed means of filling vacancies in offices in the executive and legislative branches.

Notwithstanding these outstanding issues, the Committee believes that the attached draft constitutional language is ready for consideration by the Convention. We recommend that it be adopted in principle by the Convention.

Respectfully submitted,

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ARTICLE ___

Washington Representative

Section 1: Washington Representative. A Washington representative shall be elected to represent the Commonwealth in the United States and to perform such related duties as are provided by law. The governor shall certify promptly the representative's election by providing a certificate of selection to the United States Department of State and to the representative.

Section 2: Term of Office. The term of office of the representative shall be two (2) years unless it is increased to no more than four (4) years by popular initiative pursuant to Article ___ of this Constitution.

Section 3: Qualifications. The representative shall be a qualified voter of the Commonwealth, a United States citizen or national, at least 30 years of age, domiciled in the Commonwealth, and a resident of the Commonwealth for at least ten (10) years preceding his election. No person convicted of a felony in the Commonwealth or in any area under the jurisdiction of the United States shall be eligible for this office unless he has received a full pardon.

Section 4: Annual Report. The representative shall submit a written report by January 15 of each year to the governor and legislature of the Commonwealth. Such report shall summarize the representative's official activities on

behalf of the Commonwealth during the preceding year and identify any problems requiring the attention of the Commonwealth government and the Northern Marianas people.

Section 5: Compensation. The legislature shall provide for the appropriate compensation of the representative. Such compensation shall neither be increased nor diminished during the representative's term of office.

October 27, 1976

REPORT TO THE CONVENTION OF THE COMMITTEE
ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number 2: The Judicial Branch of Government

The Committee on Governmental Institutions recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to the judicial branch of government.

The Committee believes that the Commonwealth of the Northern Mariana Islands should have a Commonwealth court system to exercise jurisdiction over all local criminal and civil matters to the same extent as a state within the United States. For the first five (5) years of the new Commonwealth, however, the Committee believes that only a local trial court should be created with defined jurisdiction, leaving all other judicial matters (including appeals) to the United States District Court for the Northern Mariana Islands pursuant to the provisions of article IV, section 402 of the Covenant. Under the Committee's recommendation, the legislature would have the power to increase the jurisdiction of the local courts after the Constitution has been in effect for five (5) years. The Committee's recommended constitutional language also deals with the structure of the judicial branch and with the selection, tenure, qualifications, compensation, removal, discipline, and administrative duties of the judges who will serve the court system. These suggested constitutional

provisions are contained in an article of nine sections. The principal issues considered by the Committee and the reasons underlying the Committee's recommended draft constitutional provisions are discussed below.

Section 1: Judicial Power. This section authorizes the legislature to create the judicial branch of the new Commonwealth consisting of such trial and appeals courts as the legislature deems necessary. It makes clear that the ultimate objective of this Constitutional article is to vest judicial power over all local civil and criminal matters in a unified Judiciary of the Northern Mariana Islands. Section 1 provides a flexible grant of authority which will enable the Commonwealth courts to exercise all the judicial power available to the Commonwealth under the Covenant, which is virtually identical to that available to a state within the United States.

Section 2: Commonwealth Trial Court. The second section requires the legislature to create a Commonwealth trial court and to provide it with appropriate supporting personnel. That court would hear all land matters regardless of the amount involved and all civil actions except those in which the amount in controversy exceeds $5,000 in value to the defendant. The court's jurisdiction would extend also to all criminal cases in which the defendant, if convicted, is liable to a fine which is not more than $5,000 or imprisonment for a term which is not longer than five (5) years. After five (5) years have elapsed from the date of

the ratification of the Constitution, the legislature would have the authority to increase the jurisdiction of the Commonwealth trial court.

This section and the following two sections of the draft article reflect the Committee's belief that the Commonwealth would best be served by starting out with a Commonwealth court system with limited jurisdiction which could be increased by the legislature over time as the Commonwealth's circumstances and resources permit. The Committee attaches a high priority to the ultimate objective of a comprehensive Commonwealth judiciary, staffed with well-trained and experienced local residents able to dispense justice fairly and to earn thereby the respect of the people for their learning, objectivity and sensitivity to the needs of the Northern Marianas people. Such a judicial branch is an important component of the self-government available to the people under the Covenant. The Committee concluded, however, that it would be impractical to require in the Constitution that such a comprehensive Commonwealth court system be created immediately upon ratification of the Constitution.

First, the Committee is concerned about the limited number of experienced Northern Marianas lawyers available to serve on such Commonwealth courts. Although it may be necessary to employ some non-Marianas lawyers as judges at the outset, the Committee considers this as a transitional need only and

wishes to minimize the number of non-Marianas lawyers serving as judges in Commonwealth courts. The Committee believes that the citizens of the Commonwealth place a high value on judicial competence and experience and that it is particularly important that the first years of experience with a Commonwealth court system encourage the people to place their confidence in the new judicial system. The Committee believes that its proposal advances these objectives.

Second, the Committee is concerned about reducing the costs to be borne by the Commonwealth taxpayers. A fully developed local judiciary would be expensive to support given the limited population in the Commonwealth. By permitting the United States District Court for the Northern Mariana Islands to conduct some trials and all appeals involving local matters at the outset, the Constitution would produce substantial monetary savings for the Marianas people. Since the federal government will fund the district court, the Committee concluded that this opportunity to conserve the limited financial resources available to the Commonwealth should not be bypassed. It is the Committee's view that some portion of such savings should be used by the legislature to advance the training of local lawyers.

Third, the Committee's recommendation also reflects the generally high reputation of the United States judiciary and the flexibility available to the Commonwealth under the Covenant. If the Committee did not believe that the people of the Northern Marianas would respect the quality of justice dispensed by the Federal courts, we would not advance this

recommendation for consideration by the Convention. In the Committee's opinion, the Commonwealth has an unusual opportunity to use the Federal District Court for some local civil and criminal cases during the early years of the Commonwealth or longer if the legislature decides that the best interests of the people so dictate.

It is for these reasons that section 2 requires the creation of a Commonwealth trial court but limits its jurisdiction for five years. The definition of jurisdiction is admittedly arbitrary, but the Committee concluded it struck an appropriate balance between the available extremes of giving the Commonwealth court too little to do or too much to do. The proposed jurisdiction of the Commonwealth trial court is greater than that currently possessed by the district courts under the TTPI court system. The Committee rejected the alternative of giving the trial court criminal jurisdiction for misdemeanors only on the grounds that the authority over more serious offenses might attract more qualified persons to the position and more experience with a local judiciary would be acquired in a shorter period of time.

Although section 2 refers to a Commonwealth trial court, the Committee contemplates that as many judges and supporting personnel would be appointed to this court as are necessary to serve the needs of the Commonwealth. In order to make certain that civil and criminal cases arising

on Rota and Tinian are promptly considered, the proposed section requires the designation of at least one (1) full-time judge to hear cases on each of these islands. The Committee believes that the proposed language provides sufficient flexibility to permit the legislature to determine the number of judges and supporting staff required to enable the Commonwealth trial court to get off to a good start. We recommend against any more specific language than is contained in the proposed section 2.

The proposed section 2 requires the creation of a specialized division within the Commonwealth trial court to hear all land matters. The Committee decided to create such a division in order to increase the efficiency and expertise with which these cases are resolved. The division would be staffed with as many judges as appropriate to hear land cases promptly. Judges assigned to the specialized land division shall be free to handle other cases in the court if their workload permits. The Committee decided not to require any special qualifications for judges assigned to the specialized land division, although the Committee emphasized its view that such judges should be expert in land matters and possess the ability to deal with such controversial matters objectively. The Committee is confident that the governor and the Senate will consider such matters carefully in evaluating the qualifications of

any nominee proposed for this judicial position.

Section 3: Commonwealth Appeals Court. Section 3 would empower the legislature to create a local appellate court after the Constitution has been in effect for five (5) years. This section clearly permits the legislature to vest all appellate jurisdiction in a Commonwealth appeals court after five (5) years have elapsed from the effective date of the Constitution, if the legislature concludes that the Commonwealth judiciary is ready for such additional responsibility. The reasons for the gradual approach are the same as those discussed above in considering the proposed section 2. The language of the proposed section grants maximum flexibility to the legislature in creating appellate courts and in deciding whether to require (or only permit) appeals in particular kinds of cases.

Section 4: Jurisdiction of the United States District Court for the Northern Mariana Islands. Section 4 vests jurisdiction in the United States District Court for the Northern Mariana Islands over those civil and criminal cases (both trial and appellate jurisdiction) which are not assigned by this article or the legislature acting pursuant to this article to the courts of the Commonwealth. When sitting as an appellate tribunal, the district court would consist of three (3) judges, at least one (1) of whom must be regularly serving as a judge in a court of record of the

Commonwealth. For the reasons set forth above, the Committee concluded that using the District Court for local matters was an appropriate transitional response to the special needs and circumstances of the new Commonwealth.

Section 5: Appointment and Qualifications. This section grants the governor the power to appoint judges of the Commonwealth courts with the advice and consent of the upper house of the legislature. This section also provides that judges will serve initial six (6) year terms and will be eligible for reappointment for one (1) or more terms. The legislature would have the authority to increase the terms of judges upon reappointment to a period of not more than twelve (12) years. Finally, the section requires that judges be at least thirty (30) years of age and United States citizens or nationals. The legislature would have the power to require other qualifications.

a) Method of Selection. The Committee concluded that appointment was a better method to select judges than through popular election. As the appointing official, the governor would have the resources and staff necessary to develop detailed and objective views concerning the qualifications of judicial candidates. The people will be able to give credit for good appointments and to fix blame for bad choices. Because the governor will depend on

the people for reelection, the Committee believes that this accountability will influence the governor to appoint well-qualified persons to the bench. There can be no firm guaranty of this, of course, as experience in the United States demonstrates. For this reason, the Committee concluded that confirmation by the Senate would provide a useful check on the governor's appointment power.

The Committee is persuaded that appointed judges would be more respected and less vulnerable to political pressures than elected judges. The selection process recommended by the Committee would free judges from the temptation of engaging in political activities to enhance their chances of reelection. Moreover, prospective judges would not feel compelled to attach themselves to political parties and engage in partisan activity in order to have a chance for appointment to the bench. As a result, judicial aspirants who are highly suited for the bench but who are averse to political activity would not be excluded from consideration. It seems clear, furthermore, that the skills involved in running successfully for office do not ensure the degree of legal ability or judicial objectivity desired for Commonwealth judges. Finally, a governor who has the power to appoint all local judges would have the capacity to

and on the presence within the Northern Marianas of persons qualified to be judges. Although the Committee is generally sympathetic with residency requirements for legislative and high executive officials, it does not want to impose any such requirements for the judicial branch during the first years of the new Commonwealth. Leaving the matter to legislative discretion will enhance the Commonwealth's ability to secure the best qualified judges and preserve the opportunity to impose such restrictions in the future if they appear desirable.

The Committee's proposed language does not require that Commonwealth judges be lawyers. The Committee expects that all judges will most probably be attorneys. The Committee believes, however, that the flexibility to define the precise scope of legal training necessary should be given the legislature. That body could then determine whether graduation from an accredited law school, admission to a bar in the United States or either will be necessary to satisfy the legal training requirement. The Committee intends that a Marianas resident who has been graduated from any law school will be deemed to have received training at an accredited institution.

The legislature would have authority to prescribe other qualifications for judges. The Committee believes that this is the best way to ensure the flexibility needed for a judicial system whose shape and functions will almost certainly change over time.

c) Tenure. The Committee's proposed section 5 would fix the duration of the initial term of every Commonwealth judge at six (6) years. At the legislature's option, the length of succeeding terms could be increased to a period ranging up to twelve (12) years.

The Committee believes that this approach would give a newly-appointed judge a sufficient period in which to develop his judicial capabilities and to demonstrate that he is worthy of reappointment. The relative brevity of the initial term would also permit the appointment of judges from outside the Commonwealth until there are a sufficient number of qualified Northern Marianas residents to serve as judges. The Committee rejects shorter terms (such as two or four years) because they might make it difficult to attract qualified judges and because a judge serving such a short term might concentrate on improving his chances for reappointment rather than meeting his responsibilities of dispensing justice expertly and fairly.

If judges demonstrate during their first term of six years that they are fully qualified to be members of the Commonwealth judiciary, the Committee concluded that a longer term of office might be appropriate. The Committee is aware that short terms of office have often been an obstacle in the United States to obtaining the best qualified judges. For a lawyer with a successful practice, going on the bench

means abandoning his private practice, foregoing any political activity, and devoting his full professional energies to his judicial responsibilities. The Committee believed that a longer term -- of up to twelve (12) years -- for second and succeeding terms might be helpful in encouraging qualified judges to make themselves available for reappointment.

On the other hand, the Committee rejected the alternative of lifetime judicial appointments. The Committee considered but was not persuaded by the advantages of such appointments. The Committee believes that appointing judges for life would deprive the Commonwealth of the ability to rid itself of jurists whose incompetence or dishonesty, while substantial, is not sufficient to justify their removal under the proposed section 7.

Section 6: Compensation. The Committee's recommended language would empower the legislature to fix the compensation of judges. Once a judge's rate of pay is set, however, it could not be decreased during the judge's term of office. The Committee has under consideration in connection with the legislative branch of government the use of an expert commission to advise the legislature with respect to governmental salaries. If the Committee pursues this approach, it reserves the right to revisit this proposed section and adjust it accordingly.

Section 7: Sanctions. The Committee's proposed language would render judges subject to impeachment. The procedures for removing a judge through impeachment would accord with those applicable against other civil officers. The grounds recommended by the Committee as adequate for impeachment are straightforward: commission of a crime, neglect of duty or conduct which brings the judiciary into disrepute.

The Committee believes that impeachment is a necessary vehicle for legislative oversight of the judicial branch. The grounds for impeachment which the Committee's proposed language would prescribe are sufficiently narrow to prevent legislative incursions into the independence of the court system. The Committee's concern for this independence motivated it to reject address and recall as methods of removing judges.

The Committee also recommends a second mechanism for disciplining judges. The article offered by the Committee would obligate the legislature to create an Advisory Commission on the Judiciary. Composed of lawyers and representatives of the public, the Commission would scrutinize the behavior of local judges. It would have the power to recommend that the governor remove, suspend or otherwise sanction a judge. The Committee is convinced that this approach permits an expert and nonpartisan review of judicial performance and a flexible

means of recommending disciplinary measures by the governor which can be tailored to suit the particular judicial misconduct.

Section 8: Limitations on Activities of Judges. The Committee believes that the Constitution should specify a broad range of activities which are denied to judges. In the Committee's view, judicial participation in such activities would, at best, appear unseemly and, at worst, give rise to charges of conflict of interest.

Under the Committee's proposed language, a judge serving in a full-time position would be prohibited from holding any other compensated office under the government of the Commonwealth or of the United States. This limitation would serve two purposes. First, it would ensure that no judge will decide the legality of an action of a branch of government in which the judge is employed. Second, such a prohibition is probably required by the "separation-of-powers" clause of the Covenant.

The recommended article would also forbid a full-time judge from practicing law. This prohibition is designed to prevent a judge from appearing as a lawyer before fellow members of the judiciary. It is also intended to eliminate the possibility that a judge will try a case involving a question similar to an issue presented in another case in which the judge is appearing as counsel. Such restrictions are commonplace in the United States.

Finally, under the proposed section 8, a judge would be barred from engaging in a wide variety of political activities. The Committee believes that judges should be removed from politics to the fullest extent possible so as to increase the likelihood that they will be objective in deciding matters involving political concerns. The proposed language is taken almost verbatim from the Puerto Rico constitution and is admittedly comprehensive in its coverage. In the Committee's view, such a broad prohibition will protect Commonwealth judges by enabling them to reject any request that they engage in any political activity on the grounds that it might violate this section of the Constitution. If a person is unwilling to abandon all political activity, it is the Committee's view that such a person is not qualified for judicial office.

Section 9: Rule-Making Power. The Committee recommends that the judiciary receive authority to formulate rules in several areas relating to judicial administration. First, the proposed constitutional language of section 9 would authorize the Northern Marianas judiciary, acting either as a body or through a committee of its members, to propose rules governing civil and criminal procedures in the courts. Second, the proposed section would empower the judiciary to adopt rules relating to judicial ethics, dealing with such matters as outside employment (to the extent not dealt with in section 8) and conflicts of interests. Third, section 9

would authorize the Commonwealth courts to adopt rules governing the admission of lawyers to the bar as well as the discipline of attorneys after their admission. Other rules on matters of judicial administration would also be authorized under section 9.

These proposed rules would be submitted promptly to the legislature for review. The legislature would have sixty (60) days in which to reject a rule submitted by the judiciary. If either house of the legislature does not disapprove a rule within that period of time, the rule would then take effect. The Committee is convinced that granting the judicial branch the authority to issue such rules would promote the efficient administration of justice. The Committee believes that the full opportunity afforded the legislature to disapprove a suggested rule would serve as a sufficient check on the judiciary's possible abuse of this power. Since the Committee has tentatively concluded that the legislative branch can determine the frequency and length of its sessions, it concluded that the sixty (60) day period provided sufficient time for the legislature to act to disapprove a proposed judicial rule.

The Committee's proposed section 9 is permissive rather than mandatory. Since it is desirable to have some rules available as soon as the Commonwealth courts begin functioning, section 9 provides further that the rules governing these subjects in the United States District Court

for the Northern Mariana Islands shall govern until such time as the Commonwealth courts adopt their own rules. The Committee has requested counsel to report whether additional language is necessary in section 9 to prevent the application of any rules applied in United States courts which are inconsistent with either the Covenant or other provisions of the Constitution.

The Committee believes that its proposed constitutional article on the judicial branch would form the basis for a court system capable of dispensing justice with efficiency and sensitivity to the needs of the people of the Northern Mariana Islands. The Committee recommends that the Convention adopt in principle the attached article.

Respectfully submitted,

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ARTICLE _____

THE JUDICIAL BRANCH OF GOVERNMENT

Section 1: Judicial Power. The judicial power of the Commonwealth shall be vested in a Judiciary of the Northern Mariana Islands. The Judiciary of the Northern Mariana Islands shall include such trial and appeals courts as the legislature may establish pursuant to this article.

Section 2: Commonwealth Trial Court. The legislature shall establish a Commonwealth trial court. This court shall have original jurisdiction over all matters involving land in the Commonwealth and all other civil actions except those in which the value of the controversy exceeds five thousand dollars ($5,000). The court shall also have original jurisdiction over all criminal actions except those in which the defendant, if convicted, may be fined an amount that exceeds five thousand dollars ($5,000) or imprisoned for a term than exceeds five (5) years. At least one (1) full time judge of the Commonwealth trial court shall be assigned to Rota, and at least one (1) full time judge of the Commonwealth trial court shall be assigned to Tinian. Land matters within the jurisdiction of the Commonwealth trial court shall be considered by a specialized division of the court for at least five (5) years. After this Constitution has been in effect for five (5) years,

the legislature may vest additional civil and criminal jurisdiction in the Commonwealth trial court.

Section 3: Commonwealth Appeals Court. After this Constitution has been in effect for five (5) years, the legislature may establish a Commonwealth appeals court to hear such appeals from judgments and orders of the Commonwealth trial court as are required or permitted by law.

Section 4: Jurisdiction of the United States District Court for the Northern Mariana Islands. The United States District Court for the Northern Mariana Islands shall have trial and appellate jurisdiction in all civil and criminal cases to the extent that such jurisdiction is not vested in courts of the Commonwealth by this article or by the legislature acting pursuant to this article. When the District Court sits as an appellate court to hear appeals from the Commonwealth trial court or from the District Court sitting as trial court, it shall consist of three judges, at least one of whom shall be a judge regularly assigned to a division of the Commonwealth trial court that functions as a court of record.

Section 5: Appointment and Qualifications. Judges shall be appointed for a term of six (6) years by the Governor by and with the consent of the Senate. The term of office may be increased by law to not more than twelve (12) years for judges who have served at least one term. A judge

shall be at least thirty (30) years of age, a United States citizen or national and possess such other qualifications as may be provided by law.

Section 6: Compensation. The compensation of judges shall be provided by law. There shall be no diminution of the salary of any judge during his term of office.

Section 7: Sanctions. Judges shall be subject to impeachment in the same manner as are other civil officers for the commission of crime, for neglect of duty or for conduct that brings the judicial office into disrepute. The legislature shall establish an Advisory Commission on the Judiciary whose members shall include both lawyers and representatives of the public. Upon recommendation of the Advisory Commission, the governor may remove, suspend or otherwise sanction a judge for illegal or improper conduct.

Section 8: Limitations on Activities of Judges. No full-time judge shall hold any other compensated government position or engage in the practice of law. No judge shall make any direct or indirect financial contribution to any political organization or party, or hold any executive office therein, or participate in a political campaign of any kind, or be a candidate for an elective public office unless he has resigned his judicial office at least six months prior to his nomination.

Section 9: Rule-Making Power. The Judiciary of the Northern Mariana Islands may establish rules governing civil

and criminal procedure, judicial ethics, admission to and governance of the Bar of the Northern Mariana Islands, and other matters of judicial administration provided, however, that any proposed rule shall be promptly submitted to the legislature and shall become effective sixty (60) days after its proposal unless disapproved by either house of the legislature. Until rules are established pursuant to this article, the rules governing such matters in the United States District Court for the Northern Mariana Islands shall apply in the Commonwealth courts.

November 4, 1976

REPORT TO THE CONVENTION OF
THE COMMITTEE ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number 3:
Legislative Branch of Government

The Committee on Governmental Institutions recommends that the Convention adopt in principle the attached constitutional provisions with respect to the legislative branch of government.

The Committee believes that the legislature of the Commonwealth of the Northern Mariana Islands should have power adequate to deal with the difficult and varied problems to be faced by the Commonwealth. Its recommended constitutional language accordingly vests such power in a legislature to be composed of two houses. The Committee's recommended language also deals with the composition of the two houses and the qualifications for membership in each, reapportionment, the procedure for the enactment of legislation, the governor's veto, confirmation of appointments, impeachment, the filling of vacancies in the legislature, legislative compensation, the conduct of legislators, and the sessions, organization and procedures in the two houses. These suggested constitutional provisions are contained in an article of fifteen sections. The principal issues considered by the Committee and the reasons underlying the Committee's recommended draft constitutional provisions are discussed below.

Section 1: Legislative Power. This section provides that the legislative power of the Commonwealth "shall extend to all rightful subjects of legislation." It vests this power in a Northern Marianas Commonwealth Legislature, to be divided into a Senate and a House of Representatives.

The language describing the extent of the legislative power is the same language used in the Covenant and is repeated here in order to confer upon the legislature all the power that the Covenant made available. As is made clear in the legislative history of the Covenant, this language gives the Commonwealth as much legislative power as is available under the United States Constitution. The Committee felt that conferring on the legislature all power available under the Covenant was the best way to ensure that the law-making body would have sufficient authority to deal with the many unique problems the Commonwealth will face. The Committee rejected the alternative of trying to enumerate the specific powers to be exercised by the legislature because of the risk of omitting an important power and the desire to avoid needless litigation concerning legislative enactments. For the same basic reasons, the Committee decided not to impose any specific limitations on the legislature in the legislative article.

The Committee intends this general grant to include the power to pass special and local laws. Local laws are those that relate only to a particular locality, such as one of the three major islands. Giving this power to the legislature does not prejudge the question of whether particular

matters should be addressed at the Commonwealth level or at the local level. That subject will be addressed by any article on local government, and in any case, power over local affairs may be delegated to localities by statute. This language was adopted to ensure that power to act in all matters, including those regarding localities, was lodged somewhere and provides the Commonwealth legislature with needed flexibility to deal with the individual problems of Rota, Saipan and Tinian.

The division of the legislature into two houses that is provided by the article is required by section 203 of the Covenant.

Section 2: Composition of the Senate. Rota, Saipan and the islands north of it, and Tinian are each to have three senators elected at large. Solely for purposes of providing representation to anyone who may come to live there, the island of Aguiguan is grouped with Tinian. The section further provides that the residents of the islands north of Saipan, once they number 1,000 persons, will also be entitled to three senators. Senators will be elected for four-year terms, except for the senator from each delegation who receives the lowest number of votes in the first election; these seantors will serve for two years only. To qualify for the office of senator, a person is required to be a qualified voter, a United States citizen or national, at least twenty-five years old, and a resident of the Commonwealth for at least five years.

The Committee decided on a nine-person Senate as a compromise, balancing the need to avoid unnecessary expense against the necessity that the body be large enough to discharge its functions. Equal representation of Rota, Saipan and Tinian is required by the Covenant. Under this provision the islands north of Saipan, once their population is large enough, would be entitled to representation in the Senate automatically. The Committee felt that any other procedure might lead to politically motivated delay in providing representation to this area.

The Committee favors a four-year term for senators to permit the accumulation of legislative experience and to provide for continuity in the Senate. The senators receiving the lowest number of votes in the first election are given two-year terms so that at least one-third of the seats in the Senate will be contested in each election. This was done to ensure that the voters would not have to wait four years to express an opinion on the actions of the Senate and to make the Senate somewhat more responsive to changes in political sentiment.

The Committee has suggested several qualifications for the office of senator. The requirement that senators be qualified voters is based on the idea that persons ineligible to vote should not hold high office. The requirement of United States citizenship or national status is intended to ensure that senators have a basic loyalty to the

United States and to the Commonwealth. The age requirement is intended to guarantee that senators have a certain maturity of judgment.

The Committee felt that it was necessary to require senators to have resided in the Commonwealth for the five years preceding their election to ensure that candidates for that office have time to acquaint themselves with the unique situation of the Commonwealth and that the voters have an opportunity to study the candidates. On advice of counsel the Committee concluded that any longer residency requirement would involve an unacceptable risk of being considered in violation of the United States Constitution. Authority is granted the legislature to increase the residency requirement if future circumstances, including clarification of the pertinent legal limitations, suggest that this is desirable.

Section 3: Composition of the House of Representatives. This section provides for a thirty-member House of Representatives, with twenty-five members elected from Saipan, and the islands north of it, two from Tinian, and three from Rota. For purposes of representation only, the island of Aguiguan is grouped with Tinian. The legislature is empowered to increase the total membership to not more than forty. Representatives are required to be qualified voters, United States citizens or nationals, at least twenty-one years old, and residents of the Commonwealth for at least three years preceding their election. For purposes of electing representatives,

the Commonwealth is divided into nine electoral districts: one each on Rota and Tinian, six on Saipan and one covering the islands north of Saipan. These districts may be altered in number or boundaries by the legislature, except that those on Saipan may not be changed for ten years following the effective date of the Constitution except as is necessary for reapportionment purposes. Also, any alteration must respect the geographic integrity of Rota and Saipan, so that no district including any part of either of these two islands may include any part of another island.

In recommending this number and distribution of representatives, the Committee has balanced the need for efficiency, the interest in economy and the requirements of the United States Constitution. The House must be large enough to do its work and represent fairly the various groups in the Commonwealth. It must not be so large as to be unwieldy or excessively expensive. The Committee believed that no substantially populated island in the Commonwealth should be represented by fewer than two representatives. However, United States constitutional provisions requiring that each representative represent approximately equal numbers of people make it necessary to give Saipan and the islands north of Saipan at least twenty-five representatives and Rota three, if Tinian is to have two. A thirty-member House of Representatives is thus the best available compromise. The legislature is permitted to increase the size of the House of Representatives

to forty members in order to facilitate adjustments necessary to ensure equal representation in the future.

The Committee recommends a two-year term of office to ensure that representatives will be responsive to the wishes of the people. The Committee's reasoning regarding the qualifications of representatives was essentially the same as that regarding senators. The Committee felt that a lower maximum age and a shorter period of required residency were desirable in light of the differences between its duties and those of the Senate in order to open the House to the greatest number of qualified persons. As in the case of the Senate, the legislature is given the power to increase the residency requirement if that seems desirable in the future.

The Committee has recommended that representatives be elected from districts in order to maximize their accountability to the voters. Linking representation to particular geographic areas lessens the likelihood that the interests of the voters of these areas would be neglected. For this reason and because of their historic representation in the District Legislature, the Committee decided that the islands north of Saipan should constitute a single district for the purpose of electing one member of the House of Representatives. It is anticipated that the six districts on Saipan be formed either by some combination of the present electoral precincts or by a special redistricting of Saipan for purposes of the first election under this constitution. The twenty-four representatives for Saipan would be divided among these districts

so as to provide for approximately equal representation of citizens by each representative. The Committee recommends that the legislature be empowered to alter or increase the number of electoral districts in order to facilitate adjustments required due to population changes. In view of the special situation of Saipan, it is felt that no alteration should take place there for ten years unless such change appears necessary to enable the legislature to fulfill its reapportionment responsibilities under this Constitution and the United States Constitution. The requirement that the geographic integrity of the islands be respected is intended to forestall any effort to create a district including parts of Rota or Saipan and another island.

The Committee considered alternative methods of voting and concluded that the simplest and traditional method -- one vote per seat to be filled -- should be followed. In districts with four representatives to be elected, for example, each voter could cast four votes but only <u>one</u> to a candidate. The Committee considered a system of cumulative voting, which would permit a voter to cast all his votes for a single candidate, but decided it might be confusing and was probably not necessary to protect minority rights in light of the electoral districts proposed for the new Commonwealth.

<u>Section 4: Reapportionment</u>. This section makes provision for the reapportionment of the House of Representatives. Such reapportionment as is needed to reflect changes

in the Commonwealth's population or as required by law is to take place at least every ten years. Initial responsibility for reapportionment is vested in the legislature, which must enact a reapportionment plan within one hundred and twenty days following each decennial (ten-year) census. The plan must provide for compact and contiguous districts and for representation by each representative of approximately the same number of residents, to the extent geography permits. If the legislature fails to carry out its responsibility, the governor is charged with the duty of promulgating a plan within one hundred and twenty days of the legislature's failure to act. The governor's plan is to be published in the manner provided for acts of the legislature, and to have the force of law once published. Upon the application of any qualified voter, the court with jurisdiction of appeals from the Commonwealth trial court is given sole jurisdiction to review any reappointment plan and make any necessary changes or promulgate a plan if the governor has failed to do so.

The purpose of periodic reapportionment is to ensure that seats in the House of Representatives are in fact distributed on the basis of population. Without such reapportionment, changes in the distribution of population among the districts would not be reflected in the allocation of seats in the House. This result would not only be contrary to the basic concept of the form of representation in the House of Representatives, but would also violate the United

States Constitution's requirement that legislators represent approximately equal numbers of people.

The requirement of reapportionment every ten years or as provided by law is intended to ensure that reapportionment takes place whenever new census information is available, and to permit more frequent reapportionment if that appears desirable. Initial responsibility is vested in the legislature in order to permit popular input into questions of representation and because the legislature has the legal authority to increase the size of the House of Representatives, to change districts and to reapportion representatives among districts. Thus the legislature is best equipped to deal responsibly with population changes and to fashion a reapportionment scheme which comports both with legal requirements and political realities. The one hundred and twenty day time limit is established to make certain that the matter is addressed expeditiously. The proposed language requires that districts be compact and contiguous to reduce the possibility that district lines will be drawn in a way intended to give a particular political group an advantage.

The governor is given the power to reapportion the House of Representatives if the legislature fails to act. The Committee intends by this arrangement to make certain that legally required reapportionment is carried out even if the legislature fails in its duty. The governor's published plan is given the force of law, in order to eliminate

any need for action by the same legislature that has already shown itself unable to deal with this question. The power of the governor in this matter is, however, checked by that of the court which hears appeals from the trial court. This check has two aspects. First, the court may review the lawfulness of the plan and amend it as necessary to bring it into line with the Constitutional requirements. Second, if the governor has failed in his duty to draw a plan, the court may draw one of its own. The court may act in either situation upon the application of any qualified voter.

Section 5: Enactment of Legislation. This section sets out the requirements for enactment of legislation. The Committee recommends that origination of appropriation and revenue bills be limited to the House of Representatives, but that no restriction be imposed on the origination of any other bill. All bills must be confined to one subject except for bills dealing with appropriations, on bills dealing with the codification, revision or rearrangement of existing law. Appropriations bills are further limited to the subject of appropriations. Under the Committee's recommendation, the legislature has the responsibility for ensuring compliance with these rules; judicial review of these matters is expressly forbidden. This section requires that a bill receive a majority of the votes cast in each house of the legislature in order to become law.

The Committee believes that appropriations and revenue bills ought to originate in the House of Representatives because that body is likely to be more closely attuned to the people than is the Senate. Furthermore, a requirement that the House of Representatives act first on such bills will permit the Senate to be aware of the views of the House of Representatives before it acts. The Committee felt that all other bills could originate in either house.

The Committee's proposal that no bill should become law without the votes of the majority of those voting in each house is an important recommendation. Any other system would reduce the degree of protection that the different systems of representation in the Senate and the House of Representatives were intended to provide. The Committee anticipates that joint action will permit more careful considerations of legislation than would be possible if one house could act alone and that the two houses will have to work out some method (such as the use of conference committees) to reconcile their views regarding proposed legislation.

The requirement that most bills be limited to one subject is intended to prevent the attachment to desirable bills of unrelated, undesirable provisions, and other devices whereby the legislature may be led to enact measures which, if considered alone, would be rejected. Such a requirement also eliminates the possibility that a bill may deal with so many different matters as to be incomprehensible

to the legislators who must consider it. The exceptions for appropriations bills and bills codifying, revising and rearranging laws were necessary because such bills cannot by their nature be limited to one subject. The majority vote requirement is simply intended to clarify this matter. It should be noted that this margin is merely a minimum requirement. It is intended that either house be able to require a different margin for passage of a bill in its own procedural rules.

Section 6: Action on Legislation by the Governor. This section would require the presiding officer of each house to sign every bill passed by the legislature. The bill will then be transmitted to the governor. If he signs the bill, it would become law. On the other hand, if the chief executive vetoes all or part of the bill, he must return it to the legislature for its reconsideration. Only if two-thirds of the elected members of each house vote to pass the bill over the governor's veto would the measure become law. The governor would be able to disapprove part rather than all of a bill only if it deals with the appropriation of money. If the governor fails to complete consideration of an appropriation bill within twenty days of receiving it and of any other bill within forty days of receiving it, it would become law automatically.

Under the Committee's proposed language, a bill passed by the legislature could become a law in three ways.

First, signature by the governor would transform a bill into a statute. Second, a bill vetoed by the governor would become law if reconsidered favorably by two-thirds of the members elected to each house of the legislature. Third, a measure would become law if the governor fails to act on it within a fixed period of time.

The Committee is convinced that assigning the veto power to the governor is an essential check on the power of the legislature. In addition, this power would increase the likelihood that legislation will benefit the people of the Commonwealth by subjecting each bill passed by the legislature to the scrutiny of the official who would be responsible for its implementation were it to become law.

Every state constitution except one follows the example of the United States Constitution in permitting a governor to veto a bill as a whole. The Committee believes that this precedent should be followed, and a general veto power is included in its recommended provision. The Committee also recommends that the governor be given the power to veto items in an appropriation bill without having to disapprove the entire measure. Item vetoes used in the context of money bills promote the efficient completion of the budgetary process while avoiding unwise expenditures. The Committee feels it unwise to permit item vetoes of all types of legislation. Most legislation is the result of compromises reached among

legislators and the Committee is reluctant to permit the governor to upset compromises reflected in bills other than appropriations bills.

The Committee is also persuaded that every bill endorsed by both houses of the legislature merits swift consideration by the governor. The time constraints imposed on the governor by the Committee's recommended section are designed to achieve that objective. The Committee concluded that a distinction could properly be drawn between appropriations bills and other bills. Since the executive branch will have prepared a proposed budget for consideration by the legislature, the Committee concluded that twenty days would be sufficient for the governor to approve or veto any appropriations bill.

A governor might reject a bill for unwise or even capricious reasons. Authorizing the legislature to override such a veto by an extraordinary majority provides flexibility necessary to the smooth functioning of government. The Committee considered other possible requirements for legislative override but decided that two-thirds of the elected members (not just those present and voting) was an appropriately severe requirement to pass legislation over the governor's veto.

Section 7: Confirmation of Appointments. This section empowers the Senate to confirm appointments by the governor where such confirmation is

required by the law or by the Constitution. The purpose of this provision is to ensure that persons whose duties are important to the whole Commonwealth are acceptable to the representatives of the three main islands within the Commonwealth.

Section 8: Impeachment. This section empowers the legislature to impeach those officials made subject to impeachment by the executive and judicial branch articles of the Constitution. Impeachment is divided into two separate processes. The House of Representatives may bring charges of impeachment by the affirmative vote of two-thirds of its entire membership. The Senate will try the official named in the charges and may convict only upon the affirmative votes of two-thirds of its members.

The Committee believes that the power of impeachment is necessary to check possible abuses by high officers of the government. The Committee believes that the definition of the officers subject to impeachment and the grounds for impeachment should be spelled out in the judicial and executive branch article and that the legislative branch article should deal only with matters of procedure. The House of Representatives is given power to bring charges, since it is most directly representative of the people who elected the executive branch officials whose judgment is to be challenged directly (in the case of impeachment of an executive branch official) or indirectly (in the case of impeachment of a judge

who was appointed by the governor). The Senate is given the power of trial to insure that the question is considered by a body that represents equally the three major islands and that can most effectively guard against conviction based on irrelevant political grounds. Extraordinary majorities are required both to impeach and to convict because of the importance of the matter.

Section 9: Vacancies: This section provides for filling vacancies that may occur through death, disability, resignation or expulsion. It provides that seats that become vacant with more than half of the term remaining shall be filled by a special election. Seats that become vacant when less than half the term remains shall be filled by the governor. He is obliged to appoint to the vacancy the unsuccessful candidate for the seat in the last election who received the highest number of votes, who is able and willing to serve. If there are no unsuccessful candidates who are able and willing to serve, the governor must appoint a qualified person from the island, if the seat is in the Senate, or electoral district, if the seat is in the House of Representatives, to which the seat is apportioned.

The Committee felt that the decision on filling a vacant term with more than half its length to run was too important to be taken from the voters. The Committee was reluctant to impose upon the Commonwealth the expense of special elections for shorter periods, and therefore

provided that the highest available runner-up should be appointed to terms with relatively little time remaining. Such persons, the Committee believed, would have demonstrated their acceptability to the voters by receiving votes in an election. The Committee believes that the governor may be trusted to appoint a successor when no runners-up are available, in light of his responsibility to the entire Commonwealth.

Section 10: Legislative Compensation. This provision sets the salary of the members of the legislature at $12,000 and permits the legislators to receive reasonable compensation for expenses. It permits the legislature to alter the amount of salary, but only upon the recommendation of an advisory commission established by law to study and make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. Such changes could not take place more often than once in four years. The section further provides that a salary increase may not be effective for the legislature that enacts it.

In dealing with the question of compensation, the Committee balanced four considerations. First, it wanted to ensure that the salaries for members of the legislature would be adequate to attract competent people to public service. Second, the Committee wished to avoid extravagance. Third, the Committee wanted to provide a system flexible enough to adjust to changing economic circumstances. Finally, the Committee wished to avoid a situation in which the legislature would

be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase.

The Committee believes that the draft article meets each of these concerns. The amount selected is large enough to be competitive, but not unreasonable. Flexibility is guaranteed by giving the legislature authority to change this amount, but the requirement of a recommendation by a commission considering the salaries received by members of all three branches of government will eliminate any impression that the legislature is acting out of self interest. The limitation to one salary change in four years and the delay in effectiveness of changes will also reduce the likelihood of needless increases. The Committee reserved to the legislature power over expenses, however, as traditional and necessary.

Section 11: Prohibition on Government Employment. This section prohibits legislators from serving in any other government position, including independent boards, agencies, authorities or commissions established by the Commonwealth legislature.

The Committee felt that permitting legislators to work in other branches of government would raise problems of separation of powers, with government-employed legislators facing conflicting pressures from the two branches of government that they serve. The Committee's proposed language also covers employment by the United States government.

The reference to independent boards and agencies was included because of the ambiguous nature of such entities and the desire to provide a clear rule prohibiting any service (whether compensated or not) by legislators on such bodies created by Commonwealth law.

The Committee discussed but discarded a proposal to forbid all outside private employment. It was felt that such a provision would make it impossible for many people to serve as legislators. Professionals who were obliged to abandon their professions for two or four years might have great difficulty re-entering private practice after their term of service ended. Business people and farmers might be forced to sell their property in order to serve. Persons who could not support their families on legislative salaries would clearly be unable to afford service as legislators.

Section 12: Legislative Immunity. This section confers immunity upon legislators for oral or written statements made either on the floor or in Committee, and shields them from arrest while going to or coming from the legislature.

The Committee believes that legislators will feel free to discuss any subject only if they are immune from civil suit and criminal prosecution as a result of any remarks made on the floor of the legislature or in its committees or in any written report. Otherwise, legislators might be afraid to discuss a subject until they had accumulated sufficient evidence to defend themselves in court. This might prevent very important matters from ever being discussed. The

Committee was concerned that immunity for statements made might be abused, but finally decided that the need to ensure freedom of debate outweighed the danger of abuse. The Committee considered also that limitations on debate so as to avoid, for example, irrelevant criticism of Commonwealth citizens would be set forth in the legislature's internal rules.

The arrest provision is intended to ensure that members are able to participate in deliberations of the legislature. The Committee rejected a broader immunity from arrest in the belief that no citizen of the Commonwealth should be above the law. Under the Committee's recommendation, members are subject to arrest for crimes committed during the legislative session but cannot be deterred while going to or coming from a legislative meeting. If convicted of a crime, of course, they would be imprisoned just like any other citizen.

Section 13: Sessions. This section provides that the legislature shall be in continuous session, with the actual meetings of each house regulated by law or by its own procedures. The presiding officers of the legislature and the governor may call special sessions. In the case of a special session called by the governor, the legislature shall be limited to a discussion of the subject that was described in the call.

The Committee wished to avoid the technical problems that develop when legislative sessions legally "end" after a brief period of convening. The Committee also felt that the legislature should have maximum flexibility in deciding how much time it needs to deal with the public business. For these reasons, sessions are to be continuous, with actual meetings to be set by law or house rule. It was felt that the subject matter of special sessions called by the governor should be limited, however, to ensure that whatever extra-ordinary matter inspired the governor's call was resolved first.

Section 14: Organization and Procedures. The Committee has attempted to collect all important provisions concerning organization and procedures in this section. All other procedural and organizational matters would be left for the legislature to resolve in its own rules.

Subsection (a): This subsection makes each house the final judge of the elections and qualifications of its members, and permits the legislature to vest in the courts the responsibility for determination of contested elections. Each house is permitted to compel the attendance of members, to discipline members, and, upon a three-fourths vote of its membership, to expel members for commission of treason, felony, breach of the peace, or violation of the legislature's rules.

The Committee concluded that each house should be the final judge of the elections and qualifications of its members so that the legislature is not subordinated to a court

on such an important matter. However, the legislature is expressly permitted to vest jurisdiction in the courts to determine contested elections. The Committee feels that the legislature may be ill-equipped to undertake the court-like proceedings required to settle a contested election, and wishes to make clear that this function may be delegated to a court. The legislature may retain final authority to accept or reject the court's action.

The provisions on compelling attendance and discipline are standard. The power of expulsion is limited to the stated grounds to prevent politically motivated expulsions. In cases of expulsion, it must be emphasized, the legislature is free to act without the member in question having been convicted in a court. Use of this provision is only one of the ways to remove legislators; they may also be recalled.

Subsection (b): This subsection requires each house of the legislature to choose its presiding officer from among its members, establish such committees as it deems necessary and determine its rules of procedure. Each house is also given power to compel the attendance and testimony of witnesses and the production of books and papers before the full house or one of its committees. Also, the legislature is required to keep a journal to be published from day to day.

These are standard provisions relating to legislative organization. The language concerning the power to compel attendance and testimony of witnesses and the production of papers is intended to make explicit the

legislature's inherent power to investigate. The requirement of a journal ensures a public record of legislative actions so as to permit informed public scrutiny of the legislature. The Committee rejected any constitutional provision directing that particular staff positions, such as auditor, be created by the legislature.

Subsection (c): This subsection requires the legislature and its committees to meet in public, but permits meetings of either house in executive session if approved by a two-thirds vote of the full membership of that house. The same vote by its parent house or houses is required before any committee may go into executive session. This section prohibits taking any final action in executive session.

The Committee attempted to balance the desirability of open government against the necessity for conducting some business in private. The Committee felt that some mechanism for private sessions was necessary, in order to facilitate, for example, discussions of military matters connected with any military posts established in the Commonwealth, or to investigate unverified charges against individuals being considered for executive positions. The two-thirds vote required as a prerequisite to executive sessions is intended to guard against excessive secrecy. Likewise, the prohibition on taking final actions in executive session is aimed at ensuring that all actions of the legislature and its committees are on the record.

Section 15: Code of Conduct. This section requires legislators to disclose any personal or private interest in any measure or bill proposed or pending before the legislature and not to vote thereon. It also requires the legislature to enact a code of conduct to govern its members, particularly regarding conflicts of interest and propriety in debate. The Committee feels that voting in situations where a member has a private interest must be discouraged. Beyond setting policy on this one matter, the Committee believes that a simple mandate to the legislature to act will ensure that the subject is adequately treated, while avoiding the inflexibility inherent in a detailed provision.

Respectfully submitted,

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November 3, 1976

ARTICLE __

THE LEGISLATIVE BRANCH
OF GOVERNMENT

Section 1: Legislative Power. The legislative power of the Commonwealth shall extend to all rightful subjects of legislation and shall be vested in a Northern Marianas Commonwealth Legislature composed of a Senate and a House of Representatives.

Section 2: Composition of the Senate.

a) The Senate shall consist of nine (9) members with three (3) members elected at large from Rota, three (3) members elected at large from Saipan and the islands north of it, and three (3) members elected at large from Tinian and Aguiguan. The term of office for senator shall be four (4) years except that the candidate receiving the third highest number of votes in the first election for senator on each island pursuant to this section shall serve a term of two (2) years.

b) The Senate shall be increased to twelve (12) members and three (3) members shall be elected from the islands north of Saipan at the first regular general election after the population of these islands exceeds one thousand (1,000) persons. The senator receiving the third highest number of votes in the first such election shall serve for two (2) years.

c) A senator shall be a qualified voter of the Commonwealth, a United States citizen or national, at least twenty-five (25) years of age, and a resident of the Commonwealth for at least five (5) years immediately preceding his election. A longer residency requirement may be provided by law.

Section 3: Composition of the House of Representatives.

a) The House of Representatives shall consist of thirty (30) members with twenty-five (25) members from Saipan and the islands north of Saipan, three (3) members from Rota and two (2) members from Tinian and Aguiguan provided, however, that the number of representatives may be increased by law to not more than forty (40). The term of office for representative shall be two (2) years.

b) A representative shall be a qualified voter of the Commonwealth, a United States citizen or national, at least twenty-one (21) years of age, and a resident of the Commonwealth for at least three (3) years immediately preceding his election. A longer residency requirement may be provided by law.

c) Rota shall constitute one electoral district, Tinian and Aguiguan shall constitute one electoral district, the islands north of Saipan shall constitute one electoral district, and Saipan shall be divided into six (6) electoral districts for the election of representatives. The legislature may change the number and boundaries of the electoral districts used for electing representatives but no district on Rota and

Saipan shall consist of more than one island. For ten (10) years following the effective date of this constitution, the legislature shall not change the electoral districts on Saipan and the islands north of Saipan except pursuant to its duties under section 4 of this article.

Section 4: Reapportionment.

a) At least every ten (10) years and within one hundred and twenty (120) days following each decennial census, the legislature shall reapportion the seats in the House of Representatives as required by changes in Commonwealth population or by law. Any such reapportionment plan shall provide for compact and contiguous districts and for representation by each member of the House of Representatives of approximately the same number of residents to the extent permitted by the geography of the Commonwealth and the distribution of population among the separate islands.

b) If the legislature fails to reapportion the House of Representatives pursuant to subsection (a), the governor shall promulgate a reapportionment plan within one hundred and twenty days after the legislature's failure to act. The governor's plan shall be published in the manner provided for acts of the legislature and shall have the force of law upon such publication. Upon the application of any qualified voter, the court with jurisdiction over appeals from the Commonwealth trial court shall have original, exclusive and final jurisdiction to review any reapportionment

plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this Constitution or, if the governor has failed to promulgate a plan within the time provided, to make one or more orders establishing such a plan.

Section 5: Enactment of Legislation.

a) Appropriations and revenue bills may be introduced only in the House of Representatives. Other bills may be introduced in either house of the legislature.

b) Every bill shall be confined to one subject except bills for appropriations and bills for the codification, revision or rearrangement of existing laws. All appropriation bills shall be limited to the subject of appropriations. Legislative compliance with the requirements of this subsection is a constitutional responsibility not subject to judicial review.

c) The legislature shall enact no law except by bill and no bill shall become law without the approval of at least a majority of the votes cast in each house of the legislature.

Section 6: Action on Legislation by the Governor.

a) Every bill passed by the legislature shall be signed by the presiding officer of each house and transmitted to the governor by the presiding officer of the house in which the bill originated. If the governor approves the bill, he shall sign it and the bill shall become law. If the governor disapproves the bill, he shall indicate his

veto on the bill and return it to the presiding officers of both houses of the legislature with a statement of the reasons for his action. The governor may veto any specific item or items in any appropriations bill and sign the remainder of the bill.

b) The governor shall have twenty (20) days in which to consider appropriation bills and forty (40) days in which to consider all other bills. If the governor fails either to sign or veto a bill within the applicable period, it shall become law in the same manner as if he had signed the bill.

c) Any bill or item of a bill vetoed by the governor may be reconsidered by the legislature. If two-thirds (2/3) of the members in each house vote upon reconsideration to pass the bill or item, it shall become law.

Section 7: Confirmation of Appointments. The Senate shall have the power to confirm appointments by the governor where such confirmation is required by this constitution or by law.

Section 8: Impeachment. The legislature may impeach the governor and such other executive and judicial officers of the Commonwealth as are made subject to impeachment by this constitution. The House of Representatives shall have the power to initiate impeachment proceedings by the vote of two-thirds (2/3) of its members and the

Senate shall have the power to hear impeachment charges and to convict by the vote of two-thirds (2/3) of its members. The legislature shall provide procedures for the trial and removal from office after conviction of officers so impeached.

Section 9: Vacancies. A vacancy in the legislature shall be filled by special election if more than one-half (1/2) of the term remains. If less than one-half (1/2) of the term remains, the governor shall fill the vacancy by appointing the unsuccessful candidate for the office in the last election who received the largest number of votes and is willing to serve or, if no such candidate is available for appointment, any person qualified for the office from the island or electoral district involved.

Section 10: Legislative Compensation. The members of the legislature shall receive an annual salary of twelve thousand dollars ($12,000) and such reasonable allowances for expenses as may be provided by law. The salary of members may be increased no more frequently than once every four (4) years and only upon the recommendation of an advisory commission to be established by law to study and make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. No increase in the salary of the members of the legislature shall apply to the legislature which enacted the same.

Section 11: Prohibition on Government Employment. No member of the legislature shall serve in any other government position including any independent board, agency, authority or

commission established by Commonwealth law.

Section 12: Legislative Immunity. No member of the legislature shall be questioned in any other place for any written or oral statement in the legislature or its committees and no member of the legislature shall be subject to arrest while going to or coming from a meeting of the legislature or a committee.

Section 13: Sessions. The legislature shall meet for organizational purposes on the second Monday of January in the year following the regular general election at which members of the legislature are elected and shall be a continuous body for the two years between such organizational meetings. Each house shall meet in regular sessions as provided by law or its procedures and may be convened at other times by its presiding officer or by the governor. When meeting pursuant to the governor's call, the legislature shall consider only those subjects described in the call.

Section 14: Organization and Procedures.

a) Each house of the legislature shall be the final judge of the election and qualifications of its members and the legislature may by law vest in the courts the trial and determination of contested elections of members. Each house may compel the attendance of absent members, discipline its members and, with the concurrence of three-fourths (3/4) of its members, expel a member for commission of treason, a

felony, breach of the peace, or violation of the legislature's rules.

b) Each house of the legislature shall choose its presiding officer from among its members, establish such committees as it deems necessary for the conduct of its business, and determine its rules of procedures. Each house shall have the power to compel the attendance and testimony of witnesses and the production of books and papers before such house or its committees. The legislature shall keep a journal of its proceedings which shall be published from day to day.

c) The meetings of the legislature and its Committees shall be public provided, however, that each house of the legislature and any legislative committee may meet in executive session if authorized to do so by two-thirds (2/3) of the members of the house involved. No final action on any legislative matter may be taken in executive session.

Section 15: Conduct of Members. Any member of the legislature who has a financial or other personal interest in any bill before the legislature shall disclose the fact to the house of which he is a member and shall not vote thereon. The legislature shall enact a comprehensive code of conduct for its members that prohibits certain actions by members with conflicts of interest, defines the proper scope of debate in the legislature, and deals with other germane subjects.

November 13, 1976

REPORT TO THE CONVENTION BY THE
COMMITTEE ON GOVERNMENTAL INSTITUTIONS

Subject: Committee Recommendation Number Four:
The Executive Branch of Government

The Committee on Governmental Institutions recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to the executive branch of government. The Committee's Recommendation does not contain any provisions concerning local government or lieutenant governors for the reasons set forth in the attachment to this Report.

The Committee believes that the Commonwealth of the Northern Mariana Islands should have an executive branch headed by a popularly elected governor and vice governor. Under the Committee's Recommendation, the governor's power would include the authority to appoint department heads with the consent of the senate and to remove them, to prepare a budget in consultation with the chief executive officers of Saipan, Rota, Tinian, and the Northern Islands, and to fill a vacancy in the office of vice governor if necessary. The Committee's recommended constitutional language also contains provisions regarding succession to the governorship, the absence or disability of the governor, the impeachment of executive branch officials, the qualifications, duties and compensation of the governor and vice governor,

the civil service system, executive and administrative departments, department of education, and the offices of attorney general and public auditor. The constitutional provisions offered by the Committee comprise an article of seventeen sections.

The principal issues considered by the Committee and the reasons for the Committee's proposed constitutional language are discussed below.

Section 1: Executive Power. This section provides that all of the executive power of the Commonwealth will be exercised by a governor and the officials specified in the article. Article II, § 203(b) of the Covenant requires that the chief executive officer of the Northern Mariana Islands be given the title of governor.

Section 2: Qualifications of the Governor. This section requires that the governor be thirty years old, possess United States citizenship or nationality, be a qualified voter of the Commonwealth, and have resided and been domiciled in the Northern Mariana Islands for the seven years immediately preceding his election. The recommended provision does, however, permit the legislature to increase or to decrease the period of residency and domicile.

The Committee believes that its proposed age requirement would promote the election of mature and experienced governors. This requirement would not, in the Committee's view, significantly reduce the number of qualified individuals available for the governorship.

This is the same age that the Committee has recommended for judges and for the Washington representative.

Limiting eligibility for the governorship to qualified voters would ensure that candidates for the office are not mentally incompetent. It would also prevent those deprived of the franchise because of criminality from seeking the post of chief executive. The Committee believes that these protections would serve the Commonwealth well.

The Committee is persuaded that requirements of residency and domicile would produce governors who are sensitive to the needs and wishes of the Marianas people. The distance between the Commonwealth and the mainland of the United States and the limited opportunity for travel among the islands make it difficult to acquire a deep understanding of the Commonwealth's culture and its problems. The Committee believes that a minimum of seven years within the Commonwealth is presently necessary to obtain that understanding. Improved means of travel and communication may allow the reduction of the seven-year period in the future. The Committee therefore recommends that the legislature be authorized to modify the residency and domicile requirements imposed by this provision.

Section 3: Vice Governor. This section establishes the office of vice governor. The vice governor would be elected Commonwealth-wide and would be required to possess the same qualifications as those demanded of the governor. The vice

governor would be charged with performing tasks assigned by law or by the governor. The title of vice governor is selected tentatively because of the division of views within the Committee regarding the availability of the term lieutenant governor.

The Committee is persuaded that it is important to have an official available to become governor in the event of a vacancy in the office and to act as chief executive of the Commonwealth if the governor is absent or disabled. Requiring the vice governor to meet the standards of eligibility imposed on the governor and to be involved in the affairs of the Commonwealth to the extent permitted by the legislature or governor would prepare the vice governor for the chief executive's role. The Committee rejected a provision that would have assigned to the vice governor the duty of presiding over the senate. The Committee believes that such a role would compel the vice governor to perform conflicting duties in the executive and legislative branches of government.

The Committee also recommends that the governor be empowered to fill a vacancy in the office of vice governor with the advice and consent of the senate. This Committee believes that the succession of an official other than the vice governor to the governorship would disrupt the smooth operation of the affairs of the Commonwealth. Accordingly, the Committee's recommendation is designed to ensure insofar

as is practicable the presence of a vice governor in the Commonwealth administration.

Section 4: Election of the Governor and the Vice Governor. This section provides that nominees of a political party for governor and vice governor will seek office on the same ticket. The voters will choose these two officials jointly, with a vote for a gubernatorial candidate automatically being cast for the candidate's running mate. Procedures for electing the governor and vice governor will be governed by Article VIII of the Constitution, as will the date on which persons elected to these posts take office.

The joint selection of the governor and vice governor will avoid the situation where officials holding these positions are from different political parties. In the Committee's view, this shared political affiliation would afford a logical successor to the governor should he either leave office before the expiration of his term or require a temporary replacement because of absence or disability. In addition, the Committee believes that a shared platform and campaign may reflect a compatibility of political beliefs which would help the two officials to work together easily.

The Committee recommends a four-year term for the governor and vice governor. The Committee believes that a term of this length would enhance the governor's independence

in dealing with Commonwealth officials and political figures. Such a tenure would also enable the governor to fashion and execute a program for the Commonwealth, thereby benefiting the Northern Marianas people and providing them with a basis upon which to judge the administration's performance. The Committee is convinced that a four-year term would not isolate the governor from the views and needs of the people.

The constitutional language proposed by the Committee will prohibit any person from being elected to the governorship more than three times. The Committee is persuaded that this limitation is desirable to prevent the establishment of oppressive political machines and to permit new political leaders to develop. It rejects the notion that a third-term governor's "lame duck" status would substantially decrease his effectiveness.

Section 5: Compensation of the Governor and Vice Governor. Section 5 reflects the Committee's view that the governor and vice governor should receive salaries commensurate with their high offices and sufficient to free them from dependence on outside sources of income. This section provides that initially the governor will be compensated at the rate of twenty-five thousand dollars and the vice governor at the rate of twenty-two thousand dollars per year with such reasonable allowances for expenses as may be provided by law. Under article __ of the Constitution, the legislature must establish

an advisory commission on executive, legislative and judicial compensation. Upon the Commission's recommendation, the legislature may increase or decrease the governor's or vice governor's salary as long as it does not dip below the constitutional minimum. If the legislature alters the chief executive's or vice governor's salary, the changes will not be effective until the end of the incumbent's term.

The Committee believes that these provisions would foster the independence of the governor. The legislature would be precluded from reducing an unpopular chief executive's salary during his four-year term of office. Conversely, the legislature would be prevented from financially rewarding a compliant governor. Provisions regarding the compensation of the governor are crucial to the separation of governmental powers in the new Commonwealth.

Section 6: Prohibition on Government Employment. This section forbids the governor or vice governor from holding another government position or from accepting from any governmental body remuneration other than the compensation paid to them under section 5. Either the governor or the vice governor may, however, run for any public office during their terms of office. Finally, section 6 requires the legislature to enact a code of conduct for the governor, vice governor and department heads, to require disclosure of financial or other personal interests, and to prevent conflicts of interest in the performance of official duties.

The legislature would have the authority, for example, to require that the governor not engage in private business activities and that he place all of his private commercial holdings in a "blind" trust. Under the terms of such a trust, the governor would transfer legal title in his financial interests to a trustee. The trustee would have the power to manage and dispose of assets in the trust and to acquire new holdings on the governor's behalf. The trustee would be obligated to devote his best efforts to handling the governor's property. The governor, in turn, could receive income generated by the trust but would be barred from obtaining knowledge as to acquisitions and sales of trust assets until he leaves the governorship. The trust would terminate at the conclusion of the governor's term of office.

The Committee believes that it is important constitutionally to attempt to ensure the governor's financial integrity. But the Committee is aware that over the course of time changed circumstances may necessitate the development of new procedures for achieving that objective. Accordingly, the Committee's recommended language reserves broad flexibility for the legislature, rather than prescribing specific standards that the governor must meet or particular procedures by which the chief executive may be compelled to adhere to those standards.

Section 7: Succession to the Governorship. This section provides that if the governor is removed, dies or resigns the vice governor will take office as governor. Should the offices of governor and vice governor both be vacant, the president of the senate will serve as acting governor. An acting governor who assumes office less than one year prior to the expiration of the governor's term will complete that term. When a year or more remains in the governor's term, the acting governor will serve only until a governor is selected by special election as provided by law.

The Committee is convinced that a clear order of succession to the governorship is essential to the efficient operation of the Commonwealth government. Accordingly, the constitutional language recommended by the Committee specifies the first two officers in the line of succession. Any further designation of officers in the line of succession is left to the legislature, because the Committee desires to preserve the opportunity to place offices not created by the Constitution in the line of succession. The Committee also recognizes that the mechanism created by section 2 for filling a vacancy in the vice governorship renders unlikely the succession of the holder of any other office.

The Committee believes that only the vice governor should become governor when a vacancy in the office occurs.

The vice governor will be elected on the same ticket as the governor or be confirmed by the senate for his post. In either case, the vice governor will be selected for his capacity to succeed the governor and therefore could claim a mandate to occupy the governorship. A legislative leader, such as the president of the senate, would not command such legitimacy. As a result, if it is necessary to reach below the vice governor in the line of succession, the new chief executive would serve only as acting governor.

The Committee's awareness of the expense of a Commonwealth-wide special election prompted it to recommend that an acting governor finish a gubernatorial term with less than one year to run. The Committee believes it unwise for an acting governor to serve for longer than that amount of time. In the Committee's view, the Commonwealth needs the vigorous leadership of a public official who has sought the highest elected office in the Commonwealth. The people of the Northern Mariana Islands especially require that leadership over a significant period of time.

Section 8: Absence or Disability of the Governor. This section provides that the vice governor will serve as acting governor if the governor is physically absent from the Commonwealth or is mentally or physically disabled. If the vice governor is also absent or otherwise unable to act as governor, the president of the senate will assume the task.

(a) Absence of the Governor. The Committee concluded that the governor could not effectively perform his duties if he leaves the Commonwealth. The Northern Mariana Islands' physical distance from centers of population is compounded by the poor communications systems and transportation facilities serving the islands. Problems will demand solutions and decisions will require implementation during the governor's travels outside the Commonwealth. Accordingly, the Committee recommends that the Constitution provide that an acting governor will serve in the place of an absent chief executive.

The Committee decided against recommending that an acting governor assume office only if the governor is without the Commonwealth for a fixed period of time, such as five days. In the Committee's judgment, this approach would deprive the Northern Mariana Islands of executive leadership during such an interim period.

(b) Disability of the Governor. The Committee recommends that the inability of the governor to perform his duties be decided on a case-by-case basis. Accordingly, the constitutional language offered by the Committee permits the person who would serve as acting governor if the chief executive is declared disabled to petition the court with jurisdiction over appeals from the Commonwealth trial court for such a declaration. This court is given exclusive

jurisdiction to check the question of the governor's disability and all related matters. The court's determination would be based on a hearing at which time all interested persons, including the governor, would have a full opportunity to present their views. Included in this right to be heard would be the opportunity to call expert and lay witnesses, to offer documentary evidence, and to present oral and written arguments. If the court finds that the governor is disabled, he may at any time seek a finding that the disability has ceased to exist. The court's decisions with respect to the existence and continuation of a disability will be absolutely final.

The Committee is convinced of the need for a physically and mentally fit chief executive. At the same time, the Committee perceives the necessity of a prompt and factually objective means by which the presence of a disability may be ascertained. The procedures provided by subsection 8(b), in the Committee's view, meet this need.

The Committee believes it undesirable to involve political figures, such as members of the governor's cabinet or legislators, in this process. Reflecting this view, the proposed provision authorizes only one political official to assert the governor's disability and provides that a court composed of non-partisan judges would ascertain the validity of that assertion. The Committee

recognizes that the twenty-fifth amendment to the United States Constitution empowers the Congress to judge whether the President is disabled. The Committee is persuaded, however, that the political atmosphere prevalent in the Northern Mariana Islands would cause this approach to be undesirable.

Section 9: Executive and Administrative Functions. Divided into four parts, this section delineates some of the major administrative and executive responsibilities of the governor. First, the Committee's recommended language will charge the governor with faithfully executing the laws.

Second, the proposed section will require the governor to consult with the (mayors) (lieutenant governors) of Saipan, Rota, Tinian and the Northern Islands in preparing the budget which the governor is obligated to submit annually to the legislature. The governor must inform the legislature of the budgetary requests of each of the (mayors) (lieutenant governors) and of his disposition of those requests. The budget will not take effect until approved by the legislature, which will have the authority to modify what the governor recommends.

Third, the suggested section requires the governor to report at least annually to the legislature with respect to the affairs of the Commonwealth and to recommend measures he considers necessary or desirable. This provision obviously does not prevent the chief executive from communicating more

frequently with the legislature.

Fourth, the language proposed by the Committee grants the governor the power to issue reprieves, commutations and pardons, after consulting with the board of parole. The section directs the legislature to create that board. The Committee's recommended provision explicitly denies the governor any authority to provide relief from a judgment of conviction upon impeachment. This means that at no time, either before or after impeachment or conviction, may the governor intrude his clemency powers into the legislature's power to remove an official.

a) Responsibility for the Faithful Execution of the Laws. The Committee's proposed language would make the governor responsible for the faithful execution of the laws. The Committee believes that, as the chief executive of the Commonwealth, the governor would possess the resources to enforce its laws and to implement the policies set by the legislature.

b) Preparation of the Budget. The Committee believes that all of the islands that comprise the Commonwealth should be adequately and equitably provided for in the Commonwealth budget. The requirements that the governor consult with the (mayors) (lieutenant governors) of Saipan, Rota, Tinian, and the Northern Islands and that he reveal his responses to their budgetary requests are designed to accomplish this objective. The islands of Tinian and Rota will enjoy an additional protection: under the proposed

language, before becoming effective the budget must be approved by the legislature. The proposed language, moreover, requires the governor to submit a budget to the legislature each year.

The Committee also realizes that efficiency is essential to the budgetary process. Accordingly, the language recommended by the Committee would vest in the governor ultimate control over the budget submitted to the legislature. In addition to expenditures, the governor will be required to specify how those expenditures will be financed. The language also provides that if, at the start of a fiscal year, the budget has not yet received approval, appropriations for governmental operations and obligations will continue at the level set for the previous fiscal year.

c) Annual Address to the Legislature. The Committee decided that the governor should be constitutionally obligated to report to the legislature at least once a year. Although the Committee feels that the governor will desire to communicate with the legislature more frequently, the recommended language reflects the Committee's belief that such a decision should be the governor's. In the Committee's view, the legislature's power to investigate the activities of the executive branch and to vote -- or deny -- appropriations for its projects is sufficient to ensure the governor's responsiveness to legislative requests for information concerning the state of the Commonwealth.

d) Clemency Power. The Committee recommends that the governor obtain the authority to extend clemency. The scope of that authority is outlined above. The Committee feels that the governor's prudent exercise of this power, in conjunction with the board of parole, would permit mercy to be extended when appropriate and wrongful convictions to be erased when necessary. The recommended language would require the governor only to discuss possible grants of clemency with the board; he need not heed their advice. The constitutional provision offered by the Committee will preclude the governor from preventing or vacating the impeachment or removal of a Commonwealth official. In the Committee's opinion, the legislature should exercise an unfettered hand in removing unfit public officials.

Section 10: Emergency Powers of the Governor. This section authorizes the governor to declare a state of emergency if the Commonwealth is invaded, if a civil disturbance erupts, if a disaster strikes or if another calamity occurs. The recommended language empowers the governor to amass all available resources of the Commonwealth in reacting to an emergency. The Committee expects that under such circumstances the governor would promptly request assistance from the United States. The Committee believes that this provision would facilitate the Commonwealth's rapid and effective response to an emergency.

The Committee decided against providing for the creation of a Commonwealth militia in the proposed article on the executive branch. The Committee believes that the Northern Mariana Islands could ill afford to finance a military organization, especially in light of the United States' responsibility under article I, section 104 of the Covenant to defend the Commonwealth from attack. The recommended language would, nonetheless, permit the legislature to establish a militia in the future.

Section 11: Attorney General. This section creates the office of attorney general. The governor will appoint this official with the advice and consent of the senate. This Committee's proposed language confers three duties on the attorney general. First, that official will advise the governor and the heads of executive departments on legal matters. Second, he will represent the Commonwealth when it wishes to assert its claims in court or it is sued. Third, the attorney general will function as the chief law enforcement officer of the Northern Mariana Islands.

The Committee believes that authorizing the governor to appoint the attorney general will lead to the designation of more qualified persons. The Committee believes that eminent lawyers who would bring valuable talents to the attorney generalship might not seek the

office if they must engage in a political campaign to win election. In addition, the Committee anticipates that an appointed chief law officer of the Commonwealth would enjoy a greater degree of popular respect than would an elected official. The Committee's language will not prevent the governor from retaining counsel other than the attorney general should the legislature appropriate funds for that purpose.

Section 12: Public Auditor. Section 12 requires the governor to appoint a public auditor subject to confirmation by both houses of the legislature. An official independent of the control of the governor and of the legislature, the public auditor will audit the Commonwealth government's handling of funds. The public auditor's jurisdiction will extend to every branch and agency of the government. The public auditor must report annually to the governor and legislature. The report must be released promptly to the public. To secure the auditor's independence and to insulate his office from political pressures, the draft section provides that he will be removable only for cause and with the affirmative vote of two-thirds of the members of the legislature. If a vacancy occurs, the presiding officer of the senate will designate an acting public auditor who will occupy the office until a permanent replacement is chosen.

The Committee believes that the establishment of the office of public auditor is vital to the financial

integrity of the Commonwealth government. The Committee feels that the public auditor would scrutinize carefully the accounts of the government without interfering with its operations.

Section 13: Department of Education. This section reflects the Committee's view that the importance of education to the new Commonwealth requires that the Constitution guarantee the creation of a board of education and a department of education. The recommended language directs the board to appoint a superintendent of education, who will head the department. The board may remove the superintendent. The board will determine and implement policy through the superintendent.

The members of the board will be appointed by the governor with the consent of the senate; the membership of the board will represent the geographical and other communities of the Northern Mariana Islands. The legislature will determine the number of board members and the length of their term. The legislature will also decide such details as whether board members may be removed prior to the expiration of their term and, if so, the means of removal.

Section 14: Heads of Executive Departments. This section provides that each principal department shall be

under the supervision of the governor and, unless otherwise provided in the Constitution or by law, shall be headed by a single executive. It also provides that the governor may appoint the heads of the executive departments with the advice and consent of the senate and will possess the power to remove these officials. All other officials will be appointed and removed as provided by law. Finally, the proposed language requires officers of the executive branch to furnish information in writing or otherwise to the governor.

The first provision in this section is designed to prevent departments headed by more than one official, a practice that virtually ensures inefficient management. Regarding the governor's appointment power, the Committee believes that the chief executive must command the loyalty of his principal associates in the executive branch if he is to govern effectively. The Committee believes that its recommended section 14 would allow the governor this necessary control over his department heads while affording the senate the opportunity to scrutinize the qualifications of the governor's appointees before they assume office. In the Committee's judgment, the force of popular opinion will also serve as an incentive to the governor to select highly qualified persons to head the executive departments.

Section 15: Executive and Administrative Departments. This section is designed to facilitate and simplify

control of the Commonwealth government. It provides that no more than fifteen executive branch departments can be created, exempting regulatory, quasi-judicial and temporary agencies established by law. It is the legislature's responsibility to establish departments, define their functions, powers and duties and make changes as appropriate. This section also provides, however, that the governor can take the initiative in administrative reorganization. If any changes in the law are required, this section authorizes the governor to effect such changes by executive orders, provided that such orders are not modified or disapproved by a majority of the legislature within sixty days after their submission.

The Committee believes that a flexible provision of this kind will assist the governor to administer an effective government. There is certainly no magic in the number fifteen; the Model State Constitution uses the figure of twenty, and some state constitutions go lower. Such a limitation prompts the legislature to exercise greater care in the establishment of new agencies, compels a continuing review of the administrative structure, protects the legislature from undue pressures to create new departments, and helps ensure that the governor has a manageable "span of control" over departments. Giving the governor the authority to institute reorganization seems particularly useful, since it is the governor who carries the responsibility for executing Commonwealth policies and providing public services in the most orderly and cost effective manner.

Section 16: Civil Service Commission. This provision obligates the legislature to create a non-partisan and independent civil service commission. The recommended section requires the commission, in turn, to base standards governing initial selection for the civil service and promotion within the service upon merit and fitness. These qualities will be gauged by objective indicia whenever possible. The Committee is persuaded that a civil service system predicated on merit would improve the quality of the functions performed by the executive and judicial branches of government.

Section 17: Impeachment of Executive Officials. The Committee recommends that only elected officials within the executive branch be subject to removal upon impeachment as provided in article II of the Constitution. The Committee believes that impeachment is a necessary check on the power of these officials, but did not wish to risk the possibility of legislative intimidation of appointive officials. In order to limit further the risk of legislative intrusions into the executive branch, however, the grounds for impeachment are limited to treason, commission of a felony, corruption, and neglect of duty. The Committee feels that the governor's authority to remove department heads and the department's capacity to discharge those under its jurisdiction under civil service rules would be sufficient safeguards against official or personal abuses by appointed employees in the executive branch of government.

The Committee recommends the adoption of this recommended article on the executive branch.

Respectfully submitted,

Jose P. Mafnas, Chairman

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Attachment

Statement of the Committee on Governmental Institutions Regarding Local Government and Lieutenant Governors

The members of the Committee on Governmental Institutions have spent many days in considering various proposals relating to local government and the responsibility for delivery of public services on the individual islands under the new Commonwealth. These proposals have generally focused on the creation of certain offices on each island -- called either a mayor or lieutenant governor -- who are popularly elected by the people on that island and have certain powers regarding local matters and the delivery of public services. One such proposal (creating the office of mayor) was incorporated in the proposed article on local government and was adopted in principle by a slim majority of the Committee of the Whole on November 11, 1976. This Committee has been considering another such proposal, creating the office of lieutenant governor with greater power over public services than the powers possessed by the mayors to be established under the local government article. This proposal has not been incorporated in the recommended article on the executive branch and this brief statement is designed to summarize the positions of the Committee members on this issue.

Several members of the Committee strongly support the lieutenant governor proposal advanced by the delegates from Rota and Tinian. These supporters believe that an office should be created that possesses supervisory power over the delivery of public services on each island, including the power to appoint supervisory personnel and to expend appropriated funds. It is not important whether the official be called a mayor or a lieutenant governor so long as the office possesses the necessary powers. The delegates from Rota and Tinian emphasize that these full powers are necessary to ensure that the injustices of the past are not repeated on their islands under the new Commonwealth. Without an adequate provision in the Constitution (either in the local government article or executive branch article), the delegates from Rota and Tinian maintain that they would prefer to remain under the present system of government in the Northern Marianas.

The other members of the Committee have decided that further debate on this issue at this time is not useful. Many of these members oppose the lieutenant governor proposal as being impractical, expensive and unnecessary. Others simply want more time to consider the matter. These members of the Committee believe that the Special Committee appointed by President Guerrero should be given time to discuss the issue and look for an acceptable compromise. These

members of the Committee respect the deeply-held views of their fellow delegates from Rota and Tinian and recognize that no Constitution is possible without support from the Rota and Tinian delegations. These members of the Committee urge the Convention to consider the recommended article on the executive branch without any renewed discussion on the lieutenant governor (mayor) issue until such time as the Special Committee completes its work.

ARTICLE ___

THE EXECUTIVE BRANCH
OF GOVERNMENT

Section 1: Executive Power. The executive power of the Commonwealth shall be vested in a governor and the other officials specified in this article.

Section 2: Qualifications of the Governor. The governor shall be a qualified voter of the Commonwealth, at least thirty years of age, a citizen or national of the United States and a resident and domiciliary in the Commonwealth for at least seven years immediately preceding his election. A different period of required residence or domicile may be provided by law.

Section 3: Vice Governor. A vice governor with the qualifications prescribed in section 2 shall perform those duties assigned by the governor or provided by law. Whenever the office of vice governor is vacant, the governor shall appoint a successor with the advice and consent of the senate.

Section 4: Election of the Governor and the Vice Governor. The governor and vice governor shall be elected at large within the Commonwealth at a regular general election and shall take office as provided by article VIII. The governor and vice governor shall be elected jointly for a

term of four years with each voter casting a single vote applicable to both offices. No person shall be elected governor more than three times.

Section 5: Compensation of the Governor and Vice Governor. The governor shall receive an annual salary of twenty-five thousand dollars and the vice governor an annual salary of twenty-two thousand dollars. Both shall receive such reasonable allowances for expenses as may be provided by law. Upon the recommendation of the advisory commission on executive, legislative and judicial compensation created by article __ of this Constitution, the legislature may increase or decrease the governor's or vice governor's salary provided, however, that neither salary shall be increased or diminished during the period for which the governor or vice governor shall have been elected.

Section 6: Prohibition on Government Employment. The governor or vice governor may not serve in any other government position or receive any compensation for performance of his official duties or from any governmental body except that provided by section 5. The governor and vice governor may each seek any public office during their term. The legislature shall enact a code of conduct for the governor, vice governor and heads of executive departments to require disclosure of financial or other personal interests and to prevent conflicts of interest in the performance of official duties.

Section 7: Succession to the Governorship. In case of the removal, death or resignation of the governor, the vice governor shall become governor. If the offices of governor and vice governor are both vacant, the president of the senate shall become acting governor. An acting governor who assumes office when more than one year remains in the term shall serve only until a governor is chosen in a special election as provided by law.

Section 8: Absence or Disability of the Governor.

(a) When the governor is physically absent from the Commonwealth, the vice governor shall be acting governor. If the vice governor is also absent or is otherwise unavailable, the president of the senate shall be acting governor.

(b) When the governor is unable to discharge the duties of his office by reason of impeachment or other disability, including but not limited to physical or mental disability, the vice governor shall be acting governor. If the vice governor is unavailable to serve, the order of succession to the office of acting governor shall be the same as if the governor were physically absent from the Commonwealth. If the person next in succession to the governor has reason to believe that the governor is unable to discharge the duties of his office, that person shall inform the Commonwealth appeals court or the United States District Court if no Commonwealth appeals court has been created under section _ of article __. The court shall have original, exclusive and final jursidiction

to determine all questions regarding disability of the governor, the existence of a vacancy in the office of governor, and succession to the office or its powers and duties.

Section 9: Executive and Administrative Functions.

(a) The governor shall be responsible for the faithful execution of the laws.

(b) The governor shall prepare and submit to the legislature a proposed annual budget for the following year. The budget shall describe all anticipated revenues of the Commonwealth and shall include recommended legislation with respect to taxation if necessary. The budget shall also recommend expenditures of Commonwealth funds. In preparing the budget, the governor shall consider submissions made by the (mayors)(lieutenant governors) of Saipan, Rota, Tinian and the Northern Islands as to the budgetary needs of those islands. The governor's submission to the legislature shall state the governor's disposition of the budgetary requests of each (mayor) (lieutenant governor). After approval by the legislature, the governor may not reprogram appropriated funds except as provided by law. If the budget is not approved before the start of that fiscal year, all appropriations for government operations and obligations shall be continued at the level for the previous year.

(c) The governor shall report at least annually to the legislature regarding the affairs of the Commonwealth and recommending measures he considers necessary or desirable.

(d) The governor shall have the power to grant reprieves, commutations and pardons after conviction for all offenses after consultation with a board of parole to be created by law, provided, however, that this power shall not apply to impeachments or to removals following impeachments.

Section 10: Emergency Powers of the Governor. The governor shall have the power to declare a state of emergency in the case of invasion, civil disturbance, natural disaster or other calamity and may mobilize all available resources to respond to that emergency.

Section 11: Attorney General. The governor shall appoint an attorney general with the advice and consent of the senate. The attorney general shall serve as legal adviser to the governor and executive departments, shall be responsible for representation of the Commonwealth government in all legal matters, and shall serve as chief law enforcement officer with responsibility for prosecuting violations of Commonwealth law.

Section 12: Public Auditor. The governor shall appoint a public auditor with the advice and consent of the legislature. The public auditor shall audit the receipt, possession and disbursement of all public funds by any branch, agency or department of the Commonwealth and shall perform other duties as provided by law. The public auditor shall report his findings to the legislature and the governor at

least once every year and such report shall promptly be made public. The public auditor may be removed only for cause and with the concurrence of two-thirds of the members of the legislature. In the event that there is a vacancy in the office of public auditor, the presiding officer of the senate shall appoint a temporary public auditor who shall serve until the governor appoints a successor with the advice and consent of the legislature.

Section 13: Department of Education. The legislature shall establish a department of education headed by a superintendent of education appointed by a representative board of education. The members of the board of education shall be appointed by the governor with the advice and consent of the senate and shall formulate policy and exercise control over the public school system through the superintendent. The composition of the board of education and other matters pertaining to its operations and duties shall be provided by law.

Section 14: Heads of Executive Departments. Each principal department shall be under the supervision of the governor and, unless otherwise provided in this Constitution or by law, shall be headed by a single executive. The governor may appoint the heads of executive departments with the advice and consent of the senate. The governor may remove the heads of executive departments. All other officers employed by the Commonwealth shall be appointed and may be

removed as provided by law. The governor may at any time require information in writing or otherwise from the officers of any administrative department, office or agency of the Commonwealth.

Section 15: Executive and Administrative Departments. All executive and administrative offices, agencies and instrumentalities of the Commonwealth government, and their respective functions, powers and duties shall be allocated by law among and within not more than fifteen principal departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial and temporary agencies need not be allocated within a principal department. The legislature shall by law prescribe the functions, powers and duties of the principal departments and of all other agencies of the Commonwealth and may from time to time reallocate offices, agencies and instrumentalities among the principal departments, and may change their functions, powers and duties. The governor may make such changes in the allocation of offices, agencies and instrumentalities and in the allocation of their functions, powers and duties as he considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

Section 16: Civil Service Commission. The legislature shall provide for a non-partisan and independent civil service commission to establish and administer the personnel policies applicable to executive and administrative departments and to the staff of the judicial branch of government. Appointments and promotions within the civil service shall be based on merit and fitness demonstrated by examination or by other evidence of competence.

Section 17: Impeachment of Executive Officials. The governor, vice governor and other elected officials of the Commonwealth government shall be subject to impeachment as provided in article __ of this Constitution. Such officers may be impeached and removed only for treason, commission of a felony, corruption or neglect of duty.

November 11, 1976
DRAFT

MINORITY REPORT OF THE COMMITTEE ON
GOVERNMENTAL INSTITUTIONS RELATING
TO COMMITTEE RECOMMENDATION NUMBER 4
ON THE EXECUTIVE BRANCH OF GOVERNMENT

The undersigned members of the Committee on Governmental Institutions oppose section __ of the proposed constitutional article relating to the executive branch of the Commonwealth government. This section creates three lieutenant governors -- one for Rota, one for Tinian, and one for Saipan and the islands north of it. As set forth in this report, we believe that this proposal is impractical, excessively expensive, and unlikely to be approved by the United States. Moreover, we believe that such a provision is not necessary to protect the interests of the citizens of any particular island in the Commonwealth.

1. The Proposal is Impractical. Although we appreciate the objectives of our colleagues, we believe that the proposed creation of three lieutenant ~~governships~~ governorships whose incumbents are popularly elected and not removable by the governor cannot work. Some of our reasons are as follows:

First, it denies the Commonwealth governor any real power over the execution of Commonwealth laws and delivery of services. The operating responsibility on each island would rest with a lieutenant governor who owes no loyalty to the governor and cannot be removed by the governor. Furthermore, the governor's department heads are limited in their

duties to the setting of general policies and the provision of so-called "technical" services. What this serves to mean is that control over money and personnel on each island will be delegated to the respective lieutenant governor. Without such control, the governor cannot meaningfully implement the laws enacted by the legislature or be held responsible for either the success or failure of the executive departments. The governor will be a symbolic figure only, and his department heads will have little to do to justify their high salaries. Creation of such an ineffective governorship is contrary to modern United States experience; there is no state or territory in the United States whose governor would have as little power or responsibility as proposed by the majority of our Committee.

Second, it is a system which encourages political controversy and partisanship. In order to ensure that the lieutenant governor is elected by the voters on each island, the candidates will have to run separately from the governor. As a result, it is almost certain that one or more lieutenant governors will be of a different political party than the governor. A governor and lieutenant governor who are members of opposing political parties will have different programs, different allies, and different approaches to governing. There will be absolutely no political or legal constraint on lieutenant governors who wish to oppose the governor's programs or appointees; in fact, such opposition may be viewed

as a way to gain publicity and to enhance one's future candidacy for the governorship, assuming anyone wants a position with such limited power. As long as a lieutenant governor has the support of the voters on his island (and presumably his legislative delegation), he can proceed to enforce the law and deliver services as he wishes without any risk of interference by the governor or anyone else. Such a system cannot long survive.

Third, the proposed system assumes a division of responsibility between the separate island departments and the Commonwealth-wide department. This division is impractical in a small community of 15,000 people. Every island needs specialized services of a kind which must be provided on a Commonwealth-wide basis: remedial reading specialists in the schools, plant pathologists in agriculture, narcotics specialists in law enforcement, surgeons in health care, and so forth. To maintain that the Commonwealth departments will prov e "technical" assistance avoids the important question as to who has the responsibility and the funds to hire these specialists and to allocate their services efficiently among all the islands. We believe it will be difficult enough for the Commonwealth as a whole to recruit and employ those with needed expertise; we are afraid that it will be nearly impossible if each of the three islands is competing for the services of experts irrespective of

whether the workload justifies a staff of specialists for each island. The majority's proposal inevitably creates confusion as to what responsibilities are "technical" in nature and what controls, if any, the Commonwealth departments have over personnel on any of the three islands.

Fourth, the proposal will guaranty that public services will not be provided on a uniform and equitable basis throughout the new Commonwealth. Uniformity can be achieved only through rigorous techniques of management -- the most important of which is accountability. The lieutenant governors are accountable to no one (except the voters every four years), and their appointments are subject to no check whatsoever, either by legislative confirmation or civil service requirements. Once appointed, their subordinates have only to please the lieutenant governor who appointed them; they are free to disregard any policies or standards announced by the Commonwealth department because no one in that department (or even the governor) is free to remove them. Under such a system, there can be no uniform system of public services, and there is a serious risk of corruption and open defiance of the law.

Fifth, the proposal threatens the integrity and effectiveness of any ~~civil~~ civil service system that is established in the new Commonwealth. The proposal would necessarily exclude from the civil service all ~~portions~~ positions to be filled ~~by~~ through

appointment by the lieutenant governors. Under a civil service system, many of these positions would be filled by career people who possess the proper technical qualifications and who could not be removed except for cause and therefore would not have to worry about the results of the next election. Furthermore, a career service can be successful only if some supervisory positions can be filled by people who rise through the ranks. By giving the lieutenant governors the authority to appoint the heads of all departments on their islands and opening up the possibility that ~~there~~ (these) heads will wish to appoint their own deputies, it seems clear that career people can attain ~~there~~ (supervisory) positions only through political appointment and not by promotion. The natural result of such a system is to encourage government employees to curry favor with the incumbents or a prospective lieutenant governor in order to be considered for a higher position. An effective civil service system based on merit cannot survive under these circumstances.

2. The Proposal Is Burdensome and Costly. Apart from the organizational and management concerns summarized above, we believe that the proposed system of three lieutenant governors will be costly beyond the resources available to the Commonwealth.

Some of our reasons for this fear are as follows:

First, the proposal creates multiple levels of supervisors, some of whom clearly will not have enough responsibility to justify a supervisor's salary. For example, let us assume there is a single school principal on Tinian. Under this proposal, the lieutenant governor on Tinian would appoint the heads of the education department on Tinian. The lieutenant governor would have two choices: (1) he could appoint the principal ~~to be~~ the department head ~~as well~~ as principal; or (2) he could appoint someone else as head of the department. The first alternative endangers whatever civil service protection the principal might have and the second entails the creation of a new supervisory position whose duties would consist of supervising one principal. It should be obvious that funds should not be paid any supervisor unless he has a full time job of supervising to do. This basic principle of management is not likely to be followed by the elected lieutenant governors, who are going to want to use their limited authority to create and fill numerous (probably between 10 and 20) supervisory positions on Saipan, Rota and Tinian.

Second, the proposal overlooks the limited population of the Commonwealth. Communities the size of Rota and Tinian (or even as large as Saipan), cannot afford to offer a full range of public services -- from police protection to health care. They do not have ~~the financial~~ resources and they do ~~not~~ have the personnel resources. Giving the power to lieutenant governors will prevent the Commonwealth from

achieving the available ~~economies~~ economies of scale -- in management and in procurement, as well as in recruitment, training and utilization of personnel. We believe that the Commonwealth must take advantage of ~~their economic~~ their economies of scale and that, therefore, services should be provided by Commonwealth departments whose personnel are responsible to a single head of department who, in turn, is responsible to the governor.

Third, the ultimate consequence of the lieutenant governor proposal ~~is~~ will be to reduce the amount of public services available to the people. Only ~~fiscal~~ a fixed amount of money will be available for government operations from the United States and from Commonwealth revenues. We estimate that the lieutenant governor proposal will cost the Commonwealth in excess of one million dollars -- $500,000 in salaries for the three lieutenant governors and some 40-50 supervisory positions unnecessary in whole or in part ~~are~~ and $500,000 in lost ~~economies~~ economies. This will mean one million dollars less in the value of actual services provided to the people -- fewer teachers, policemen, agricultural specialists, doctors and others who actually serve the people. We cannot support a proposal that is so costly.

3. The Proposal Will Endanger the Approval of the Constitution by the United States. We oppose the proposal also because we believe it will endanger the approval of the Constitution by the United States. Our reasons are as follows:

First, the United States will almost certainly conclude that the proposal is not practical for the reasons discussed above.

Second, the United States will be concerned about the costs attached to the proposal, especially if it is coupled with other provisions in the Constitution which seem to allocate a disproportionate amount of money to government operations in the new Commonwealth.

Third, the United States will consider this an unprecedented form of governmental organization which is contrary to established theory and practice in the United States. They will be quick to point out the limited population in Rota and Tinian and the lack of realism involved in believing that such small communities should be responsible for providing a full range of public services.

Fourth, some authorities in the United States will consider any Constitution with one vice governor and three lieutenant governors as top heavy and perhaps foolish. The proposal will give comfort to those who opposed the Covenant and want to see the new Commonwealth fail.

Fifth, there will be some who believe that this proposal is inconsistent with the Covenant's concept of a single, unified Commonwealth headed by a governor vested with executive power. The separatist concerns that underlie the lieutenant governor proposal will raise questions as to the viability of the new Commonwealth and the readiness of the people of Rota, Saipan and Tinian to live and work together.

4. The Proposal is Not Necessary. We believe that the concerns of Rota and Tinian are adequately met by other tentative provisions of the Constitution and by the proposal on local government advanced by the Committee on Finance, Local Government and Other Matters.

First, we believe the proponents of the lieutenant governor proposal are looking too much to the past and do not fully appreciate the ample protections afforded them under the new Constitution. For the first time in the history of the Northern Marianas Islands there would be a popularly elected governor who will represent all the people. His principal appointments must be confirmed by a senate in which Rota and Tinian each has a voice equal to that of Saipan. The organization of executive departments, including their special arrangements for providing services to Tinian and Rota, is also subject to approval by the senate. The annual budget, which details the personnel and funds allocated to each island, will also require legislative approval and will provide a timely and appropriate means for Rota and Tinian to make certain that their needs are being met.

Second, we believe that the proposal of the Committee on Finance, Local Government and Other Matters is an excellent response to the concerns of Rota and Tinian. The newly created position of mayor appears to be a flexible and practical way to make certain that the interests of each island have a spokesman who can communicate directly with the governor. The mayor

proposal avoids the defects of the lieutenant governor proposal, because it does not make the mayor responsible for the execution of Commonwealth law and the delivery of Commonwealth services in his island. At the same time, it does give the mayor meaningful oversight responsibilities -- to make certain that the laws are being fairly implemented, that appropriate funds are being properly spent, and that the services being provided to the people are of sufficient quality and quantity.

For the foregoing reasons, we oppose Section 1 of the Committee report.

Respectfully submitted,

# COMMITTEE ON PERSONAL RIGHTS AND NATURAL RESOURCES

October 22, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
OF THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: COMMITTEE RECOMMENDATION Number 1:
Eligibility to Vote

The Committee recommends that the Committee of the Whole adopt in principle the constitutional provision attached hereto with respect to eligibility to vote.

The Committee considered the matter of eligibility to vote and election procedures and decided that the provisions with respect to eligibility to vote should be a separate Constitutional article and should be transmitted separately for the consideration of the Convention.

The Committee's proposed article contains three sections.

The first section sets out the six basic qualifications for voting.

- attainment of 18 years of age
- domicile in the Northern Mariana Islands
- residence in the Northern Mariana Islands
- no current serving of a sentence for any crime other than a misdemeanor having a maximum sentence of six months or less
- no adjudication of unsound mind by a court of law
- either U.S. citizenship or U.S. national status

The second section prohibits the use of any literacy requirement as a qualification to vote. The third section requires the legislature to set out the criteria for determining domicile and residence in the Northern Mariana Islands and to specify the length of the residence requirement.

The Committee's reasons for recommending each of these requirements are set out below:

Section 1: Qualifications of Voters

Subsection (a): Age. The Committee recommends that the minimum age requirement of the Twenty-Sixth Amendment of the United States Constitution be adopted for use in the Commonwealth. That minimum age requirement is 18 years. The Committee believes that requiring voters to be at least 18 years of age will promote responsible, intelligent and mature voting.

The Committee considered lowering the age requirement to 17 years as would be permitted under the United States Constitution. This would recognize the fact that currently over half of the people in the Northern Mariana Islands are under the age of 18. It would also recognize the fact that persons aged 17 may volunteer to serve in the Armed Forces. The Committee decided against such a lower minimum age requirement because the greater maturity generally available at age 18 would be important with respect to voting, the experience of all of the states indicates that a minimum age requirement of 18 years is practical, and lowering the

age requirement to accommodate the present portion of the population that is below the age of 18 looks too much to the present instead of to the future when those under the age of 18 will be old enough to vote.

Subsection (b): Domicile. The Committee's proposed constitutional provision requires domicile in the Northern Mariana Islands in order to qualify to vote. The provision directs the legislature to define the criteria for determining domicile for voting purposes. The Committee believes that a domicile requirement ensures that only those who intend to make their permanent home in the Northern Mariana Islands will be eligible to vote. This prevents persons who may live in the Northern Mariana Islands for some period of time, but who maintain a permanent residence elsewhere, from voting in the Northern Mariana Islands. The Commonwealth will have a small population whose interests could be adversely affected if persons who come to the Northern Mariana Islands without any intention to stay permanently are permitted to vote.

Subsection (c): Residence. The Committee's proposed constitutional provision also requires residence for a specified period of time in the Northern Mariana Islands in order to qualify to vote. This requirement operates together with the domicile requirement to ensure that persons who have an intention to remain permanently in the Northern Mariana Islands demonstrate that intention by actually

residing in the Commonwealth for a specified period of time.

The Committee decided not to include a length of residence requirement in the Constitution because of the risk of conflict with recent U.S. Supreme Court decisions. Those decisions have allowed 30-day residence requirements (and 50-day residence requirements in two special circumstances), but have prohibited longer durational residency requirements. Instructing the legislature to determine the length of residence required for voting fulfills the need for such a requirement without jeopardizing the Constitution's chance of acceptance by the U.S. Congress. It allows the legislature the flexibility to establish a length of residence requirement in accordance with U.S. Supreme Court decisions.

The Committee decided that the best way to keep outsiders from voting in the Northern Mariana Islands was not a long and possibly unconstitutional residency requirement, but a requirement that all voters be bona fide residents of the Northern Mariana Islands. Therefore, the proposed constitutional provision requires the legislature to determine residence and domicile in the Northern Mariana Islands for voting purposes. A possible list of such criteria is attached to this report.

Subsection (d): Criminal sentence. The Committee decided that persons should be ineligible to vote who are, at the time of the election, serving a sentence after conviction of any crime other than a misdemeanor having a maximum sentence of six months or less. The Committee intends that persons on parole or probation or under a suspended sentence would also be disqualified. The Committee believes that persons who have been convicted of such crimes have demonstrated that they are not responsible enough to vote. However, the Committee believes that the disqualification should not extend any longer than the sentence by which such a person pays his debt to society. Therefore, under the Committee's proposal, the disqualification would end when the sentence was served or a pardon was granted.

The Committee considered limiting the voting disqualification to conviction of a felony. This approach was rejected because many misdemeanors involve very serious violations. The Committee's attention was drawn to an instance in which a man threw a child against a wall and otherwise abused it but was charged only with assault and battery, which is a misdemeanor. The Committee also considered leaving to the legislature the task of defining the crimes for which conviction would carry with it a disqualification from voting. The Committee believed that it was unlikely that this was a situation where circumstances might change over time so as to make flexibility desirable, therefore the Committee rejected this approach.

Subsection (e): Unsound Mind. The Committee decided to disqualify from voting those persons who had been found by a court of law to be of unsound mind. The Committee believes that such persons do not have the capacity to vote responsibly.

The Committee recognizes that there are persons of unsound mind other than those who have been found to be of unsound mind by a court. The Committee decided to limit the disqualification to those persons as to whom a court had acted because the disqualification from voting is a serious matter and should be determined fairly. If the matter of unsound mind is determined by a court, then evidence must be presented, usually by a doctor or psychiatrist, and the protections of due process are available.

Subsection (f); U.S. Citizenship and U.S. National Status. The Committee considered three groups of persons with respect to a possible citizenship requirement for voting: aliens, U.S. citizens, and U.S. nationals.

The Committee decided that aliens should not be permitted to vote in the Northern Mariana Islands. The Committee believes that aliens do not have the requisite stake in the affairs of the Northern Mariana Islands to permit them to vote. By definition, aliens owe allegiance to some other country. The Committee believes that allegiance to the Commonwealth should be required before any person is permitted to vote.

The Committee gave lengthy consideration to the question whether residents of the Northern Mariana Islands who elect to be U.S. nationals rather than U.S. citizens should be permitted to vote. The Committee was concerned primarily with the large group of U.S. nationals that exists elsewhere in the Trust Territory. The Committee considered whether a requirement of U.S. citizenship (that would disqualify U.S. nationals) would be in the best interests of the Commonwealth. On the one hand, this restriction would disqualify some residents of the Northern Mariana Islands. On the other hand, this restriction would help prevent large numbers of U.S. nationals from other places from coming to the Northern Mariana Islands and qualifying to vote, thus diluting the control that the current residents have. The Committee decided that this is a matter where circumstances might change in the future and therefore some flexibility should be given to the legislature. The proposed Constitutional provision permits U.S. nationals to vote at the present time but permits the legislature, by law, to disqualify U.S. nationals at some time in the future should circumstances require that protection.

Section 2: No literacy requirement. The Committee decided that no person should be deprived of the right to vote because he or she is unable to read or write. The Committee believes that many people in the Northern Mariana

Islands who cannot read or write are able to vote intelligently. Because the right to vote is a fundamental right, the Constitution should protect that right whenever possible. The Committee noted the example of Puerto Rico where a constitutional prohibition on literacy tests was adopted at a referendum in 1970. The Committee also took into account the strong opposition of the U.S. Congress to literacy tests.

The Committee considered leaving the matter of literacy tests to legislative discretion because of the difficulty of predicting whether the Northern Mariana Islands will need a literacy requirement in the future. The Committee decided, however, for the reasons stated above, that this was an area where the legislature should not have flexibility.

Section 3: Domicile and Residence. The Committee's recommended provision includes requirements for domicile and residence, as explained above, but does not define either of these terms. The Committee believes it is appropriate to leave these definitions to the legislature because the criteria for determining domicile or residence may change over time. The legislature would also be able to adjust these definitions as the court decisions expand or contract the permissible area of restrictions.

The Committee has also left the task of specifying the length of the residence requirement to the legislature.

The United States Supreme Court has placed restrictions on the use of a length of residence requirement for voting. It has, in its decisions, indicated that a 30-day requirement is permissible and that a 50-day requirement may be permissible under certain circumstances. The Court is likely to find any requirement beyond 50 days to be unconstitutional. The Committee believes that a 60-day or 90-day residence requirement would be desirable but also believes that this is more appropriately done by statute. If the length-of-residence requirement is in a statute, only the statute could be challenged as unconstitutional. Moreover, if the Supreme Court indicates in the future that a longer residence requirement is permissible under circumstances applicable to the Northern Mariana Islands, the legislature could move promptly to amend the statute and take advantage of the opportunity to impose a more stringent requirement.

Respectfully submitted for
the Committee

Felipe Q. Atalig, Chairman

Francisco T. Palacios,
Vice Chairman

Leon Talsacan

Pedro M. Atalig

Luis Limes

Felix A. Ayuyú

Juan S. Demapan

Manuel A. Tenorio

Ramon G. Villagomez

Jose S. Borja

Daniel P. Castro

Henry U. Hofschneider

Hilario F. Diaz

Attachment to Report

## Possible Criteria for Determining Domicile and Residence for Voting Purposes

In order to be domiciled in the Northern Mariana Islands for voting purposes, a person must maintain a residence in the Northern Mariana Islands with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever absent, even for an extended period. A person can have only one domicile. A domicile cannot be lost until a new one has been acquired.

The intention to continue a residence in the Northern Mariana Islands shall be presumed not to exist if any of the following criteria are met:

a) maintenance of a permanent residence or place of abode outside of the Northern Mariana Islands;

b) maintenance of a current registration or qualification to vote in a place other than the Northern Mariana Islands;

c) presence in the Northern Mariana Islands solely as the result of employment;

d) presence in the Northern Mariana Islands solely as the result of employment of a spouse, relative or other person upon whom the prospective voter is economically dependent;

e) support of a spouse or family in a place other than the Northern Mariana Islands;

f) payment of taxes imposed by reason of residence in a place other than the Northern Mariana Islands;

g) maintenance of a motor vehicle registration, driver's license or boat license in a place other than the Northern Mariana Islands.

ARTICLE __

Eligibility to Vote

Section 1: Qualifications of Voters. Any person is eligible to vote who, at the date of the election, meets each of the following requirements:

a) is 18 years of age or older

b) is domiciled in the Commonwealth

c) is a resident of the Commonwealth and has resided in the Commonwealth for a period specified by law

d) is not serving a sentence for any crime other than a misdemeanor having a maximum sentence of six months or less

e) is not of unsound mind as adjudicated by a court of law

f) is either a United States citizen or a United States national, provided however, that the legislature may, by law, provide that United States nationals are not eligible to vote

Section 2: No Literacy Requirement. No person may be denied the right to vote because such person is unable to read or write.

Section 3: Domicile and Residence. The legislature shall implement the domicile and residence requirement of Section 1 by defining the criteria by which domicile and residence shall be determined for voting purposes and specifying the length of residence within the Commonwealth that shall be required.

October 22, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
OF THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: COMMITTEE RECOMMENDATION NO. 2:
Elections and Election Procedures

The Committee on Personal Rights and Natural Resources recommends that the Committee of the Whole adopt in principle the attached Constitutional provision with respect to elections and election procedures.

The Committee recommends that a separate article of the Constitution be devoted to elections and election procedures and that this article have four sections that cover general elections, other elections, election procedures and taking office after elections.

The reasons for the Committee's recommendations are set out below.

Section 1: General Elections. The Committee recommends that there be one regular general election throughout the Commonwealth and that this election be held on the first Sunday in November. The Committee further recommends that all Commonwealth officers be elected at this general election. This would include all the elected officials from the executive branch, the legislative branch, the Washington Representative, and any other officials whose election is provided for in the Constitution.

The Committee has three reasons for this recommendation. First, consolidating the election of all

Commonwealth officers into one general election is less costly than conducting several separate elections. Second, voter interest and attention would be concentrated on the important Commonwealth election contests. Third, not all Commonwealth officers would be standing for election every year and the number of offices to be filled at the general election in any given year, therefore, will not be so great as to cause voter confusion.

Section 2: Other Elections. The Committee recommends that the legislature be given the responsibility of providing for other elections. This would include local government elections and special elections not provided for by the Constitution. This provision is intended to permit the legislature to make a judgment whether it would be useful to consolidate local elections with the regular general elections or to hold them separately at different times. This provision would also permit the legislature to delegate the responsibility for providing for local elections to the local government units themselves.

Section 3: Election procedures. This provision delegates to the legislature the responsibility of providing for the details of election procedures. The Committee makes this recommendation because it believes these matters are more appropriately governed by statute. Election procedures often need to be modified and these modifications should not require a constitutional amendment.

Under this provision the legislature may provide for such things as the resolution of contested elections, voting protections (protecting voters from arrest, service of process or jury duty during the time they are voting), absentee voting, secrecy in voting, language aid to voters who do not speak English, Chamorro or Carolinian, definitions of and penalties for election fraud, election holidays, method of voting (ballot, punch card, or voting machine), party voting, ballot format, methods of counting votes, methods of supervising voting places, selection of election officials, voter registration, primary elections and other nominating procedures.

These matters are currently within the jurisdiction of the legislature and the Committee believes that this system should be continued.

Section 4: Taking Office After Elections

The Committee recommends that there be a uniform provision with respect to taking office after election. The Committee's proposed constitutional provision requires that all Commonwealth officers elected at the regular general election in November take office on the second Monday of January of the following year. This would also apply to any local government or other officials elected at the general election if that were specified by the legislature.

The Committee believes that it is important to have an orderly succession to office. This provision leaves approximately two months, between the first Sunday in November and the second Monday in January, for the transition from one office holder to another to be completed. The Committee believes that this is sufficient time to provide for orderly transition while not leaving hold-over officers in office too long after they have been defeated at the polls. The Committee considered designating the first day of January but decided that the date on which officers would take office should not fall on a holiday.

Respectfully submitted,

Felipe Q. Atalig, Chairman

Francisco Palacios, Vice Chairman

Leon Taisacan

Pedro M. Atalig

Luis Limes

Felix A. Ayuyu

Juan S. Demapan

Manuel A. Tenorio

Ramon G. Villagomez

Jose S. Borja

Daniel P. Castro

Henry U. Hofschneider

Hilario F. Diaz

ARTICLE ___

Elections

Section 1: General Election. The election of officers of the Commonwealth provided for by Article ___ (Executive Branch), Article ___(Legislative Branch), and Article ___ (Washington Representative) of this Constitution shall be held on the first Sunday in November. This election shall be the regular general election of the Commonwealth.

Section 2: Other Elections. Other elections shall be held as provided by law.

Section 3: Election Procedures. The legislature shall by law provide for the registration of voters, the nomination of candidates, absentee voting, secrecy in voting, the administration of elections, the resolution of election contests, and all other matters with respect to election procedures.

Section 4: Taking Office After Elections. All officers elected at the regular general election shall take office on the second Monday of January of the year following the year in which the election was held.

Subsection (a): The provision recommended by the Committee is a simple one. It requires only that the initiative petition state the full text of the law to be enacted and that it be signed by at least twenty percent of the qualified voters in the Commonwealth.

The Committee recommends that the full text of the proposed law be stated in the petition so that those who sign the petition will know precisely what they are supporting.

The Committee recommends that a petition be required to be signed by twenty percent of the qualified voters in the Commonwealth for two reasons: (1) Initiative petitions should be put on the ballot only if they have a reasonable chance of passing. If at least twenty percent of the qualified voters sign the petition, that is an indication that the proposed law has a reasonable chance of passing when it is put to the voters. (2) There is a relatively small number of qualified voters in the Northern Mariana Islands at the present time and these voters are concentrated in relatively small geographic areas. Therefore, it is not unreasonable or unduly burdensome to require those who would propose legislation by this method to get the support of at least twenty percent of the voters before the matter is put on the ballot.

The Committee specified a percentage of the qualified voters rather than a specific number of qualified voters (such as 500 or 1,000) so that the Constitution can be flexible and apply with the same force as the population grows. If the Committee had required that petitions be signed by 1,000 qualified voters, that would be about 17% of the qualified voters at present, but as the number of qualified voters increased (through increases in the population) that requirement of 1,000 signatures would represent a decreasing, and therefore less stringent, percentage of the total number of qualified voters.

The Committee specified a base of the total number of qualified voters rather than the total number of votes cast in some previous election or the total number of persons of voting age in order to apply the same requirement to all initiative petitions and to relate the requirement to those who actually could vote. If the number of votes cast in a previous election were used as a base, and that election happened to have a very small voter turnout, then it would be relatively easy to get the required number of signatures on the petition. Then in the following year, if there was a hotly contested election and the voter turnout was very large, getting the required number of signatures on the petition would be much more difficult. If the requirement were based on the number of persons of voting age it might

be unrealistic. Not everyone of voting age will be eligible to vote. If the Legislature requires registration, for example, a person who is not registered cannot vote, even though he is of voting age. Requiring signatures from twenty percent of the persons of voting age might be the same as requiring twenty-five or thirty percent of the persons actually qualified to vote. The committee believes that such a requirement would be too stringent.

The Committee considered a requirement that an initiative petition be signed by twenty percent of the qualified voters in each chartered municipality rather than twenty percent of the qualified voters in the Commonwealth. This would ensure that no legislation could be proposed by means of the initiative without significant voter support in Rota and Tinian. The Committee rejected this approach because the twenty percent requirement is only applicable to putting an initiative proposal on the ballot. After being put on the ballot, the proposal must be approved by a majority of the votes cast. The Committee believes that the requirement for the signatures of twenty percent of the Commonwealth voters is sufficient protection against abuse of the initiative.

Subsection (b): This section provides a mechanism for verifying that the signatures on the petition actually are of persons who are qualified to vote and that the number of signatures is at least twenty percent of

those qualified to vote. This subsection (together with subsections (c) and (d)) makes this Constitutional provision self-executing. It does not require any action by the Legislature, and it directs the Executive Branch to take certain actions. This ensures that there will be no interference with the people's right to use the initiative.

Subsection (c): This section specifies when the petition will be submitted to the voters. The next general election was specified because it is less costly to the Commonwealth government than using special elections. Waiting for the next general election may result in some delay before an initiative petition can be submitted to the voters (for example, an initiative petition that was completed in January would have to wait for the next general election in the following November), however this delay would never be for more than a year and that length of time did not seem inappropriate to have legislation pending. Moreover, providing that initiative petitions be considered at the next regular general election permits the voters to decide on all of the proposals that have been made in the preceding year.

Subsection (d): This section specifies when the new law that has been approved by the voters will go into effect. If the petition is successful, the new law will become effective 30 days after the election. There may be special circumstances when the supporters of the

petition will want the new law to come into effect in a shorter or longer time. This provision permits the petition to state when it will come into effect to take account of such special circumstances. In these cases, the voters will be approving not only the substance of the new law but its proposed effective date as well.

Section 2: Referendum. The Committee believes that the referendum should be available to the people to reject a law passed by the Legislature that is not acceptable. This is also an important check on the power of the Legislature. The provision for the referendum is constructed in the same fashion as the provision for the initiative.

Subsection (a): The basic provision is very simple. It requires that the petition set out the full text of the law that is sought to be rejected so that the persons who are signing the petition know precisely what they are supporting. It also requires that the petition be signed by at least twenty percent of the qualified voters within the Commonwealth. The reasons for the Committee's choice in this regard are the same as are stated above with respect to the initiative.

The Committee considered the problem that legislation to be challenged by a referendum petition could continue in effect during the time the petition was being circulated and prior to the next regular general election. The Committee considered providing that no legislation would go into effect

for a period of 90 days during which referendum petitions could be circulated. If the petition were completed successfully within 90 days, the legislation would be suspended until the election. The Committee rejected this approach because it represents a substantial interference with the legislative process and because the adverse impact of having legislation in effect during the time before the voters decided on the referendum petition was not sufficient to justify this substantial interference.

Subsections (b)(c) and (d): This section also includes provisions that are intended to make this section self-executing. No action by the Legislature will be necessary and the Executive Branch is directed to take certain actions. This will minimize interference by the government with the use of the referendum by the people. These provisions are the same as those for initiative, and the Committee's reasons for recommending them are the same as those set out above under the explanation of the Committee's recommendations on the initiative.

Section 3: Recall. The Committee believes that the recall should be available to the people to remove from office an elected official who has some length of time left in his term of office but who has not acted properly. The Committee recommends that the recall apply to all elected officials. This would include elected officials in all

branches of the Commonwealth Government -- Executive Branch, Legislative Branch, Judicial Branch (if any), and Washington Representative -- and all local government officials.

Subsection (a): This section requires that the petition identify precisely the elected official that is sought to be removed and that it be signed by forty percent of the qualified voters.

The provision requires that an official be identified by name and office so that there will be no confusion as to the person who is sought to be removed. The provision does not require that the petition state any reasons for removal. The Committee believes that removal by the voters should be as unlimited as is election by the voters. This is different from impeachment. In that case, only the Legislature acts to remove an official of the executive branch, and it is appropriate to require that specific charges of criminal conduct or improper conduct in office be made and proved before the official can be removed. The Committee recognizes that it may be desirable at some time in the future to require that referendum petitions state reasons for removal and therefore has given the power to the legislature to so provide.

The provision requires that referendum petitions be signed by forty percent of the qualified voters in the Commonwealth. The Committee considered a range of percentage

from fifteen percent to fifty percent. The Committee decided on a requirement of forty percent for three reasons: (1) recall is a very sensitive matter because it involves a challenge to a duly elected official and therefore the petition should require the signatures of a higher percentage of the qualified voters than for initiative or referendum which involve only legislation; (2) recall is a significant protection for the voters against improper or ineffective conduct in office and therefore it should not be made so difficult to get a recall proposal in the ballot that this protection is lost; and (3) the forty percent requirement applies only to putting proposals in the ballot -- no official can be removed unless a majority of the voters voting in the election agree that he should be removed.

The number of signatures necessary for a recall petition is a percentage of the total number of persons qualified to vote for the office from which the elected official is sought to be removed. Thus, if the office is one such as the governor for whom all voters in the Commonwealth are eligible to vote, then forty percent of all voters must sign the recall petition in order for it to be presented to the voters at an election. Similarly, if a local government official is sought to be removed, only forty percent of the total number of local voters who are eligible to vote for that local official would be required.

Subsections (b)(c) and (d): These are self-executing provisions and the Committee's reasons for recommending them are the same as stated above with respect to initiative and referendum.

Subsection (e): This subsection permits the Legislature to take certain actions with respect to recall that it cannot take with respect to initiative or referendum. The Committee's reasons for including this provision were to guard against possible abuses of the recall device and to permit some flexibility to change without the need of a constitutional amendment. The Legislature may provide limitations on the use of the recall. This means that the Legislature can provide, for example, that the recall cannot be used against a public official during his first six months in office, or that a recall can be used against a particular public official only once each year. This would prevent harassment by a minority group in subjecting the public official to continuous recall elections.

This provision also permits the Legislature to require that the grounds for the recall be stated in the petition. Many jurisdictions that use the recall have this requirement so that the public official can answer the charges that are made against him.

This provision also permits the Legislature to specify that recall petitions will be submitted to the voters at special elections. Because of the great damage that

can be done to the public interest by a corrupt or otherwise incapable public official, the Committee felt that it might be better to permit a recall petition to be considered by the voters immediately, rather than waiting for the next general election. This provision gives the Legislature the flexibility to so provide.

Respectfully submitted,

Felipe Q. Atalig, Chairman

Francisco T. Palacios,
Vice Chairman

Felix A. Ayuyu

Leon T. Taisacan

Pedro M. Atalig

Luis M. Limes

Juan S. Demapan

Manual A. Tenorio

Ramon G. Villagomez

Jose S. Borja

Daniel P. Castro

Henry U. Hofschneider

Hilario F. Diaz

ARTICLE ___

INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. The people may enact laws by initiative.

a) An initiative petition shall contain the full text of the proposed law, and shall be signed by a number of qualified voters equal to at least twenty percent of the total number of qualified voters within the Commonwealth.

b) Initiative petitions shall be filed with the Attorney General for certification that the requirements of Section 1(a) have been met.

c) Initiative petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) An initiative petition submitted to the voters shall become law if approved by a majority of the votes cast, and shall take effect 30 days after the date of the election unless the initiative petition itself otherwise provides.

Section 2: Referendum. The people may reject any act of the legislature by referendum.

a) A referendum petition shall contain the full text of the law that is sought to be rejected and shall be signed by a number of qualified voters equal to at least twenty percent of the total number of qualified

voters within the Commonwealth.

b) Referendum petitions shall be filed with the Attorney General for certification that the requirements of Section 2(a) have been met.

c) Referendum petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) A referendum petition submitted to the voters shall take effect if approved by a majority of the votes cast, and the law that is the subject of the petition shall become null, void and be repealed 30 days after the date of the election unless the referendum petition otherwise provides.

Section 3: Recall. All elected public officials in the Commonwealth are subject to recall by the voters of the Commonwealth or political sub-division from which elected.

a) Recall petitions shall identify the public official sought to be recalled by name and title or office and shall be signed by a number of qualified voters equal to at least forty percent of the total number of persons qualified to vote for the public office from which the public official is to be removed.

b) Recall petitions shall be filed with the Attorney General, or, if recall of the Attorney General

is sought, with the Governor, for certification that the requirements of Section 3(a) have been met.

c) Recall petitions that have been certified shall be submitted to the voters at the next regular special election unless an earlier submission is provided by law.

d) A recall petition shall take effect 30 days after the date of the election if approved by the majority of the votes cast.

e) The Legislature may provide for limitations on the use of the recall, require that the grounds for recall be stated in the recall petition and specify that recall petitions be submitted at special elections.

October 25, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
BY THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: Reconsideration of Committee Recommendation No. 3: Initiative, Referendum and Recall

Pursuant to the action of the Committee of the Whole to refer back to the Committee on Personal Rights and Natural Resources Committee Recommendation No. 3 on Initiative, Referendum and Recall, the Committee has reconsidered these matters and has revised some of its proposed language. The Committee recommends that the Committee of the Whole adopt in principle the revised language that is attached hereto.

The Committee's reasons for its revisions are as follows:

Section 1(a) has been revised to make clear that legislation on local matters (to the extent permitted by the local government article) can be initiated by a petition signed by twenty percent of the voters in that locality. This section has been further revised to require that an initiative petition on Commonwealth-wide matters must be signed by at least twenty percent of the qualified voters in two of the three chartered municipalities. The Committee recommends this provision because it puts the initiative on the same footing as legislation originated in the legislature. In the legislature, if two of the municipalities disagree with proposed legislation, it can be blocked in the upper

house. Similarly, under the Committee's revised language, if the petition is not supported by twenty percent of the voters in two of the municipalities, it cannot be put on the ballot. The Committee considered a proposal that would require the petition to be signed by twenty percent of the voters in each of the three municipalities. This was rejected because it would increase the burden on the people in using the initiative and would permit only one municipality to prevent a measure from being put on the ballot. The Committee believed that permitting two of the three municipalities to prevent measures from being put in the ballot was a fair compromise.

Section 1(b) has not been changed.

Section 1(c) has not been changed.

Section 1(d) has not been changed.

Section 2(a) has not been changed.

Section 2(b) has not been changed.

Section 2(c) has not been changed.

Section 2(d) has not been changed.

Section 3(a) has been revised to require that grounds for a recall petition be stated in the petition. This change removes this matter from the discretion of the legislature and requires that each petition state the grounds on which recall is sought. In this way, each person who signs a petition will be informed of the reasons why recall is sought

and can make an informed decision whether to sign the petition. The revision does not place any limitations on the grounds for recall. The Committee believes that removal by the voters should be as unlimited as election by the voters.

Section 3(b) has not been changed.

Section 3(c) has been changed to provide that the legislature may require recall petitions to be submitted at special elections instead of general elections. This is the same provision that was formerly in Section 3(e). The Committee believes that it is generally best to avoid special elections because of the cost involved. However, the Committee recognizes that great damage can be done to the public interest by a corrupt or otherwise incapable public official and it may be better to permit a recall petition to be considered by the voters immediately, rather than waiting for the next general election. The Committee's recommended provision gives the legislature flexibility in this regard. The legislature can weigh the cost of special elections, can consider the frequency with which recall is used, and can decide if special elections are worth the cost.

Section 3(d) has not been changed.

Section 3(e) has been changed to provide that a recall petition cannot be used against a public official during the first six months of his term in office. This prevents abuse of the recall process by using it immediately

after the election in which the people have expressed their approval of the elected official. It permits the elected official to have some time in office to prove himself before he can be challenged. Section 3(e) has also been changed to provide that a recall petition cannot be used against a public official more than once a year. This prevents abuse in subjecting a public official to continuous recall elections. This section applies only to a single public official. It does not prevent more than one recall petition against different public officials to be used in any one year.

Respectfully submitted for the Committee,

Felipe Q. Atalig, Chairman

Francisco T. Palacios, Vice Chairman

Pedro M. Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel P. Castro

Juan S. Demapan

Hilario F. Diaz

full text of the law that is sought to be rejected and shall be signed by a number of qualified voters equal to at least twenty (20) percent of the total number of qualified voters within the Commonwealth.

b) Referendum petitions shall be filed with the Attorney General for certification that the requirements of Section 2(a) have been met.

c) Referendum petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) A referendum petition submitted to the voters shall take effect if approved by a majority of the votes cast, and the law that is the subject of the petition shall become null, void and be repealed thirty (30) days after the date of the election unless the referendum petition otherwise provides.

Section 3: Recall. All elected public officials in the Commonwealth are subject to recall by the voters of the Commonwealth or political sub-division from which elected.

a) Recall petitions shall identify the public official sought to be recalled by name and title or office, shall state the grounds for recall, and shall be signed by a number of qualified voters equal to at least forty percent of the total number of persons qualified to vote for the public office from which the public official is to be removed.

b) Recall petitions shall be filed with the Attorney General or, if recall of the Attorney General is sought, with the Governor for certification that the requirements of Section 3(a) have been met.

c) Recall petitions that have been certified shall be submitted to the voters at the next regular general election unless the legislature provides that recall petitions be submitted at special elections.

d) A recall petition shall take effect thirty (30) days after the date of the election if approved by the majority of the votes cast.

e) Recall petitions shall not be filed against any public official more than once in any year or during the first six months of a term in office.

October 26, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
BY THE MAJORITY OF THE MEMBERS OF THE
MEMBERS OF THE COMMITTEE ON PERSONAL
RIGHTS AND NATURAL RESOURCES VOTING
ON THE MATTER OF RECONSIDERATION OF
THE COMMITTEE'S RECOMMENDATION ON
INITIATIVE

Subject: Reconsideration of Committee Recommendation No. 3: Initiative

A majority of the Committee members voting, both in person and by proxy, at the time the Committee reconsidered its proposed constitutional provisions with respect to initiative support an amendment of the proposed language of Section 1(a) to provide that an initiative petition must be signed by at least twenty percent of the qualified voters of each of the three chartered municipalities in order for the initiative proposal to be put on the ballot.

These Committee members believe that the initiative is an alternative to passage of legislation in the legislature and might be used if the smaller municipalities blocked legislation by means of their votes in the upper house of the legislature. For this reason, these members recommend that an initiative petition be required to obtain support in each of the three municipalities and that any municipality be permitted to block an initiative proposal and prevent it from being put on the ballot. These Committee members believe that this requirement ensures the participation of the voters on Rota and Tinian in this means of

enacting legislation and that this protection is necessary for the fair use of the legislative power by the people.

Section 1(a) has also been revised to make clear that legislation on local matters (to the extent permitted by the local government article) can be initiated by a petition signed by twenty percent of the voters in that locality.

These Committee members recommend no change in sections 1(b)(c) and (d).

The proposed Constitutional provision with respect to initiative is attached and these Committee members recommend that it be adopted in principle by the Committee of the Whole.

Respectfully submitted by
the Committee,

Felipe Atalig, Chairman

Francisco Palacios, Vice Chairman

Pete Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel P. Castro

Juan S. Demapan

Hilario F. Diaz

Henry Hofschneider

Luis Limes

Manuel A. Tenorio

Ramon G. Villagomez

LEON I. TAISACAN

ARTICLE __

INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. The people may enact laws by initiative.

a) An initiative petition shall contain the full text of the proposed law and shall be signed by at least twenty (20) percent of the total number of voters qualified to vote on the proposed law and if the petition proposes a general law that affects each chartered municipality the petition shall be signed by at least twenty (20) percent of the qualified voters in each of the chartered municipalities.

b) Initiative petitions shall be filed with the Attorney General for certification that the requirements of Section 1(a) have been met.

c) Initiative petitions certified by the Attorney General shall be submitted to the voters at the next regular election.

d) An initiative petition submitted to the voters shall become law if approved by a majority of the votes cast and shall take effect thirty (30) days after the date of the election unless the initiative petition itself otherwise provides.

Section 2: Referendum

(See separate Committee report.)

Section 3: Recall

(See separate Committee report.)

October 26, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
BY THE MINORITY OF THE MEMBERS OF THE
COMMITTEE ON PERSONAL RIGHTS AND
NATURAL RESOURCES VOTING ON THE MATTER
OF RECONSIDERATION OF THE COMMITTEE'S
RECOMMENDATION ON INITIATIVE

Subject: Reconsideration of Committee Recommendation No. 3: Initiative

The members of the Committee on Personal Rights and Natural Resources who are opposed to the majority report believe that an initiative petition on Commonwealth-wide matters should be signed by at least twenty percent of the qualified voters in two of the three chartered municipalities.

These members recommend this provision because it puts the initiative on the same footing as legislation originated in the legislature. In the legislature, if two of the municipalities disagree with proposed legislation, it can be blocked in the upper house. Similarly, under the Committee's revised language, if the petition is not supported by twenty percent of the voters in two of the municipalities, it cannot be put on the ballot. These members of the Committee believe the proposal that would require the petition to be signed by twenty percent of the voters in each of the three municipalities should be rejected because it would increase the burden on the people in using the initiative and would permit only one municipality to prevent a measure from being put on the ballot. These members believe that permitting two of the three municipalities to prevent measures from being put in the ballot is a fair compromise.

These Committee members are in agreement with the modification of Section 1(a) to make clear that legislation on local matters (to the extent permitted by the local government article) can be initiated by a petition signed by twenty percent of the voters in that locality.

These Committee members are also in agreement with the recommendation that the proposed language in Sections 1(b)(c) and (d) remain unchanged.

The proposed Constitutional provision with respect to initiative supported by these Committee members is attached and these Committee members recommend that it be adopted in principle by the Committee of the Whole.

Respectfully submitted by
the Committee,

Felipe Atalig, Chairman

Francisco Palacios, Vice Chairman

Pete Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel P. Castro

Juan S. Demapan

Hilario F. Diaz

Henry Hofschneider

Luis Limes

Manuel A. Tenorio

Ramon G. Villagomez

ARTICLE __

INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. The people may enact laws by initiative.

a) An initiative petition shall contain the full text of the proposed law and shall be signed by at least twenty (20) percent of the total number of voters qualified to vote on the proposed law and if the petition proposes a general law that affects each chartered municipality the petition shall be signed by at least twenty (20) percent of the qualified voters in each of two of the chartered municipalities.

b) Initiative petitions shall be filed with the Attorney General for certification that the requirements of Section 1(a) have been met.

c) Initiative petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) An initiative petition submitted to the voters shall become law if approved by a majority of the votes cast, and shall take effect thirty (30) days after the date of the election unless the initiative petition itself otherwise provides.

Section 2: Referendum

(See separate Committee report.)

Section 3: Recall

(See separate Committee report.)

October 26, 1976

REPORT TO THE COMMITTEE OF THE WHOLE
BY THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: Reconsideration of Committee Recommendation No. 3: Referendum and Recall

Pursuant to the action of the Committee of the Whole to refer back to the Committee on Personal Rights and Natural Resources Committee Recommendation No. 3 on Initiative, Referendum and Recall, the Committee has reconsidered these matters and has revised some of its proposed language on recall. The language on referendum remains unchanged. The Committee members are submitting two separate reports on initiative.

The Committee's reasons for its revisions are as follows:

Section 2(a) has not been changed.

Section 2(b) has not been changed.

Section 2(c) has not been changed.

Section 2(d) has not been changed.

Section 3(a) has been revised to require that grounds for a recall petition be stated in the petition. This change removes this matter from the discretion of the legislature and requires that each petition state the grounds on which recall is sought. In this way, each person who signs a petition will be informed of the reasons why recall is sought

and can make an informed decision whether to sign the petition. The revision does not place any limitations on the grounds for recall. The Committee believes that removal by the voters should be as unlimited as election by the voters.

Section 3(b) has not been changed.

Section 3(c) has been changed to provide that the legislature may require recall petitions to be submitted at special elections instead of general elections. This is the same provision that was formerly in Section 3(e). The Committee believes that it is generally best to avoid special elections because of the cost involved. However, the Committee recognizes that great damage can be done to the public interest by a corrupt or otherwise incapable public official and it may be better to permit a recall petition to be considered by the voters immediately, rather than waiting for the next general election. The Committee's recommended provision gives the legislature flexibility in this regard. The legislature can weigh the cost of special elections, can consider the frequency with which recall is used, and can decide if special elections are worth the cost.

Section 3(d) has not been changed.

Section 3(e) has been changed to provide that a recall petition cannot be used against a public official during the first six months of his term in office. This prevents abuse of the recall process by using it immediately

after the election in which the people have expressed their approval of the elected official. It permits the elected official to have some time in office to prove himself before he can be challenged. Section 3(e) has also been changed to provide that a recall petition cannot be used against a public official more than once a year. This prevents abuse in subjecting a public official to continuous recall elections. This section applies only to a single public official. It does not prevent more than one recall petition against different public officials to be used in any one year.

Respectfully submitted for the Committee,

Felipe Q. Atalig, Chairman

Francisco T. Palacios, Vice Chairman

Pedro M. Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel H. Castro

Juan S. Demapan

Hilario F. Diaz

Henry U. Hofschneider

Luis M. Limes

Leon L. Taisacan

Manual A. Tenorio

Ramon G. Villagomez

ARTICLE __

INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative.

(See separate majority and minority reports.)

Section 2: Referendum. The people may reject any act of the legislature by referendum.

a) A referendum petition shall contain the full text of the law that is sought to be rejected and shall be signed by a number of qualified voters equal to at least twenty (20) percent of the total number of qualified voters within the Commonwealth.

b) Referendum petitions shall be filed with the Attorney General for certification that the requirements of Section 2(a) have been met.

c) Referendum petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) A referendum petition submitted to the voters shall take effect if approved by a majority of the votes cast and the law that is the subject of the petition shall become null, void and be repealed thirty (30) days after the date of the election unless the referendum petition otherwise provides.

Section 3: Recall. All elected public officials in the Commonwealth are subject to recall by the voters of

the Commonwealth or political sub-division from which elected.

a) Recall petitions shall identify the public official sought to be recalled by name and title or office, shall state the grounds for recall, and shall be signed by a number of qualified voters equal to at least forty percent of the total number of persons qualified to vote for the public office from which the public official is to be removed.

b) Recall petitions shall be filed with the Attorney General or, if recall of the Attorney General is sought, with the Governor for certification that the requirements of Section 3(a) have been met.

c) Recall petitions that have been certified shall be submitted to the voters at the next regular general election unless the legislature provides that recall petitions be submitted at special elections.

d) A recall petition shall take effect thirty (30) days after the date of the election if approved by a majority of the votes cast.

e) Recall petitions shall not be filed against any public official more than once in any year or during the first six months of a term in office.

October 28, 1976

REPORT TO THE COMMITTEE OF THE WHOLE BY THE
COMMITTEE ON PERSONAL RIGHTS AND NATURAL RESOURCES

Subject: Further Reconsideration of Committee Recommendation No. 3: Initiative

Pursuant to the action of the Committee of the Whole to refer back to the Committee on Personal Rights and Natural Resources that portion of Committee Recommendation No. 3 dealing with initiative, the Committee has reconsidered this matter again and has revised its proposed language for Section 1(a). The Committee recommends that this language and the language in Sections 1(b)(c) and (d), that remain unchanged, be adopted in principle by the Committee of the Whole.

The Committee's reasons for its revision are as follows:

Section 1(a): The Committee recommends its original language providing that on matters affecting only one municipality, an initiative petition be signed by at least 20% of the voters in that municipality and on matters affecting the entire Commonwealth, an initiative petition be signed by at least 20% of the voters in the Commonwealth.

The Committee recommended this language in its first report to the Committee of the Whole. That provision was referred back to the Committee on Personal Rights and Natural Resources for reconsideration.

During debate on reconsideration, the delegates from Rota and Tinian urged that an initiative petition that proposed a general law to have effect Commonwealth-wide be signed by 20% of the voters in each of the three municipalities. A majority of the Committee members believed that this was not satisfactory because it would permit one municipality to prevent a proposal from being put on the ballot for the consideration of the voters. These Committee members proposed a compromise under which an initiative petition that proposed a general law to have effect Commonwealth-wide would be signed by 20% of the voters in each of two of the three municipalities. These Committee members believed this compromise to be appropriate because it put the initiative on the same footing as legislation originated in the legislature. In the legislature, if two of the three municipalities disagree with proposed legislation, it can be blocked in the upper house. Similarly, under the proposed compromise language, if the petition is not supported by at least 20% of the voters in two of the three municipalities, it cannot be put on the ballot. This compromise was rejected by the members of the Committee who are delegates from Rota and Tinian.

Therefore, the Committee has reinstated its original language and recommends that this provision be adopted in principle by the Committee of the Whole.

Respectfully submitted by the Committee,

Felipe Atalig Chairman

Francisco Palacios, Vice-Chairman

Pedro M. Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel P. Castro

Juan S. Demapan

Hilario F. Diaz

Henry U. Hofschneider

Luis Limes

Leon Taisacan

Manuel A. Tenorio

Ramon G. Villagomez

ARTICLE __

INITIATIVE, REFERENDUM AND RECALL

Section 1: Initiative. The people may enact laws by initiative.

a) An initiative petition shall contain the full text of the proposed law. If the petition proposes a local law that affects only one municipality the petition shall be signed by at least twenty (20) percent of the total number of voters qualified to vote in the municipality. If the petition proposes a general law for the Commonwealth the petition shall be signed by at least twenty (20) percent of the total number of qualified voters in the Commonwealth.

b) Initiative petitions shall be filed with the Attorney General for certification that the requirements of Section 1(a) have been met.

c) Initiative petitions certified by the Attorney General shall be submitted to the voters at the next regular general election.

d) An initiative petition submitted to the voters shall become law if approved by a majority of the votes cast and shall take effect thirty (30) days after the date of the election unless the initiative petition itself otherwise provides.

Section 2: Referendum.

(adopted in principle by the Committee of the Whole)

Section 3: Recall.

(adopted in principle by the Committee of the Whole)

October 29, 1976

REPORT TO THE COMMITTEE OF THE WHOLE BY
THE MINORITY OF THE COMMITTEE ON PERSONAL
RIGHTS AND NATURAL RESOURCES

The minority of the Committee on Personal Rights and Natural Resources agrees with the Committee's recommendations with respect to initiative with one exception. The minority recommends either that Section 1(a) require the signing of initiative petitions by twenty percent of the qualified voters in each chartered municipality, or that Section 1(d) be amended to require approval of an initiative proposal by three-fourths (3/4) of the votes cast on the proposal in order for that proposal to become law. The Committee recommendation requires approval by a majority of the votes cast on the proposal. Either one of the changes in the Committee's recommendation supported by the minority will allow adequate representation and protection of those voters who reside on the islands other than Saipan and will guarantee widespread voter approval of initiative proposals on all of the islands in the Commonwealth.

Respectfully submitted
for the Committee,

Felipe Q. Atalig, Chairman

Francisco T. Palacios,
Vice Chairman

Pedro M. Atalig

Felix A. Ayuyu

Jose S. Borja

Daniel P. Castro

Juan S. Demapan

Hilario F. Diaz

Henry U. Hofschneider

Luis M. Limes (w/Reservation)

Leon I. Taisacan

Manuel A. Tenorio

Ramon G. Villagomez

October 29, 1976

REPORT TO THE CONVENTION
OF THE COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: Committee Recommendation No. 4:
Personal Rights

The Committee recommends that the Committee of the Whole adopt in principle the constitutional provision attached hereto with respect to personal rights.

The Committee has considered a wide range of proposals with respect to personal rights and recommends that there be a single constitutional article dealing with all personal rights. The draft provision attached to this report contains 12 sections each of which deals with a separate personal right or group of related rights.

The Committee's recommendations are organized in three general sections. The Committee considered first those personal rights that are guaranteed by the United States Constitution and that are made applicable within the Northern Mariana Islands by the Covenant. Those rights are set out in Sections 1 through 6. The Committee then considered those personal rights that are guaranteed within the United States by the United States Constitution but are not extended automatically to the Northern Mariana Islands

by the Covenant. Those rights to be included in the Commonwealth Constitution are set out in Sections 7 through 9. Finally, the Committee considered personal rights that are guaranteed by some state constitutions and that have been recommended by various experts, but that are not included in the United States Constitution and therefore are not extended to the Northern Mariana Islands by the Covenant. Those rights to be incorporated in the Commonwealth Constitution are set out in Sections 10 through 12. The reasons for the Committee's recommendation with respect to each proposed constitutional provision falling within these three categories are set out below.

## Rights Guaranteed by the United States Constitution and Applicable Automatically in the Northern Mariana Islands

In general, the Committee decided to incorporate into the Commonwealth Constitution rights that are guaranteed by the United States Constitution. The Committee believed that it would be useful to collect in one place in the Constitution all of the important personal rights. This would permit citizens of the Commonwealth to look to their own Constitution for a complete statement of their personal rights and would not require them to go back through the Covenant and consult the relevant parts of the United States Constitution.

Section 1: Laws Prohibited. This section is drawn from Article I, Section 10 of the United States Constitution.

It prohibits three kinds of laws: (1) bills of attainder, which are laws that declare a person guilty of a crime and impose punishment without a trial before a court; (2) ex post facto laws, which are laws that define new criminal offenses and apply them retroactively to a period of time before the law was enacted; and (3) laws impairing the obligations of contract.

The Committee decided not to incorporate the privileges and immunities clause of Article IV, Section 2 of the United States Constitution because it is of limited benefit to citizens of the Northern Mariana Islands. Its benefits apply primarily to United States citizens who travel to the Commonwealth. The privileges and immunities clause of the United States Constitution is made applicable automatically by the Covenant and will be in force in the Commonwealth even though it is not included in the Commonwealth Constitution.

Section 2: Freedom of Religion, Speech, Press and Assembly. The Committee recommends that the general language of the First Amendment of the United States Constitution be incorporated in the Commonwealth Constitution. The Committee has not provided for any extension of that language.

The provision with respect to freedom of religion requires that the Commonwealth government refrain from aiding religion. As under the United States Constitution,

some aid to religious institutions, such as schools, is permitted if that aid is for a non-religious purpose, such as education in science or other non-religious subjects.

The provision with respect to freedom of speech prevents interference with the free expression of ideas except where important interests in social order are involved. Because the Committee has not extended the First Amendment language, this constitutional provision does not protect obscenity or certain forms of conduct such as flag-burning that have been classified as "non-verbal" speech.

The provision with respect to freedom of the press prevents any government censorship of the press by the executive, legislative or judicial branches of the government. Because the Committee has not extended the rights guaranteed by the United States Constitution, this provision does not give newsmen the right to refuse to reveal their sources and may, in some instances, permit a court to order newsmen not to publish certain information about criminal defendants or trials.

The provision with respect to freedom of assembly prevents any government interference with political rallies, religious gatherings or other meetings. This provision also gives the people the right to petition the government for the redress of their grievances.

Section 3: Search and Seizure. This section provides a guarantee with respect to the security of the people in their persons, homes, papers and other effects.

Section 3(a) provides that a search or seizure can be conducted only pursuant to a warrant, and that the warrant must be issued by a court after a showing of probable cause. This is an extension of the Fourth Amendment. Under the United States Constitution some searches may be conducted without a warrant and with less than a showing of probable cause. The Committee believes that an extension of the Fourth Amendment protection is appropriate for the Commonwealth in order to establish a uniform rule governing all searches and seizures.

Section 3(b) deals specifically with searches and seizures through wiretapping. It provides the same protections against these actions of the government by requiring a warrant in every case. The Committee believes that wiretapping should not be prohibited in the Commonwealth because there are some types of crimes, such as drug trafficking, that are very difficult to prosecute without such evidence. The Committee has included this provision so that the policy with respect to wiretapping in the Commonwealth will be absolutely clear.

Section 3(c) is an extension of the Fourth Amendment. It provides that the victims of illegal searches or seizures will have a cause of action against the Commonwealth government. Under the Fourth Amendment, the only sanction for an illegal search or seizure is the application of the exclusionary rule that prevents the evidence obtained by these methods from being used in the criminal trial. The Committee believes that a more sensible policy is to compensate those who are adversely affected and to leave the courts free to decide whether the evidence gathered by these methods should be used in the trial based on considerations of the probative nature of the evidence itself. The Committee recognizes that there may be a need for limitations on the amount of money damages for which the Commonwealth will be liable in such cases and has permitted the legislature to set such limits.

Section 4: Criminal Prosecutions. This section contains nine separate fundamental rights pertaining to prosecution of criminal cases.

Section 4(a) provides that the criminal defendant shall have the right to be represented by a lawyer in all cases and in all appeals. This is an extension of the

right provided by the Sixth Amendment of the United States Constitution, which guarantees counsel only in cases in which the defendant may be sentenced to prison and only through the first appeal. Under the Committee's recommended provision, a defendant can waive his right to counsel. If a defendant elects to be represented by counsel and is too poor to pay legal fees, the Commonwealth will have the responsibility of providing counsel. The Committee recognizes that extending the right to counsel also extends the burden on the Commonwealth, both in financial resources and in the minimum time necessary for the trial of cases. However, the Committee believes that this right is important in securing a fair trial and an effective judicial system.

Section 4(b) is taken directly from the Sixth Amendment to the United States Constitution and has not been extended. It provides that the accused has the right to be confronted with the witnesses against him so that he can meet that evidence and present his own defense effectively. It also provides that the accused has the right of compulsory process to obtain witnesses in his favor. This means that the court will issue subpoenas to persons who have relevant information but who are unwilling to testify voluntarily. In this manner, the defendant can have the benefit of all available evidence at his trial.

Section 4(c) is taken directly from the Fifth Amendment to the United States Constitution and has not been extended. It provides that no person can be compelled to testify against himself. This means that no witness in a trial or other administrative proceeding can be compelled to testify against himself. It also means that no defendant can be compelled to testify at all at his own trial. A defendant in a criminal case is entitled to have the Commonwealth prove the offense without any testimony from him. The defendant can, of course, elect to testify in his own behalf.

Section 4(d) is taken directly from the Fifth Amendment to the United States Constitution and has not been extended. It requires a speedy and public trial. The Committee considered an extension of this right that would require a trial in the municipality from which the defendant came. The Committee rejected this proposal because it believed that trial at the place where the crime was committed was more appropriate.

Section 4(e) is taken from the Fifth Amendment to the United States Constitution and has been extended by the Committee to cover double jeopardy between the federal and Commonwealth jurisdictions. Under the Fifth Amendment, a defendant cannot be prosecuted twice by the same jurisdiction -- that is he cannot be prosecuted twice by the Commonwealth or twice by the federal government. However,

it is possible for a defendant to be prosecuted twice -- once by the federal government and once by the state government -- for the same offense, if that offense happens to be a violation of both federal and state statutes. Under the Committee's recommended provision, there would be only one opportunity to prosecute a defendant. The Commonwealth and federal prosecutors would be required to confer and decide which should undertake the prosecution. Once one jurisdiction had prosecuted a defendant, the other jurisdiction would be barred. The Committee points out that this would affect only a small number of cases and would not affect cases where the crime resulted in more than one type of charge being brought against the defendant. The federal prosecutor could prosecute bank robbery charges, for example, and if the defendant were acquitted, the Commonwealth prosecutor could then prosecute for a subsidiary offense arising out of the same crime such as illegal possession of a gun.

Section 4(f) is taken directly from the Eighth Amendment to the United States Constitution and has not been extended. This provision prohibits excessive bail. It does not require that defendants be able to put up bail and be released from prison in all cases. The legislature might decide that certain crimes, for example murder or drug trafficking, are so serious that no person accused of those crimes and against whom a sufficient

amount of evidence exists should be permitted to leave jail pending trial. In those cases the severity of punishment increases the likelihood that the accused will not return to stand trial once freed. The Committee recommends a prohibition on excessive bail so that if the legislature provides for bail in certain types of cases a judge cannot set bail higher than poor persons can afford just to keep them in jail. The draft provision requires only that for cases where the legislature permits bail, the bail not be excessive.

Section 4(g) is also taken directly from the Eighth Amendment to the United States Constitution and has not been extended. It provides that excessive fines shall not be imposed. This provision does not require or prohibit the imposition of fines for offenses for which the legislature finds them to be appropriate. The provision only requires that when fines are available as a punishment and they are imposed, that they not be excessive in relation to the crime.

Section 4(h) has also been taken directly from the Eighth Amendment to the United States Constitution and has not been extended. It prohibits cruel and unusual punishments. This means that the legislature may not devise or use punishments such as starvation, torture, non-voluntary medical experimentation or things other than prison terms, probation and other forms of partial release.

Section 4(i) is a specific extension of the Eighth Amendment to cover capital punishment. The Committee believes that capital punishment should be abolished because mistakes are sometimes made in prosecuting criminals and if an innocent person were put to death by the Commonwealth an irremediable injustice would have been done. The Committee considered the burden on the Commonwealth of keeping prisoners in custody for long sentences as would be required without the death penalty. The Commonwealth decided that this burden was reasonable because the Committee believes that no risk should be taken with a human life. The Committee also considered the use of capital punishment as a deterrent and decided that this was probably outweighed by the possibility of rehabilitation in some cases, therefore capital punishment should not be used.

Section 5: Due Process. This provision is taken directly from Section 1 of the Fourteenth Amendment to the United States Constitution and has not been extended. This provision requires the Commonwealth government to observe strict standards of fairness in dealing with the people. The protections of this section do not extend to interference with civil rights by a private individual. The legislature, however, has the option to extend such protection by statute.

Section 6: Equal Protection. This provision was taken from Section 1 of the Fourteenth Amendment to the United

States Constitution and has been extended significantly. The first sentence of the Committee's recommended provision is the standard equal protection clause. Similar clauses are found in every state constitution. This provision guarantees that the government will treat all persons similarly situated in the same manner. It forbids classifications that are irrational. The second sentence of this provision requires special protection against certain kinds of classifications: race, color, religion, ancestry or sex. This is an extension of the Fourteenth Amendment protection which applies strict scrutiny only to race and ethnic classifications. The Committee's recommended provision forbids classifications based on these two factors and adds religion, ancestry and sex. The Committee believes that these are important protections and should be made explicit in the Commonwealth Constitution. The Committee decided not to extend the language of this section to include discrimination based on alienage.

Rights Guaranteed by the United States Constitution within the United States But Not Applicable Automatically in the Commonwealth

The Committee considered five fundamental rights guaranteed by the United States Constitution but not made applicable automatically by the Covenant in the Northern Mariana Islands. These are the right to bear arms, the right not to be required to house soldiers, the right to a grand jury indictment in certain criminal cases, the right to

trial by jury in criminal cases, and the right to trial by jury in civil cases. The Committee's recommended provision includes a form of each of these rights except the right to indictment by grand jury. The Committee decided that the grand jury procedure was costly, time-consuming and not required in a relatively small community such as the Commonwealth.

Section 7: Availability of a Militia

This section incorporates the language of the Second Amendment to the United States Constitution. It permits the Commonwealth to form a militia if that is necessary and guarantees the right to bear arms in order to have armed and trained citizens available to serve in the militia. The Committee believes that a militia might be necessary to help keep order during times of disaster or other emergency. This Amendment guarantees the right of the Commonwealth to organize such a militia -- on land, at sea or in the air -- but does not require the legislature to do so. The Committee believes that the protection available from the United States military forces will suffice in most instances. The Committee's proposed constitutional provision does not guarantee the right of an individual to possess any particular gun. Under this proposed provision, the legislature could enact a gun control law if that were to become necessary.

Section 8: Quartering Soldiers. This section is taken from the Third Amendment to the United States Constitution and has not been extended. It prohibits the quartering of soldiers in civilian homes during peacetime, and permits such action during wartime only as provided by the legislature. The Committee discussed including refugees in this provision, but decided that such a contingency could be left to the legislature.

Section 9: Right to Trial by Jury. This section authorizes the legislature to specify the particular kinds of criminal and civil cases in which the parties involved will have the right to request a jury trial. The Committee did not want to guarantee the right to trial by jury in all cases in the Northern Mariana Islands because of the expenses associated with juries, the difficulty of finding jurors unacquainted with the facts of a case, and the fear that the small closely-knit population in the Northern Mariana Islands might lead to acquittals of guilty persons in criminal cases. Nonetheless, the Committee believes that in some cases, especially those where defendants face serious criminal charges and long terms of imprisonment, the right to trial by jury should be guaranteed. Therefore, this section gives the legislature the authority to designate the categories of cases in which a jury trial may be requested. Within these categories of cases, any defendant

may elect to have a jury trial. The choice rests solely with the defendant. At the present time, all criminal defendants in the Northern Mariana Islands have the right to trial by jury, yet there have been very few such trials. The Committee expects that this practice will continue, particularly in light of evidence that judges and juries generally reach the same verdicts.

Rights Not Guaranteed by the United States Constitution Within the United States

Each of the rights in this section is in addition to the protection offered by the United States Constitution. The Committee provided for these additional protections because it believed that they met significant needs within the Commonwealth. The Committee also considered constitutional protection for access to governmental hearings and documents, collective bargaining and humane treatment of prisoners. The Committee decided that these matters are more appropriately left to the legislature.

Section 10: Free Public Education. This section guarantees the right of each person to attend a free public school. This does not mean that each public school must accept all students that apply. Each school may restrict enrollment to students within a certain age range or of certain abilities, but if persons are not allowed to attend certain schools, there must be other free public schools that

are open to them. Similarly, if existing schools cannot house all of the potential students in the Commonwealth, new schools must be built. This section does not prohibit schools from adopting disciplinary and administrative rules or from refusing to accept students who are serving criminal sentences.

Section 11: Clean and Healthful Environment. This provision protects the environment in the Commonwealth. The Committee does not believe that there are significant environmental problems at the present time. However, it believes that this is an appropriate constitutional provision in order to provide protection for the future.

Section 12: Privacy. This provision protects the right of each person to privacy. This means that a person should not be subjected to unwanted publicity or intrusion into his affairs unless there is a compelling government interest that overcomes the individual's interest.

Delegate Proposals. The Committee considered Delegate proposals numbered 25, 31 and 67 that pertain to the article on personal rights.

With respect to proposal number 25, Sections 1, 2, 3, and 5 are consistent with the Committee's proposed Constitutional provision. Section 7 of the proposal is covered in more limited form by Section 10 of the Committee's proposed provision. Consideration of Sections 6 and 9 was deferred.

With respect to proposal number 31, this matter is covered in more limited form by Section 9 of the Committee's proposed provision.

With respect to proposal number 67, Section 1 is covered by Section 4(a) and (d) of the Committee's proposed provision. Consideration of Section 2 has been deferred.

The Committee has deferred consideration of constitutional provisions with respect to the rights of juveniles and will consider that matter when it considers other delegate proposals dealing with personal rights.

Respectfully submitted by the Committee,

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ARTICLE __

PERSONAL RIGHTS

Section 1: Laws Prohibited. No law shall be made that is a bill of attainder, an ex post facto law, or a law impairing the obligation of contracts.

Section 2: Freedom of Religion, Speech, Press and Assembly. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Section 3: Search and Seizure. The people shall have the right to be secure in their persons, houses, papers and belongings.

a) No search or seizure shall be conducted without a warrant issued by a court and no warrant shall issue but upon probable cause supported by oath or affirmation and describing particularly the place to be searched and the persons or things to be seized.

b) No wiretapping or other comparable means of surveillance shall be used except pursuant to a warrant.

c) Any person adversely affected by an illegal search or seizure shall have a cause of action against the government within limits provided by law.

Section 4: Criminal Prosecutions. In all criminal prosecutions certain fundamental rights shall pertain.

a) The accused shall have the right to assistance of counsel in all cases, including all appeals.

b) The accused shall have the right to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor.

c) No person shall be compelled to be a witness against himself.

d) There shall be a speedy and public trial.

e) No person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution.

f) Excessive bail shall not be required.

g) Excessive fines shall not be imposed.

h) Cruel and unusual punishment shall not be inflicted.

i) Capital punishment is prohibited.

Section 5: Due Process. No person shall be deprived of life, liberty or property without due process of law.

Section 6: Equal Protection. No person shall be denied the equal protection of the laws. No person shall be denied the enjoyment of civil rights or be discriminated against in the exercise thereof on account of race, color, religion, ancestry or sex.

Section 7: Availability of a Militia. In order that a militia may be available if necessary in times of emergency, the right of the people to keep and bear arms shall not be infringed.

Section 8: Quartering Soldiers. No soldier in time of peace may be quartered in any house without the consent of the owner, nor in time of war except in a manner prescribed by law.

Section 9: Trial by Jury. The legislature may provide for trial by jury in serious criminal and civil cases as defined by law.

Section 10: Free Public Education. Each person shall have the right to a free public education.

Section 11: Clean and Healthful Environment. Each person shall have the right to a clean and healthful environment.

Section 12: Privacy. The right of individual privacy shall not be infringed except upon a showing of compelling government interest.

November 4, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON
PERSONAL RIGHTS AND NATURAL RESOURCES

Subject: Committee Recommendation No. 5: Public Lands

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional article with respect to public lands.

The Committee's proposed constitutional article contains six sections. The first section defines the public lands as including both surface lands and submerged lands in which the Commonwealth has any right, title or interest. The second section delegates to the legislature the responsibility for submerged public lands. The third section delegates to the Marianas Public Land Corporation the responsibility for surface public lands. The fourth section sets out the basic organization of the Corporation. The fifth section sets out the fundamental policies under which the Corporation must operate. The sixth section provides for a Marianas Public Land Trust to hold and invest the funds derived from the public lands.

In order to gather information with respect to the present system of land management, the Committee invited five witnesses to appear before it and present their views: Elmer L. Gay, Supervisor for Cadastral Surveying, Office of Land Management; Robert W. Green, Senior Land Commissioner

for Yap; Dennis Pacht, Division of Lands and Surveys, Department of Resources and Development; Gregorio Camacho, Land Registration Team Chairman, Land Commission Office; and Joseph Vosmik, Senior Land Commissioner, Land Commission Office. The Committee heard from each of these witnesses with respect to the utility of forming a public land corporation and the functions that might be assigned to such a corporation.

The Committee's reasons for recommending its proposed constitutional article are as follows:

Section 1: Public Lands. This section defines the public lands as including lands in three categories: (1) lands that will be returned to the Commonwealth Government by the Trust Territory pursuant to the Secretarial Orders and the Covenant; (2) lands that the Commonwealth government may hereafter purchase, lease, or receive by other means; and (3) the submerged lands off the coast to which the Commonwealth government now has or may in the future have a claim under international law or United States law. This section also specifies that the ownership of these lands rests collectively with the people of the Commonwealth who are of Northern Marianas descent. The term "Northern Marianas descent" will be defined by the Committee's proposed constitutional article dealing with land alienation.

Section 2: Submerged Lands. This section provides that the legislature shall have discretion to deal with the submerged lands. The Committee believes that there is great uncertainty with respect to how much of the submerged lands the Commonwealth will come to own in the future, and there is also no clear indication at this time as to precisely what form of development will be most appropriate for the submerged lands. For these reasons, the Committee believes that the legislature should be given discretion to deal with this subject in the future without constitutional restriction.

Section 3: Surface Lands. This section provides that the responsibility for the surface public lands will be placed in a corporation created specially for this purpose by the Constitution. The Committee considered several alternative ways of protecting the public lands: creating a special corporation; using the existing corporation created in 1974 by the District Legislature; creating a special agency in the Executive Branch; and leaving the matter to the legislature.

The Committee decided that the creation of a special corporation was the best alternative. The corporate structure permits flexibility and consistency in policy-making while at the same time maintaining a responsibility to the people. The corporation created by the Committee in Section 4, as explained below, is not entirely separate from the executive branch or the legislative branch and cannot function totally independently. It will coordinate closely with the executive

branch because the governor may appoint executive branch officials to sit as directors. It will coordinate closely with the legislative branch because the legislature may approve or disapprove certain actions taken by the Corporation and set policy for the homestead program. The legislature may dissolve the corporation after ten years.

The Committee found that placing the responsibility for the public lands in a department of the executive branch would involve questions of the management and disposition of the public lands in the political process to a degree that might be detrimental to long-term planning and stability. If an executive branch agency were created, each time a new governor were elected, the key agency officers would be replaced and a new policy might be begun. The Committee believes that it may be desirable to phase out the special staff function devoted to public lands after ten or more years if many of the problems of the public lands have been solved and many of the lands have been transferred. The Committee believes it would be easier to accomplish this phase-out if it were applied to a special corporation rather than to a regularly established part of the executive branch of government. The Committee also believes it may be desirable to permit the staff that handles public land matters to be assembled without regard to civil service rules. This would be particularly true if civil service rules required long

residency in the Northern Marianas because the staff then might not be able to attract experts needed only for a short term.

The Committee decided that the corporation created by the Marianas District Legislature in 1974 was inappropriate for permanent use for a number of reasons: it is too large; it contains a number of provisions that are relevant to an interim period only; and it does not contain appropriate grants of power or limitations on power.

The Committee decided that the alternative of leaving public land matters to the legislature was not appropriate because the public lands represent the most important natural resource of the new Commonwealth and the Constitution should contain the basic guidelines as to the use of this natural resource.

This section provides that the Corporation shall have responsibility for the management and disposition of the public lands. It is the Committee's intention to leave the adjudicatory functions to the special land division of the Commonwealth trial court created by the proposed article on the judicial branch.

Section 4: Marianas Public Land Corporation. This section establishes a special public corporation to deal with public lands and sets out the basic organizational structure of the corporation. Organizational matters not specified by the Constitution are left to the Corporation.

Section 4(a): Appointment of Directors: This provision specifies that the affairs of the Corporation shall be directed by nine directors. Each of the directors will be appointed by the governor with the advice and consent of the Senate. It is the Committee's intent to keep the Corporation's structure small and efficient. The Committee believes that nine persons are an adequate body to reflect the diversity of views within the Marianas with respect to public lands. It is the Committee's intent that the directors serve part-time and be compensated on a per diem basis. Compensation matters are left to the discretion of the Corporation. It is also the Committee's intent that some of the directors may serve on the full-time staff and be compensated accordingly.

If any director fails to serve a full term for any reason, under the Committee's recommended provision, the governor would appoint a successor.

The Committee did not provide for removal by the governor, for impeachment, or for recall of the directors because it believes there are sufficient safeguards in the eligibility, appointment and administration process and the Corporation should not become involved in the political process. If the governor could remove a director without cause, the directors might be removed every time a new governor was elected. That would defeat the purpose of having an independent body to deal with public land matters and would adversely affect the stability and long-term planning capability of the Corporation.

The Committee's recommended provision does not limit the governor from requesting that a director resign or from accepting a resignation if offered. If the governor could remove a director only for cause there would be some difficulty in defining the reasons for removal sufficiently to prevent removal for political reasons. Impeachment was not included because the functions of the directors are limited and the results of their actions can be undone by the legal process. If the directors permit an improper transaction, the details of that transaction must be disclosed in the annual report and it may be challenged in the courts. If the transaction is determined to be illegal, it can be undone and the land will be returned to the public lands. The principal conflict of interest problem is dealt with by Section 4(e) that requires the directors to disclose their interests in land. Recall was believed inappropriate because that applies to elected officials who can be removed by the same voters that elected them. The Committee's proposed language in Section 4(b) disqualifies any person who has been convicted of a crime that carries a maximum sentence of six months or more. The Committee intends to exclude minor traffic violations. Under this provision any director who was convicted while in office would be removed automatically and the governor could appoint a successor.

Section 4(b): Qualifications of Directors. The Committee's proposed constitutional provision includes five basic qualifications for the position of director: U.S. citizenship or national status; five years' residency in the Commonwealth;

no conviction of any crime that carries a maximum sentence of six months or more; fluency in Chamorro or Carolinian; and Northern Marianas descent. The Committee believes that these qualifications will help ensure adequate knowledge of the Northern Mariana Islands special circumstances and needs with respect to the public lands. The Committee considered an age qualification and decided it was unnecessary.

The Committee also recommends that representation be secured for each of the municipalities and for the Carolinian community on Saipan. This is accomplished by requiring that two of the directors be residents of Saipan; two be residents of Rota; two be residents of Tinian; and one be a resident of the Northern Islands. There is also a requirement that one of the directors be a Carolinian or a person of Carolinian descent. The director who is a resident of Saipan or the Northern Islands could also be a Carolinian, thus meeting two of the requirements and leaving the governor free to appoint two persons who did not meet these particular residency or descent requirements. It is the Committee's intention to permit the Governor to appoint up to two persons without any restrictions in order to promote coordination with the executive branch and to permit the appointment process to take into consideration special qualifications such as legal or banking experience.

Under the Committee's proposal, these representation requirements would always apply, so that if there is a vacancy

for any reason, it must be filled in a manner that permits these representation requirements to be met. For example, if two directors from Rota were appointed and one died or left office, thus creating a vacancy, that vacancy would have to be filled by another director from Rota.

Section 4(c): Directors' Terms of Office. The Committee's proposed constitutional provision sets a six-year term of office with staggered terms so that only three vacancies occur every two years. The six-year term is intended to put the directors on a different footing than the governor and members of the upper house of the legislature who serve four-year terms, and the members of the lower house who serve two-year terms. It is also intended to promote stability in land use planning by having relatively long-term turnover among directors. In order to effectuate the staggered terms, of the first nine directors appointed, three would be appointed for two-year terms; three would be appointed for four-year terms; and three would be appointed for full six-year terms. The governor would determine which of his initial appointees would serve short terms and which would serve full terms.

It is the Committee's intention that the position of director not be a full-time one. Directors would meet perhaps monthly to consider policy matters and would be compensated only for their time in attending those meetings.

The day-to-day business of the Corporation would be managed by a small professional staff. The Committee did not include any specific limitation on the number of meetings or amount of compensation because the general provision on retention of funds for expenses of administration (Section 5(g)) should provide adequate protection. If the directors meet too often or if they pay themselves too much, they would not meet the requirements of Section 5(g) that expenses of administration be reasonable. If they did not meet that requirement, legal action could be brought to recover the funds spent and to prevent further such action. The annual report requirement ensures that the people will have adequate information on expenses incurred by the Corporation.

The Committee has included a limitation that prevents a director from serving more than one term in office. The reason for this limitation is to prevent any consideration bearing on reappointment from affecting a director's decisions with respect to any matter that comes before him.

Section 4(d): Vote Requirement. This section provides that the directors may take action by a majority vote of the total number of directors. The Committee believes this will permit the directors to function effectively but will prevent any action from being taken by a small number of directors who might constitute a majority of a quorum.

Section 4(e): Annual Report. This section requires the directors to publish an annual report to the people. The report must include at least three sections: (1) a description of the management of the public lands held by the Corporation

for the people; (2) a description of the nature and effect of any transfers of interests in public lands during the year covered by the annual report; and (3) a disclosure by each of the directors of any interest held in any land in the Commonwealth. The purpose of this section is to provide sufficient information to the public on the activities of the Corporation, to require a public disclosure and description of all of the transfers made by the Corporation, and to require a disclosure by the directors of any interest in land held by them in order to make available information on possible conflicts of interest.

Section 4(f): Dissolution of the Corporation. The Committee believes that much of the work with respect to the public lands may be completed within ten (10) years. Much of the land available for homesteading may have been transferred by that time; other portions of the land may be under long-term leases that will not be renegotiated for some years; and public uses for parks and other recreational, historic preservation, and scenic uses will have been established. The Committee recommends that a Corporation structure be used, in part, because it is easier to dismantle when it is no longer needed. This section provides for that dissolution. At any time ten years after the effective date of the Constitution, the legislature may decide to disband the Corporation. It must take this action by a two-thirds vote of the members of both houses. The Committee considered using a popular

referendum for this purpose but decided that an extraordinary majority of the legislature should be sufficient safeguard that the Corporation will be disbanded only if it is no longer needed.

Section 5: Fundamental Policies. This section sets out the fundamental policies that must be followed by the Corporation in carrying out its responsibilities. All matters not specifically mandated by the Constitution or delegated to the legislature are left to the discretion of the Corporation.

Section 5(a): Homesteading. This provision requires that the homestead program be continued and that the Corporation make land available for that purpose. It puts three limitations on the homestead program. First, a person may have only one homestead. If he is granted a homestead and then sells it, he may not qualify for another. Further, if a person elects to apply for a village homestead and receives it, then he would not be eligible for a farm homestead. Each person would have to make a choice as to the type of homestead for which he will seek to apply. The Committee believes this restriction is necessary because of the scarcity of land and its importance as a natural resource.

Second, the provision requires that a person who is granted a homestead hold it for five years before he will be granted title. Third, it requires that a person who is granted

title to a homestead hold it for ten years after he has been granted title before he may sell it. These two restrictions are necessary to be sure that the land used for the homestead program is used properly and that persons who get land for free actually intend to make use of it rather than call it for a profit.

The Committee's proposed language includes an exception to the second and third of these three limitations for persons who have resided on public lands continuously for 20 years or more at the effective date of the Constitution. This is a one-time exception designed primarily for the benefit of the people of the Northern Islands who have never qualified for the previous homestead programs. The Committee's proposal would permit

these persons to apply for homesteads under the new government's program and, if they met the other requirements, to be eligible to receive title and sell these lands immediately.

The Committee discussed other policy decisions with respect to the homestead program and decided that all other matters with respect to eligibility and the nature of the interest to be transferred to the homesteader be left to the legislature. The Corporation is required to follow the rules that are established by the legislature. The Committee believes that the legislature is best suited to decide who should be eligible for a homestead and what type of interest in land (title, lease or easement) a homestead grant should include. These are not really matters of land management that would be appropriate for the Corporation and are more matters of social policy that are appropriate for the legislature. The Corporation could make policy on matters other than eligibility and the nature of the interest to be transferred if any of those arose in the course of administering the homestead program.

Section 5(b): Transfers of Title. This section provides that the Corporation shall not transfer title to any public lands (except for homestead) for a period of ten years after the effective date of the Constitution. The Committee believes that there is a substantial interest in not selling the public lands. These lands belong to all the people of the Commonwealth who are of Northern Marianas descent. If they are sold to a single individual or corporation, and subsequently resold, the profit from the

value of the land goes only to the individual or corporation. The original owners, the people of the Commonwealth, get little or nothing. However, the Committee recognizes that an outright prohibition on sale of any of the public lands would have adverse social and economic effects. There is a social benefit from having as many people as possible own land. This creates a stable, responsible society that has a stake in the continued well-being of the Commonwealth. Another consideration is that if all of the public lands were removed from the possibility of outright sale, the existing private lands would increase greatly in value because of their relative scarcity thus restricting their availability to the relatively wealthy. In addition, there may be some kinds of investment that are practical only if ownership of the land is available.

The Committee has sought to meet both types of concerns by recommending a prohibition on sales for a limited period of time. During this period the Corporation can negotiate leases of the public lands so that economic development will not be stalled; and the Corporation and the people can assess the social and economic advantages and disadvantages of a prohibition on sale. At the end of the ten-year period the Corporation could continue the no-sale policy if it found that to be of substantial benefit or the people could require such a continuation by constitutional amendment.

Homesteads are specifically excluded from this section because they are provided for in Section 5(a).

Section 5(c): Transfers of Leaseholds. This section limits the leasehold interest that the Corporation can transfer to 25 years, including all rights of renewal. It requires that after 25 years, the lands come on the market again and be subject to competitive bidding. It may be that the original lease holder will be granted another lease for an additional 25 years, but he will have no automatic right to that lease and a competitor may receive it instead. The Committee believes that the 25-year period is sufficiently long not to hamper economic development, and sufficiently short to ensure that the Commonwealth maintains maximum control over and gets the maximum benefit from its public lands.

Section 5(d): Transfers of Large Parcels for Commercial Use. This section provides that the Corporation may not transfer any interest (title or leasehold) in large parcels for commercial use without the advice and consent of the Senate. During the first ten-year period, this section would be limited to leaseholds because of the prohibition on sales in Section 5(b). After the ten-year period, if sales were permitted, such sales would also be covered by this section. The Committee believes that transfers of large parcels of public lands are particularly sensitive because they take the land out of circulation and have a more limiting effect on the amount available for other purposes than do transfers of relatively small parcels. For this reason, the Committee believes it is appropriate for the Senate to exercise its

judgment with respect to the wisdom of the proposed transfer. The Committee intends that the term "commercial" would not apply to the homestead program.

Section 5(e): Transfers of Sandy Beaches. This section prohibits the transfer of any public lands that are within 150 feet of the high water mark of any sandy beach within the Commonwealth. This section applies only to transfers of public land in the future. The Committee recognizes that there is a present statute governing the use of land adjacent to public beaches. However, the Committee believes that the principle of protecting the availability of sandy beaches is important to the commercial interests of the Commonwealth for promoting tourism and to the interests of the people of the Commonwealth in access to these important natural resources.

Section 5(f): Land Use Planning. This section requires the Corporation to prepare a comprehensive land use plan with respect to the public lands including priority of uses. This plan will permit the public and the legislature to be informed of the Corporation's overall goals for the public lands. The Committee does not intend that such a land use plan would remain in effect indefinitely and the Committee's recommended provision permits the Corporation to amend the plan from time to time as changed circumstances require.

Section 5(g): Disposition of Funds. This section provides for the disposition of funds to be derived from the public lands. These funds include the payments made by the

United States for property leased under Article VIII of the Covenant. The Committee recommends that the funds from the public lands be placed in a trust fund that is an entity separate from the Corporation. The Committee believes that the functions of land management and money management should not be combined. Therefore this provision requires that the Corporation turn over the proceeds from the public lands to the Trust. The Committee's recommended provision does not include any timetable that the Corporation would have to follow but does include a general requirement that the moneys be turned over promptly.

The details with respect to the trust fund are set out in the proposed Section 6 of the constitutional article recommended by the Committee and are explained in the section of this report that deals with that language.

The general provision with respect to the disposition of funds permits the Corporation to retain a portion of the funds for administration purposes. There are two restrictions: the funds must be necessary for administration and the expenses of administration must be reasonable. The Committee discussed specifying a percentage limitation on the funds that could be withheld for administration but decided that since the amount of revenues might vary from year to year, and since there may be start-up costs for the Corporation, there should be no specific limit.

Section 6: Marianas Public Land Trust. This section establishes the Marianas Public Land Trust to hold and invest the proceeds from leases (and sales, if authorized in the future) of public land. The Trust would hold the proceeds from the lease of military lands and any other private or commercial leases made in the future.

The Committee considered several alternatives with respect to the proceeds from the public lands: turning the proceeds over to the general revenues to be appropriated by the legislature, earmarking the proceeds for certain public purposes, putting the funds into a development bank, and putting the funds into a trust.

The Committee recommends that a trust be used because this is an effective way of preserving the assets created by the public lands. Like the lands themselves, the moneys from the lands belong to the people. The Committee believes that these moneys should be preserved for the benefit of the people now and in the future. In order to achieve this goal, the moneys should not be dispersed, but should be invested and only the interest should be expended.

The Committee provided an incentive for the establishment by the legislature of a development bank by providing that such a bank could receive up to 55% of the trust funds accumulated in any given year or a total of

$10 million, whichever is less. The Committee believes that if the legislature establishes such a bank, the United States financial assistance earmarked for economic loans by Section 702(c) of the Covenant should be placed in that bank. There should not be two separate government entities dispersing economic loan funds. Therefore, the constitutional provision specifies that the Trust will contribute capital to the development bank only if all of the United States economic assistance for loan funds is directed by the legislature to the bank. If this is done, the bank will receive $1.75 million per year for seven years or a total of $12.25 million at the end of seven years. The Committee believes that the bank may need more capital at the outset than is provided in U.S. economic assistance. Therefore the Committee's recommended provision permits the Trust to deposit funds in the bank to provide the bank with a total capitalization of $10 million. As the bank accumulates its own funds from U.S. economic assistance or other sources, it would repay the Trust. The Committee did not recommend a constitutional provision that would establish the bank directly since that is more efficiently done by legislation.

The Committee did not provide for earmarking of the interest from the public land funds because it believes that needs may change in the future and the legislature should be given the flexibility to allocate these funds as new needs arise.

Section 6(a): Trustees. This section provides that the Trust shall be administered by three trustees. The Committee recommends a small number because the administrative duties are not extensive. The Committee intends that these positions would be part-time and compensated on a per diem basis. The trustees would not have any full-time staff and could hire financial counsel and legal counsel as required.

This section also provides that the trustees shall be appointed and removed by the Commonwealth trial court. The position of trustee is a fiduciary one. Courts have substantial experience with fiduciaries because they must appoint custodians, receivers, trustees and guardians in many different types of cases. The position of trustee should be entirely removed from politics and does not need to have a fixed term of office. The Court could remove a trustee for any breach of fiduciary or legal duty and would have the responsibility to do so if a trustee engaged in any improper conduct.

Section 6(b): Investments. The main function of the trustees is to invest the funds derived from the public lands. The Committee's recommendation is that the trustees be limited to investing in United States government bonds for the first ten years of the Trust. This would guarantee a safe investment, but would permit the trustees to select among the various types of United States bonds or similar debt instruments that may become available in the future. The Committee's provision sets a standard of reasonable, careful and prudent investment for the period after the initial ten years.

Section 6(c): Contribution to Development Bank. As explained above, the Committee believes it desirable for the Commonwealth to have its own bank. This provision of the Constitution would provide an incentive for the legislature to establish such a bank and would provide for the Trust to make a contribution to the bank so that it would have sufficient capital to operate effectively. The Committee intends that the contribution to the bank be repaid to the Trust out of funds to be provided by United States economic assistance grants. In this way, the bank will be aided, but the Trust will be maintained for the benefit of the people now and in the future.

Section 6(d): Disposition of Interest. This section requires the trustees to transfer the interest on the Trust funds to the general revenues of the Commonwealth that are available for appropriation by the legislature. The Committee rejected any earmarking of these funds because the legislature is in the best position to allocate funds among the competing needs of the people of the Commonwealth.

There are two limitations on this general direction. First, the trustees may retain sufficient funds for the administration of the Trust. This provision makes the Trust totally independent of either the executive or legislative branches of the government. Second, the trustees must make available the interest and principle of the funds received pursuant to Section 803(e) of the Covenant. That section earmarks the $2.0 million received from the lease of the lands

at Tanapag Harbor for a memorial park. It is not the intent of the Committee that the trustees would have anything to do with the establishment or maintenance of the park. They would simply make these funds available to the executive branch department that has this responsibility.

Section 6(e): Annual Report. This section requires the trustees to prepare and publish an annual report to the people of the Commonwealth. This report would contain the following information: (a) an accounting of all revenues received by the Trust; (b) an accounting of all expenses of administration incurred by the Trust; and (c) a description of all investments and other transactions authorized by the trustees.

Section 6(f): Trustees' Duty. This section provides that the trustees shall be held to strict standards of fiduciary care. Under this section, after the ten-year limitation on the type of investments expires, the trustees will have to exercise great care not to invest in anything that will cause a loss to the Trust or that will not maximize the income that can be safely made by the Trust.

Delegate Proposals: The Committee considered delegate proposals numbered 23, 46, 81, 92, 112, 122, 129, 137 and 140 that pertain to the article on public lands.

Proposal number 23 is covered by the Committee's proposed constitutional provision section 5(a).

Proposal number 46 is covered by section 1.

Proposal number 81 is covered by section 1.

Proposal number 92 is covered by section 3.

That places the responsibility for all public lands in the Marianas Public Land Corporation.

Proposal number 112 is covered by the homestead program authorized by section 5(a).

With respect to proposal number 122, sections 1, 2, 3 and 4 were deferred until the Committee discusses the subject of land alienation. Section 5 of the proposal is covered by section 4 of the Committee's proposed constitutional article establishing the Marianas Public Land Corporation. Section 6 of the proposal is covered by section 5(g) of the Committee's proposed constitutional article.

Proposal number 129 is covered by section 4.

Proposal number 137 is covered by section 5(b).

Proposal number 140 is covered by section 5(e).

Respectfully submitted,

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ARTICLE __

PUBLIC LANDS

Section 1: Public Lands. All of the lands as to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth pursuant to Secretarial Order 2969, all of the lands as to which right, title or interest have been vested in the Resident Commissioner pursuant to Secretarial Order 2989, all of the lands as to which right, title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands pursuant to Article VIII of the Covenant to, and all submerged lands off the coast of any part of the Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership pursuant to international law or United States law are public lands and belong collectively to the people of the Commonwealth who are of Northern Marianas descent.

Section 2: Submerged lands. The management and disposition of submerged lands shall be as provided by law.

Section 3: Surface lands. The management and disposition of all public lands except those provided for by section 2 shall be the responsibility of the Marianas Public Land Corporation.

Section 4: Marianas Public Land Corporation. There is hereby established the Marianas Public Land Corporation.

a) The Corporation shall have nine directors appointed by the governor with the advice and consent of the Senate who shall direct the affairs of the Corporation for the benefit of the people of the Commonwealth who are of Northern Marianas descent.

b) Two directors shall be residents of Saipan, two shall be residents of Rota, two shall be residents of Tinian, one shall be a Carolinian or person of Carolinian descent, and one shall be a resident of the Northern Islands. Each director shall be a United States citizen or national, a resident of the Commonwealth for at least five (5) years preceding his appointment, a person who has not been convicted of any crime carrying a maximum sentence of imprisonment of six months or more, a person who is able to speak Chamorro or Carolinian and a person of Northern Marianas descent.

c) The directors shall serve six-year terms provided however that three of the first nine directors appointed shall serve a two-year term, three shall serve a four-year term and three shall serve a six-year term. No person may serve more than one term as director.

d) The Corporation shall act by majority vote of the total number of directors.

e) The directors shall prepare and publish once each year a report to the people of the Commonwealth describing the management of the public lands and the nature

and effect of any transfers of interests in public land during the preceding year and disclosing the interests of each of the directors in any land in the Commonwealth.

f) At any time ten years after the effective date of this Constitution, by an affirmative vote of two-thirds of the members of each house of the legislature, the Corporation may be dissolved and its functions may be transferred to the executive branch of government.

Section 5: Fundamental policies. The Marianas Public Land Corporation shall follow certain fundamental policies in the performance of its responsibilities.

a) The Corporation shall make available some portion of the public lands for a homestead program. No person shall be eligible for more than one homestead. No person shall receive title to a homestead for five years after the grant of a homestead or shall be able to transfer title to a homestead within ten years of receipt thereof provided, however, that these requirements shall be waived for persons who have established a continuous residence on public lands for at least 20 years as of the effective date of this Constitution. Other requirements for eligibility for the homestead program and the nature of the interest in land to be transferred by the Corporation shall be as provided by law.

b) The Corporation shall not transfer title to any public lands for a period of ten years from the effective date of this Constitution, except with respect to homesteads as provided under Section 5(a).

c) The Corporation shall not transfer any leasehold interest in any public lands for a period exceeding twenty-five (25) years including all renewal rights.

d) The Corporation shall not transfer to any person or legal entity any interest in more than five hectares of public land for use for commercial purposes unless the proposed transfer has been approved by a majority vote of the members of the Senate.

e) The Corporation shall not transfer any interest in any public lands that are located within 150 feet of the high water mark of any sandy beach within the Commonwealth.

f) The Corporation shall adopt a comprehensive land use plan with respect to the public lands including priority of uses and such plan may be amended from time to time as the Corporation shall provide.

g) The Corporation shall transfer promptly all moneys received from the public lands to the Marianas Public Land Trust provided however that the Corporation shall retain the portion of such moneys necessary to meet reasonable expenses of administration.

Section 6: Marianas Public Land Trust. There is hereby established a Marianas Public Land Trust.

a) The Trust shall have three (3) trustees appointed and removed by the Commonwealth trial court.

b) The trustees shall make reasonable, careful and prudent investments. During the first ten (10) years of the

Trust, no investments shall be made except in obligations of the United States government.

c) If the legislature authorizes a Marianas development bank, and if the legislature provides that the entire amount of United States economic assistance for economic development loans provided under Section 702(c) of the Covenant shall be deposited in that bank, then the Trust shall use up to fifty-five percent (55%) of its receipts in any given year to increase the total capital available to the bank to the sum of ten million dollars ($10,000,000). If in any year subsequent to a deposit of funds by the Trust in the bank, the bank has more than t n million dollars ($10,000,000) in total capital, then the bank shall re-pay to the Trust the excess above ten million dollars ($10,000,000) until the Trust has been made whole.

d) The trustees shall carry out the intention of Section 803(e) of the Covenant by making available the interest, and to the extent necessary, the principal of the amount received for the lease of property at Tanapag Harbor for the development and maintenance of a memorial park. The trustees shall transfer to the general revenues of the Commonwealth all remaining interest accrued on the Trust proceeds, provided however that the Trustees may retain the amount of the interest necessary to meet the reasonable expenses of administration of the Trust.

e) The trustees shall prepare and publish an annual report to the people of the Commonwealth accounting for all revenues received and expenses incurred by the Trust and describing all investments and other transactions authorized by the trustees.

f) The trustees shall be held to strict standards of fiduciary care.

November 5, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON PERSONAL
RIGHTS AND NATURAL RESOURCES

Subject: Committee Recommendation No. 6:
Eminent Domain

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional provision with respect to eminent domain.

The Committee's recommended constitutional provision contains two sections. The first provides that the eminent domain power is to be exercised only for a public purpose under terms to be provided by the legislature. The second requires compensation for any lands taken and a determination that public lands cannot be used instead of private lands for the intended public purpose.

The Committee's reasons for its recommendation are as follows:

Section 1: Eminent Domain. This section authorizes the Commonwealth government to exercise the eminent domain power and specifies that it shall be exercised only for a public purpose. The public purpose is to be defined by the legislature. There must be a benefit to the general public defined in any statute authorizing the use of the eminent domain power. This provides flexibility for the legislature to meet future needs.

The Committee decided not to limit the eminent domain power to specified purposes because it is difficult to foresee all of the needs that the government might have in the future. The Committee also decided not to limit the exercise of the eminent domain power to specified executive branch departments or agencies because that would have an adverse effect on the ability of the governor to re-organize the executive branch should that become necessary.

Section 2: Limitations. This section requires just compensation for the taking of any private property. The Committee has included this requirement although Section 5 of the article on personal rights includes the same guarantee. This provision is intended to make clear to the people their rights in the event that the government decides to exercise its eminent domain power.

This section also requires a determination that no suitable public land is available for the intended public purpose before the power of eminent domain is exercised. The Committee believes that a taking of private land is a very serious imposition on an individual citizen and should not occur if the government has any reasonable alternative. The government should be required to plan for its needs in the foreseeable future and to make use of public lands wherever possible.

The general provision contained in Section 1 that the government may exercise the eminent domain power as provided by law permits the legislature to enact further limitations on the use of the eminent domain power. The Committee believes that it is appropriate for the legislature to make decisions with respect to limitations such as: 1) requiring a showing that acquisition by voluntary means is not feasible; 2) requiring that only a leasehold or easement interest be taken; and 3) requiring that the leasehold be returned to the property owner if the public purpose no longer requires it. These are matters that could be affected by the particular use for which eminent domain is to be exercised and by the circumstances within the Commonwealth at the time.

The Committee considered two other powers with respect to land use within the Commonwealth: zoning and property tax benefits. The Committee recommends that no constitutional provision be made for these matters and that they be left to the legislature under its general grant of legislative power.

Zoning requires separating the land within the Commonwealth into zones and restricting the use of land (both public and private) within each zone. By providing no

constitutional language, the Committee's recommendation permits the legislature to exercise the zoning power or to delegate that power to the executive branch or to the local island government. This is the approach taken by most state constitutions. The need for zoning and the most useful approach to zoning will probably change in the future and the Committee believes that it is necessary to preserve flexibility in this regard.

The Committee wishes to point out that the Public Land Corporation has zoning power with respect to the public lands pursuant to Section 5(f) of the Committee's proposed constitutional language. That provision requires the Corporation adopt a comprehensive land use plan with respect to the public lands including priority of uses. The land controlled by the Public Land Corporation will be a large portion of the land on each island and the legislature may decide that further zoning is unnecessary for some time.

Real property tax benefits can be used as an incentive to encourage particular uses of private property. The Committee on Finance, Local Government and Other Matters has recommended that decisions with respect to all types of taxes, including the property tax, be left to the legislature. The Committee on Personal Rights and Natural Resources endorses this view and therefore recommends no additional constitutional language with respect to property tax benefits.

Delegate Proposals. The Committee considered three delegate proposals on the subject of land use controls: proposals numbered 24, 26 and 27.

Delegate proposal number 24 has five parts. Parts 1 and 3 are covered by the Committee's proposed provision. Parts 2, 4 and 5 contain limitations on the use of the eminent domain power that under the Committee's proposed provision would be left to the legislature.

Delegate proposal number 26 requires the approval of the exercise of eminent domain power on Tinian and Rota by the municipal government. The Committee believes that all the powers to be accorded local government should be considered together and for this reason recommends that this delegate proposal be referred to the Committee on Finance, Local Government and Other Matters.

Delegate proposal number 27 contains limitations on the exercise of the eminent domain power within the Commonwealth by the United States. This proposal contains the same language as provided by Section 806 of the Covenant. The Committee believes that it is not necessary to include this provision in the Constitution because this protection is specifically included in the Covenant.

Respectfully submitted by the Committee,

Felipe Q. Atalig, Chairman

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ARTICLE ___

EMINENT DOMAIN

Section 1: Eminent Domain Power. The government may exercise the power of eminent domain to acquire private property necessary for the accomplishment of a public purpose as provided by law.

Section 2: Limitations. Private property shall not be taken without just compensation and shall not be taken unless no suitable public land is available for the accomplishment of the public purpose.

November 8, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON PERSONAL
RIGHTS AND NATURAL RESOURCES

Subject: Committee Recommendation No. 7:
Natural Resources

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional provision with respect to natural resources.

The Committee's recommended constitutional provision contains three sections. The first section provides that the fish and other marine resources located in the waters off any Commonwealth coast belong to the Commonwealth to the maximum distance from the coast permitted by international law or United States law. These natural resources are to be controlled, protected and preserved for the benefit of the people and no interest in these resources may be transfered except as provided by the legislature. The second section requires the preservation of certain islands as uninhabited places for recreational purposes and for use as bird and wildlife sanctuaries. The third section provides for the preservation of sites of historical, cultural and traditional significance to the people of the Northern Mariana Islands.

The Committee has the following reasons for its recommendations:

Section 1: Marine Resources. This section lays claim to the marine resources, including fisheries, present in the water off any Commonwealth coast to the maximum distance from the coast that is permitted by international law and United States law. The provision does not specify any mile limit on the Commonwealth's jurisdiction because the extent of the jurisdiction of the Commonwealth is unclear at the present time and may be made specific and extended in the future. If the Constitution claimed more than was permitted under current United States law, the provision would be unconstitutional under the United States Constitution. If the Constitution claimed less than is made available in the future, a constitutional amendment might be necessary. The flexible language recommended by the Committee permits the Commonwealth to claim and exercise jurisdiction to the maximum extent permitted as circumstances change in the future.

The Committee's recommended provision requires the legislature to control, protect and preserve these resources. This requirement is included because of the importance that these resources may have for the economy of the Commonwealth in the future. The provision also prohibits the transfer of any interest in marine resources within the jurisdiction of the Commonwealth except as

provided by law. This requires that there be no leases or sales of fisheries or other marine resources except in accordance with a statute passed by the legislature. The Committee believes this control is important because of the possibility that, without control, these resources may be exhausted.

Section 2: Uninhabited Islands. This section requires that the island of Managaha be maintained in an uninhabited condition and that it be used for recreational purposes. It is the Committee's intention that no permanent structures such as houses, hotels or other facilities be constructed on the island in order that the island can be preserved in its present condition and used by the people of the Commonwealth for recreational purposes.

This section also requires that the island of Sarigan be maintained in an uninhabited condition and that it be used as a sanctuary for bird and wildlife species indigenous to the Commonwealth. This use could include ecological and other scientific studies. This section does not preclude stationing caretakers or scientific personnel on these islands or construction of buildings for those purposes.

The Committee is concerned with the rapid rate at which native wildlife is being depleted in the Northern Mariana Islands. The Committee recognizes the need to

preserve certain areas as natural habitats where fish, coconut crabs, fruit bats and other native species can be maintained and preserved. The Committee considered the advantages and disadvantages of each island available for this purpose. The Committee believes that Sarigan is best suited for this purpose by reason of its location, present use, economic value and possible future development. However, the Committee recognizes that a feasibility study or further consideration may lead to the conclusion that another island is equally or better suited for these purposes. For this reason the Committee's proposed draft language permits the legislature to substitute another island for Sarigan as the bird and wildlife sanctuary if the legislature finds that the other island is equally or better suited for this purpose. If the legislature does not act, then Sarigan will continue to be used for this purpose.

The Committee believes that at least one island should be preserved for this purpose and believes that this provision should be included in the Constitution to ensure an adequate safeguard. The Committee finds that legislative efforts in the past have been inadequate.

Section 3: Cultural and Historical Sites. The Northern Mariana Islands have many places of historical, cultural and traditional significance to the people of the Northern Mariana Islands. These sites are on public land and, under the Committee's recommended article

on Public Lands, will be subject to the control of the Public Land Corporation for at least ten years after the effective date of the Constitution. Thereafter the control of public lands may pass to the executive branch. The Committee believes that this section should be included in order to provide the basic guidelines on preservation of these sites regardless of the authority that manages them. This section directs the legislature to protect and preserve these sites and to maintain public access to them. It leaves to the legislature the determination of the best means of so doing.

The Committee is also concerned with artifacts and other things of cultural or historical significance such as the latte stones, cannons and other objects that might be dismantled and moved outside the Commonwealth. These objects are an important part of the heritage of the people of the Commonwealth and should be preserved. The Committee's recommended provision requires that these objects be protected and preserved in a manner to be defined by the legislature. It also contains a prohibition on the export of such objects.

Delegate Proposals. The Committee considered delegate proposals numbered 21, 89, 99, 115, 116, 117 and 146 that pertain to the article on natural resources.

With respect to proposal number 21, the Committee decided to refer the proposal to the Committee on Governmental Institutions because the proposal deals basically with how the votes of people who move to Agiguan island in the future should be counted. The uses of the public lands on Aguigan island are already covered by this Committee's recommended provision on public lands.

Proposal number 89 is covered by section 1 of this recommendation.

The Committee believes that proposal number 99 is a statutory and not a constitutional matter.

Proposals numbered 115, 116 and 117 are covered by sections 2 and 3 of this recommendation.

The Committee opposes proposal number 146 because it does not believe the Constitution should name specific boards and commissions. The legislature has full authority to create boards and commissions as it deems them necessary or appropriate.

Respectfully submitted by the Committee,

Felipe Q. Atalig, Chairman

Francisco T. Palacios, Vice Chairman

Pedro M. Atalig

Felix A. Ayuyu

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ARTICLE ___

NATURAL RESOURCES

Section 1: Marine Resources. All of the marine resources found in waters off the coast of any part of the Commonwealth over which the Commonwealth now or hereafter may have any jurisdiction pursuant to international law or United States law shall be controlled, protected and preserved by the legislature for the benefit of the people of the Commonwealth. The transfer of any interest in the marine resources of the Commonwealth shall be on terms and conditions provided by law.

Section 2: Uninhabited Islands. The island of Managaha shall be maintained as an uninhabited place and shall be used only for recreational purposes. The island of Sarigan and such other islands as may be provided by law shall be maintained as uninhabited places and shall be used only for the preservation of bird and wildlife species provided, however, that the legislature may substitute in place of Sarigan another island equally or better suited for that purpose.

Section 3: Places and Things of Cultural and Historical Significance. Places of importance to the culture and traditions of the people of the Northern Mariana Islands and places where significant historical events occurred within the Northern Mariana Islands shall be protected and preserved and public access thereto shall be maintained as provided by law. Artifacts and other things of cultural or

historical significance shall be protected and preserved as provided by law and shall not be removed from the jurisdiction of the Commonwealth.

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REPORT TO THE CONVENTION BY TH
COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: COMMITTEE RECOMMENDATION Number 8:
Restrictions on Land Alienation

The Committee on Personal Rights and Na
that the Convention adopt in principle the attache
with respect to restrictions on land alienation.

The Committee's recommended constitutional provision has six sections. The first section sets out the basic restriction. Acquisition of permanent and long-term interests in real property is limited to persons of Northern Marianas descent. The second section defines the term acquisition to include all transfers except inheritances by spouses and foreclosures of mortgages when the mortgagee does not hold title for more than five years. The third section defines the term "permanent and long-term interests in real property" to include all sales and all leases of longer than 25 years. The fourth section defines the term "persons of Northern Marianas descent" to mean persons who are United States citizens or nationals and who are at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood. The fifth section permits corporations to be considered as persons of Northern Marianas descent so long as they are incorporated and have their principal place of business in the Commonwealth, have voting shares at least 51% of which are owned by persons of Northern Marianas descent, and have directors at least 51% of whom are persons of Northern Marianas descent. The sixth section makes transactions that violate section 1 absolutely void and

provides that land owned by corporations that fail to maintain their qualification under section 5 will be forfeited to the government.

The Committee's reasons for its recommendation are as follows:

Section 1: Alienation of Land. This section incorporates into the Constitution the basic requirements with respect to land alienation set out in section 805(a) of the Covenant. This section requires that the acquisition of permanent and long-term interests in real property in the Commonwealth be restricted to persons of Northern Marianas descent.

The Committee followed three basic principles in implementing the restrictions on land alienation mandated by the Covenant and section 1. First, the Committee used only those restrictions that are necessary to the accomplishment of the purpose that underlies the Covenant. Second, the Committee avoided the use of any racial or ethnic classification to accomplish its purpose. Its classifications are based on neutral principles of place of birth, domicile, incorporation and other essential attributes. Third, the Committee spent a great deal of time and effort to find the least restrictive means of accomplishing its purpose.

The Committee's purpose in implementing the restrictions on land alienation is to protect the culture and traditions of the people of the Northern Mariana Islands, to promote the political growth needed in the first critical years of the Commonwealth, to accomplish the political union with the United States with a minimum of cultural and economic dislocation, and to provide the stability needed to survive in the family of nations.

The Committee believes that restrictions on the alienation of land are necessary to this purpose because the social and economic benefits that are to be derived from land ownership are unique and cannot be duplicated in any other way. The Commonwealth to be created by this Constitution will be

very small. It will have only a few hundred square miles of land and 15,000 people. Although the population may grow in the future, the available land cannot increase. Land is one of the principal sources of social stability. It gives root to the pride, confidence and identity as a people that will permit the cooperative action necessary to a successful Commonwealth. If it passes out of the hands of the people of the Northern Mariana Islands, these unique social and economic benefits will be lost.

Land is the only significant asset that the people of the Commonwealth have. There are no substantial mineral resources; there is no commercial enterprise capable of sustaining large numbers of people; there is no valuable location on important trade routes. Virtually all of the land on the islands now belongs to the people of the Northern Mariana Islands, either individually or collectively. Substantial economic and cultural dislocation would follow inevitably should this land be lost by transactions with outsiders in the near future. Land is the basis of family organization in the islands. It traditionally passes from generation to generation creating family identity and contributing to the economic well-being of family members.

Land is not held primarily for its economic value, and in the past, economic values have not been in competition with the social and family values represented by the land. From the end of World War II to the present, the law enforced in the Northern Mariana Islands has forbidden alienation of land to persons not citizens of the Trust Territory of the Pacific Islands. The people of the Northern Mariana Islands have had little opportunity to gain experience in land transactions of the kind that would be necessary to compete effectively against investors from the well-developed economies of other countries.

Restrictions on land alienation are necessary to preserve the character and strength of the communities that make up the Commonwealth. The

people of the Commonwealth are willing to sacrifice the short-term economic gain that might be achieved by putting their land on the market in order to achieve the longer-term economic and social gain that will come from preserving their family and social order, thus protecting the basis for enduring economic growth. The people are willing to take the time to learn how best to use their land. There are at present no complete land use plans and no comprehensive zoning regulations. These tools will be necessary to regulate the use of land in the Commonwealth by outsiders and restrictions on land alienation will provide the necessary time to consider and enact these protections.

The Commonwealth is new. The people have had little experience in self-government. It is a more prudent course to proceed carefully, accepting change only as it proves to be of long-term benefit to the Commonwealth as a whole. It is necessary to construct certain safeguards at the outset of the Commonwealth government to ensure that the change in the political order is supported by stability in the social order so that the people may conserve the strength necessary to the survival of the Commonwealth as a viable political and economic entity.

The requirements with respect to land alienation recommended by the Committee are the least restrictive way to achieve the Committee's purpose. First, section 1 restricts only the acquisition of permanent and long-term interests in real property in the Commonwealth to persons of Northern Marianas descent. It does not prevent outsiders from using land in the Commonwealth. It permits the acquisition by persons from the United States, persons from other parts of the Trust Territory, and aliens of short-term and non-permanent interests in land. It permits a wide range of uses of land by such persons for commercial and personal purposes.

Second, the Committee sought to find restrictions that would include all those persons who are a part of the community that has made the creation of the Commonwealth possible and to exclude as nearly as possible only those persons who are not a part of that community of interest. In so doing, the Committee recognized that no classification system based on neutral principles can be completely effective or error free, including only those who should be included or excluding those who should be excluded. The Committee has erred on the side of including a few of those persons who should be excluded rather than excluding any of those persons who should be included. The Committee has also considered the required duration of these restrictions and has adopted a relatively less restrictive alternative in that regard as well.

Sections 2 through 6 implement the basic restriction in section 1 in the manner described below.

Section 2: Acquisition. The Covenant uses the phrase "acquisition of such [permanent and long-term] interests" in real property in the Commonwealth, but does not include any definition of the term "acquisition." The Committee decided to include a definition of this term in the Constitution because of its central importance to the implementation of the restrictions. The Committee's definition of "acquisition" includes all transfers by sale, lease, gift, inheritance or any other means.

The Committee has provided two exceptions to this definition. The first exception is for transfers to spouses by inheritance. The Committee does not consider this as an acquisition because property acquired or maintained by a married couple is usually supported by the labors of both spouses. When one spouse dies, the other spouse should be able to take over as owner of the family property. This exception means that spouses who are

not persons of Northern Marianas descent will be able to own permanent or long-term interests in land if they are acquired by inheritance. This exception applies to the spouses of persons who are persons of Northern Marianas descent as well as to the spouses of persons who now own real property in the Commonwealth but who are not of Northern Marianas descent. The Committee believed that there was not sufficient justification to support different treatment for classes of spouses. The Committee wishes to point out that the exception is only for inheritance. Spouses who are not persons of Northern Marianas descent are not qualified to acquire land by sale, lease, gift or other means.

The second exception applies to banks or others that acquire permanent and long-term interests in real property through mortgage foreclosure. The Committee recognizes that those who give mortgages normally do not do so for the purpose of acquiring property. They are interested in receiving repayment of the principal amount loaned plus the interest on the principal. Those who give mortgages insist on a right to acquire interests in real property only to protect their investment in case of a default. Their intention, therefore, would not be to retain the property acquired through foreclosure, but to sell it in order to recover their investment. The Committee decided for this reason that foreclosure of a mortgage should not be treated as an acquisition if, within five years of the foreclosure, the bank or other mortgagee disposed of the interest gained through the foreclosure. This exception permits the normal banking operations to continue, and the five-year limitation prevents circumvention of the restriction on alienation through the use of sham mortgages that would be foreclosed with consent. Under the Committee's

proposal, this type of transaction would be made unprofitable because the new owner could hold title for only five years unless that owner was a person of Northern Marianas descent.

Section 3: Permanent and Long-Term Interests in Real Property. This section defines the term "permanent and long-term interests in real property" used both in the Covenant and in section 1. Two types of interests are included: freehold interests and leasehold interests of longer than 25 years.

Freehold interests are all types of ownership or title -- fee simple, fee tail, and life estate -- granted by all types of deeds -- warranty deeds, quitclaim deeds, wills, and deeds executed pursuant to laws of intestate succession (when a person dies without a will). It includes all types of sharing arrangements for ownership -- ownership jointly vested in two or more persons, ownership vested in two or more persons as tenants in common, and ownership in two or more persons vested in succession.

Leasehold interests are those granted by contract for the possession and use of real property usually for a specified number of years. Under a lease agreement, the owner retains title but gives up his right to possession and exclusive use during the term of the lease. This section only applies to leases of more than 25 years. The Committee applied a definition of long-term lease that is consistent with section 5(c) of the constitutional article on public lands, which prohibits the Marianas Public Land Corporation from alienating long-term interests in the public lands. That section places the dividing line at 25 years. The Committee believes that this definition of "long-term" is appropriate in light of past experience with leases in the Trust Territory, under circumstances similar to those in the Northern Mariana Islands, and because of past experience in the Northern Mariana Islands. The

Committee also believes that 25 years is the least restrictive definition of "long-term" that will serve the practical needs of the Commonwealth. Twenty-five years is about the length of time that separates the generations within families in the Northern Mariana Islands and an arrangement that lasts long enough to affect more than one generation should be considered to be long-term.

The 25-year limitation imposed by this section applies to any extensions in a lease term as well as to the original term. This is also consistent with the treatment of leases in the article on public lands. The Committee believes that renewal rights are an integral part of a lease and should not be permitted to constitute an extension of the time limitation.

Under this section, aliens and other persons who are not of Northern Marianas descent will be permitted to use property under leases of 25 years or less. They will be able to build substantial structures and improvements because they will have 25 years to amortize these investments. A wide variety of commercial and private uses will be feasible under this limitation.

Section 4: Persons of Northern Marianas Descent. This section defines the term "persons of Northern Marianas descent," which is used in both the Covenant and in section 1 of this article.

The Northern Mariana Islands have been ruled by the Spanish, the Germans, the Japanese, and the Americans. Over the years there has been some migration to and from these islands by people from each of these ruling nations and from the other islands in the Pacific. People occasionally have come to the Northern Mariana Islands from other places. Most of these people came as administrators or entrepreneurs. They maintained their citizenship elsewhere and clung to their national identity. They did not adopt the culture or integrate with the people of the Northern Mariana Islands. Throughout the

history of the Northern Mariana Islands, those who considered themselves as the people of the Northern Mariana Islands have been the Chamorros and the Carolinians who settled on the various islands, formed a cohesive social group, worked for the political and economic betterment of the Northern Mariana Islands, and considered these islands as their home.

For this reason, the Committee defined the term "person of Northern Marianas descent" as a person who meets two criteria: (1) a citizen or national of the United States; and (2) a person of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood.

The Committee believed that a baseline was needed in order to define what is meant by a person of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood. The Committee did not use a racial or ethnic classification for this purpose. All persons who were born in the Northern Mariana Islands prior to 1950 and who were citizens of the Trust Territory are defined as full-blooded Northern Marianas Chamorros or Northern Marianas Carolinians. Similarly, all persons who were domiciled in the Northern Mariana Islands prior to 1950 and who were citizens of the Trust Territory are defined as full-blooded Northern Marianas Chamorros or Northern Marianas Carolinians.

From this baseline, it will be possible to calculate the percentage of Northern Marianas descent necessary to qualify under the first part of the section. For example, if a husband and wife were both born in the Northern Mariana Islands prior to 1950 and were both citizens of the Trust Territory, they are both considered as 100% Northern Marianas descent and their children will be 100% Northern Marianas descent. If a husband was domiciled in the Northern Mariana Islands prior to 1950 and was a citizen of the Trust Territory and his wife was born in the Philippines and was a Philippines citizen, then the husband is 100% Northern Marianas descent and

the wife is 0% Northern Marianas descent. Their children, then, are 50% Northern Marianas descent and they qualify to own property under this section since only 25% Northern Marianas descent is required. If a person who is 50% Northern Marianas descent marries a person who is 0% Northern Marianas descent, their children will be 25% Northern Marianas descent and will still qualify to own property.

The Committee inserted the words "or a combination thereof" after the requirement of one-quarter Northern Marianas Chamorro or one-quarter Northern Marianas Carolinian blood to make clear that if a Chamorro marries a Carolinian the percentage of Northern Marianas descent of any children of that marriage is not decreased.

The Committee included the requirement of citizenship in the Trust Territory because it believes that persons who were domiciled in the Northern Mariana Islands prior to 1950 but who did not become Trust Territory citizens when that citizenship became available are not within the group that should be eligible to own land. By maintaining citizenship somewhere outside the Trust Territory, these persons indicated that their basic allegiance was elsewhere. Similarly, the Committee believes that the children of Americans or Filipinos who were stationed here temporarily prior to 1950 and who were therefore born in the Northern Mariana Islands should not be included in the group eligible to own land in the Northern Mariana Islands. These children would have the citizenship of their parents. They would not have been Trust Territory citizens and therefore would not qualify.

The Committee included the requirement of United States citizenship or national status because it believes that only those who intend to place their allegiance with the Commonwealth and with the United States should be included in the group eligible to own land. Citizens of other countries and

citizens of the remainder of Micronesia (after the Trusteeship is ended) would be excluded under this requirement because their basic allegiance is elsewhere. This requirement would exclude contract workers who came to the Northern Marianas from foreign countries or from other districts within the Trust Territory. Many of these people came to the Northern Mariana Islands because the government for the entire Trust Territory was located in Saipan for many years. If the seat of government had been elsewhere, these people would not have resided in the Northern Mariana Islands at all. The Committee believes that these persons should not be included in the group eligible to own land.

The Committee also made provision for the adopted children of persons of Marianas descent. They will automatically become persons of Northern Marianas descent if they are adopted while under the age of 18. The Committee used this age limitation to permit legitimate adoptions and to prevent adoptions for the purpose of circumventing the restrictions on land alienation. The Committee did not specify the percentage of Northern Marianas descent that an adopted child would acquire from his adopting parents. It is the Committee's intent that the adopted child shall have the same position with respect to Northern Marianas descent as would a natural child. That is, if a person who is 50% Northern Marianas descent is married to a person of 0% Northern Marianas descent, their natural children, if they had any, would be 25% Northern Marianas descent. In that case, an adopted child should also be 25% Northern Marianas descent. However, the Committee recognizes that there are many possible variations and believes that it is impossible for the Constitution to include a provision that covers all cases. For example, a child adopted by a person who is unmarried, or by a person who

marries more than once would require a special rule. The Committee believes that these matters are best left to a court for decision under the specific facts of each special case.

Section 5: Corporations. The Committee considered the special problem of corporations, and the recommended constitutional provision deals with corporations in a separate section. Under the definition in Section 4, no corporation would be qualified to own land because section 4 applies only to natural persons. Section 5 permits a corporation to be considered as a "person of Northern Marianas descent" if it meets four qualifications.

First, a corporation must be incorporated in the Commonwealth. This requirement will make ineligible corporations that are incorporated anywhere else in the United States, anywhere in the Trust Territory or in any foreign country. The purpose of this restriction is to give control over the corporations that own land in the Commonwealth to the government of the Commonwealth, which will be able to enact statutes regulating incorporation.

Second, a corporation must have its principal place of business in the Commonwealth. Under this requirement, a corporation may have offices in Guam, Japan or any other place, but the principal office must be in the Commonwealth. The purpose of this restriction is to limit land ownership to corporations that are operating primarily in the Commonwealth.

Third, a corporation must have directors that govern its affairs, and at least 51% of the directors must be persons of Northern Marianas descent. The purpose of this restriction is to ensure that any corporation that owns land in the Commonwealth is governed by persons of Northern Marianas descent. In this way, the decisions of the corporation will be

made by persons who have a stake in the future of the Commonwealth. No profits may be paid to persons outside the Commonwealth and no investment may be accepted from persons outside the Commonwealth unless the directors agree.

Fourth, the corporation must have voting shares and at least 51% of the voting shares must be owned by persons of Northern Marianas descent. The purpose of this requirement is to maintain control of the corporation in the hands of persons who are of Northern Marianas descent. This is important because the corporation is a conduit for owning land. It is only through control of the corporation that this ownership of the land is controlled.

The Committee discussed a provision under which 51% of all shares, not just voting shares, would be required to be in the hands of persons of Northern Marianas descent. This provision was not adopted because it would place a limit on the development of corporations through equity financing and because it would not prevent the flow of profits out of the Commonwealth. There is a limited amount of capital in the Northern Mariana Islands at the present time. If 51% of all shares, not just voting shares, had to be owned by persons of Northern Marianas descent, expansion of capital through sales of additional shares would not be possible in many cases because persons of Northern Marianas descent with capital to invest could not be found in sufficient numbers. The Committee's recommended provision permits a corporation to divide its stock into voting and nonvoting shares. It can sell the nonvoting shares to anyone, but it must sell at least 51% of the voting shares to persons of Northern Marianas descent. The voting shares control the corporation and no payment of profits as dividends to the nonvoting shares may be made without the approval of the directors

(who must be 51% persons of Northern Marianas descent) and the holders of the voting shares (who also must be 51% persons of Northern Marianas descent). Therefore, there is no increase in the amount of profits that will flow out of the Commonwealth under the Committee's recommended provision as compared to a provision that requires 51% of all shares (voting and non-voting) to be owned by persons of Northern Marianas descent.

A requirement that 51% of all shares be in the hands of persons of Northern Marianas descent would probably lead many corporations to use debt financing rather than equity financing. In other words, the corporation would borrow money rather than trying to raise money by the sale of stock. There is nothing in any of these provisions that prevents foreigners from investing in corporations that own land in the Commonwealth by lending money. If debt financing were used rather than equity financing, more profits would probably flow out of the Commonwealth because payments of principal and interest on the debt would be required--the directors would have no flexibility as they do with declaring dividends on stock. Also, payments on debt have a priority over payments on equity, and under this type of provision the foreign debt holders would be paid first, and the local shareholders second. If equity financing is used, the foreign equity holders and the local equity holders get paid at the same time.

The Committee recognizes that the organization and shareholding of corporations changes from time to time as new directors are elected and as shares of stock are sold. The Committee's recommended constitutional provision covers all such changes by providing that a corporation is eligible to own land only so long as it meets all the requirements. If the percentage of directors falls below 51% Northern Marianas descent or if the percentage of shareholders falls below 51% Northern Marianas

descent, the corporation is automatically ineligible to own land and the enforcement rule in section (6) takes effect. For this reason corporations will be very careful about election of directors and transfers of stock interests. They will probably provide that any shareholder who wants to sell his shares will have to notify the corporation first and identify the prospective buyer. If the buyer is a person of Northern Marianas descent or if the transaction is so small that it will not bring the percentage of shares owned by persons of Northern Marianas descent below the 51% limit, then the corporation will permit the transfer. Otherwise, the corporation will probably exercise its right to buy back the shares. The Committee believes that these restrictions are easy to understand and that corporations will devise sufficient methods to ensure that these requirements are met.

Section 6: Enforcement. This section provides that any transaction made in violation of section 1 is void from the beginning and has no force or effect. This means that if a person sells land to a person who is not of Northern Marianas descent, that transaction never takes effect and never has any consequence with respect to the title of the land. The title remains in the person who tried to sell it.

This section affects only the title in land. It does not affect the cause of action that the buyer may have if the seller takes his money and then does not have to part with title because the buyer is not a person of Northern Marianas descent. Those causes of action would be governed by the general law of contracts.

This section also provides that if a corporation becomes ineligible under section 5, any land that it owns will be forfeited to the government. The Committee believes that this is a simple provision,

easily understood by those who are responsible for the affairs of corporations. If the legislature finds that forfeiture to the government is too harsh or that it should not apply to small family corporations, it could provide that the lands could be transferred back to the corporation if the requirements of section 5 are once again met. This matter is left to the discretion of the legislature.

Duration of the restrictions

The Committee's recommended article does not include any specific provision with respect to the duration of the restrictions on land alienation. This means that the restrictions must continue in effect for 25 years as required by the Covenant and thereafter will expire only if a constitutional amendment is passed under the procedure provided in the proposed article or constitutional amendment.

Delegate Proposals. The Committee considered delegate proposals numbered 8, 10, 37, 71, 74 and 122 that relate to land alienation.

Delegate proposals 8, 10 and 74 deal with the statutes of limitations governing land matters and would require that claims now foreclosed by those statutes be permitted to be re-opened. The Committee received an opinion of counsel that re-opening statutes of limitations with respect to property rights would be unconstitutional under the 14th Amendment of the United States Constitution because it would constitute a taking of property without due process of law. Counsel advised the Committee that statutes of limitations could be re-opened in order for the Commonwealth government to provide compensation or priority in the distribution of public lands in the homestead program. The Committee may consider this matter further.

Delegate proposals 37, 71 and 122 are covered by the Committee's recommended constitutional article.

Respectfully submitted by
the Committee,

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Francisco T. Palacios, Vice Chairman

Pedro M. Atalig

Felix A. Ayuyu

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ARTICLE ___

RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land. The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.

Section 2: Acquisition. The term acquisition as used in section 1 shall include acquisition by means of all transfers by sale, lease, gift, inheritance or any other means provided, however, that a transfer to a spouse by inheritance shall not be considered an acquisition under this section and provided further, that a transfer to a mortgagee by means of a foreclosure on a mortgage shall not be considered an acquisition under this section if the mortgagee does not hold the permanent or long-term interest in real property for more than five years.

Section 3: Permanent and Long-Term Interests in Real Property. The term permanent and long-term interest in real property as used in section 1 shall include all freehold interests and all leasehold interests of more than twenty-five years including all renewal rights.

Section 4: Persons of Northern Marianas Descent. For all purposes under this Constitution, a person of Northern Marianas descent shall be defined as a person who is a citizen or national of the United States and of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof or an adopted child of such person if adopted while under the age of 18 years. For purposes of determining Northern Marianas descent, a person shall be considered to be a full-blooded Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled

in the Northern Mariana Islands prior to 1950 and was a citizen of the Trust Territory of the Pacific Islands prior to the termination of the Trusteeship with respect to the Commonwealth.

Section 5: Corporations. A corporation shall be deemed to be a person of Northern Marianas descent so long as it is incorporated in the Commonwealth, has its principal place of business in the Commonwealth, has directors at least fifty-one percent of whom are persons of Northern Marianas descent and has voting shares at least fifty-one percent of which are owned by persons of Northern Marianas descent as defined by section 4.

Section 6. Enforcement. Any transaction made in violation of section 1 shall be void ab initio. At any time that a corporation ceases to be qualified under section 5, any permanent or long-term interest in land in the Commonwealth owned by the corporation shall be forfeited to the government.

November 12, 1976

REPORT TO THE CONVENTION BY THE
COMMITTEE ON PERSONAL RIGHTS
AND NATURAL RESOURCES

Subject: Committee Recommendation No. 9:
Miscellaneous Provisions

The Committee recommends that the Convention adopt in principle the constitutional provisions that are attached to this report.

There are three miscellaneous provisions that the Committee recommends be added to or substituted for the provisions already reported out by the Committee. These provisions cover matters deferred by the Committee or raised by delegate proposals received by the Committee after it had completed its report to the Convention.

The Committee's reasons for its recommendations are as follows:

Section 1: Statute of Limitations. This provision permits the legislature to repeal any statute of limitations currently in force in the Commonwealth with respect to land. The Committee's recommended provision does not require these statutes to be repealed because the Committee believes that the legislature should study this matter and repeal only those statutes that have caused specific problems in the past. If statutes of limitation are repealed, the Commonwealth will be able to provide remedies for those whose land was taken in the past without just

compensation. Those remedies can include monetary compensation or priority with respect to the distribution of public lands. The Committee's recommended provision leaves to the legislature the form and amount of such compensation. The Committee believes that this kind of detail would be inappropriate for inclusion in the Constitution.

Section 2: Treatment of Children in Criminal Proceedings. This provision requires that children under the age of 18 be protected in criminal judicial proceedings and in conditions of imprisonment. The Committee believes it is appropriate for the Constitution that declares the basic provision with respect to juveniles to declare the basic principles while leaving the specific implementation of those principles to the legislature.

The Committee believes that children under the age of 18 should be treated as delinquents rather than criminals. The criminal records of juveniles should not be available to the public and their interests should be protected carefully in criminal proceedings because they are not old enough to understand fully and protect their rights. The Committee also believes that juveniles should not be imprisoned together with adults and that any term of imprisonment for juveniles should include participation in rehabilitation programs. The Committee believes that juveniles are more easily rehabilitated if they are kept

separate from adult criminals. The Committee's recommended provision contains general language that would cover all of these objectives.

Section 3: Search and Seizure. The Committee recommends that the wording of the Fourth Amendment to the United States Constitution be substituted for the Committee's proposed language on search and seizure in section 3(a) of the article on personal rights previously reported to the Convention and adopted in principle by the Convention. The Committee has received the views of law enforcement officials who believe that the Fourth Amendment language is more flexible and practical than the language proposed by the Committee. The Fourth Amendment is made applicable to the Commonwealth by the Covenant, and therefore the Committee believes that the substitution of the Fourth Amendment for the Committee's proposed draft would be appropriate.

The Committee's proposed language in section 3(b) covering wiretapping and section 3(c) covering compensation for victims of illegal search or seizure would remain unchanged.

Respectfully submitted by
the Committee,

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Francisco T. Palacios,
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Pedro M. Atalig

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MISCELLANEOUS PROVISIONS

Section 1: Statute of Limitations. The legislature may repeal any statute of limitations currently in force in the Commonwealth with respect to land in order for the Commonwealth to provide compensation for past transactions. Such compensation to be provided by the Commonwealth may include monetary relief or priority with respect to the distribution of public lands but shall not affect any right in property that vested pursuant to the repealed statute of limitations.

[to be added as Section 7 to the Constitutional article on land alienation]

Section 2: Treatment of Children in Criminal Preceedings. Persons who are under 18 years of age shall be protected in criminal judicial proceedings and in conditions of imprisonment.

[to be added is subsection (j) to Section 4 of the Constitional article on personal rights]

Section 3: Search and Seizures. The right of the people to be secure in their persons, houses and other property, papers, and belongings against unreasonable searches and seizures shall not be violated.

(a) No warrants shall issue except upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

(b) [remains unchanged]

(c) [remains unchanged]

[to be substituted for Section 3(a) of the Constitutional article on personal rights]

COMMITTEE ON FINANCE, LOCAL GOVERNMENT
AND OTHER MATTERS

October 22, 1976

REPORT TO THE CONVENTION
COMMITTEE ON FINANCE, LOCAL GOVERNMENT AND
OTHER MATTERS

Subject: Committee Recommendation Number 1:
Constitutional Amendment

The Committee recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to amendment of the constitution.

The Committee has carefully considered how best to propose and approve changes in the constitution of the Commonwealth of the Northern Mariana Islands. It believes that the principle of a constitution as a fundamental document for the government of the Northern Mariana Islands will be protected, while recognizing the need for flexibility by authorizing three alternative methods of proposing changes, all subject to ratification by the people.

The Committee's proposed article contains five sections. The first section introduces the three alternative methods of constitutional revision. The next three deal with these alternative methods for proposing constitutional amendments or revisions; the fifth deals with ratification.

The second section of the proposed article establishes a method for authorizing future constitutional conventions. This would be done by proposals for a call

for a constitutional convention initiated either by the legislature or by voter petition. In both instances approval of the call by the voters at a regular general election would be required. The legislature would be mandated to propose a call for a constitutional convention within seven years after ratification of the constitution; thereafter it would have the discretion to propose a call. Majority votes in each house would be required for such proposals. In addition, a petition signed by three-fourths of the registered voters of one of the three municipalities (Rota, Saipan or Tinian) also would initiate a call for a constitutional convention. A vote of two-thirds of the registered voters of the Commonwealth would be required to approve the call for a constitutional convention. Proposals for a call for a constitutional convention would not be subject to gubernatorial veto.

The number of delegates to the constitutional convention would be equal to the number of members of the most populous house of the legislature. Delegates would be elected. (The Committee deferred temporarily the method of election in order to be consonant with the methods for election of the legislature.) Elections would be nonpartisan.

The third section authorizes the legislature to propose constitutional amendments. Either house could initiate an amendment, which must be passed by both houses by a rate of seventy-five percent of the members present and voting. Each proposed constitutional amendment could

embrace only one article of the constitution.

The fourth section of the proposed article authorizes popular initiative of constitutional amendments upon petition of fifty percent of the total number of voters registered at the time of the last regular general election, including at least twenty-five percent of the registered voters from each of the three municipalities. The full text of the proposed constitutional amendment would be required to be contained in initiative petitions. Proposals under this arrangement must be initiated at least 180 days prior to a regular general election and would be submitted to the legislature for review and comment but not approval before their submission to the voters for ratification.

In the cases of both legislatively and popularly initiated constitutional amendments, gubernatorial vetoes would not be permitted.

The fifth section of the proposed article requires that any proposed amendment of revision of the constitution be submitted to the voters for their ratification at a general election. In the case of legislatively initiated amendments, a majority of the votes cast would be required for ratification. In the case of popularly initiated amendments, or amendments or revisions of the constitution proposed by a constitutional convention, a vote of two-thirds of the votes cast would be required for ratification.

The Committee's reasons for recommending these provisions are as follows:

1. Constitutional Convention. Changing conditions and experience under the new constitution of the Commonwealth may make it desirable to review this fundamental document and to make necessary adjustments. It is felt that the voters should have an opportunity to authorize a constitutional convention for this purpose within seven years after the new constitution is adopted. In addition, the legislature should be authorized to propose calls for constitutional conventions in the future; and the public itself, through the initiative arrangement, could propose such calls. The requirement for petitions by a high number of voters -- three-fourths of the registered voters of at least one municipality -- is designed to reduce the likelihood of intemperate proposals or pressures. The constitutional convention process facilitates a comprehensive review of the entire document, or major portions of it, and assures close attention to the experience under the constitution, which often cannot be done by ordinary legislative processes. Given the high costs of constitutional conventions and the time required to authorize and assemble a convention, the voters of the Northern Mariana Islands in each instance should approve calls for constitutional conventions. Delegates would be

popularly elected, as in the case of the present convention, encouraging broad public participation and interest and respect for democratic traditions.

2. Legislative Initiative. A constitutional convention typically involves a broad review of the existing constitution and is not a matter to be undertaken frequently or lightly. Based on widespread experience in fifty states and Puerto Rico, however, there is need or desire to consider specific amendments of the constitution, some of a technical nature, others relating to particular constitutional policies or protection of individual liberties. Among the fifty states, the legislature is considered the appropriate forum for proposing individual constitutional amendments. At the same time, the Committee was of the opinion that constitutional amendments should be proposed in a more deliberative way than ordinary legislation and therefore recommends that such actions be proposed only when approved by a three-fourths vote of each house, rather than by a simple majority. To facilitiate voter understanding of the issues raised by the amendments, any single amendment would be limited to the subject matter contained in one article of the constitution. Thus, an amendment might deal with the executive branch or the bill of rights, but not both. (Separate amendments could be proposed.)

3. Popular initiative. The Committee reviewed the question of whether the two aforementioned methods of proposing changes in the constitution would suffice: the use of a constitutional convention or initiative by the legislature? The Committee was particularly concerned with the possible failure of the legislature to propose needed amendments, no matter how desirable they might appear. To preserve the public's ultimate right to decide the content of its fundamental document, the Committee proposes a third method of amending the constitution: the use of an initiative arrangement involving petitions signed by a designated number of registered voters. In order to discourage frivolous proposals or ones that reflect the desires of only narrow interest groups, a substantial number of signatures would be required (fifty percent of the registered voters is proposed), as well as a significant number of signatures from each of the three municipalities (the arrangement proposed at least twenty-five percent of the registered voters for each municipality). The use of a stated number of signatures was rejected because of possible population changes.

4. Ratification. The public's ultimate right to approve constitutional amendments would be preserved, in the judgment of the Committee, by requiring that all such proposals be submitted to and approved by the voters at a

regular general election. This is designed to prevent haste consideration of proposals and to assure continued participation of the public in the constitutional process of the Commonwealth. Most states require ratification, whether involving proposals initiated by constitutional convention[1/], the legislature or by popular initiative. The Committee decided that a higher vote for ratification should be required of proposals under the constitutional convention and popular initiative method than in the case of legislatively initiated proposals. The legislature is the popularly elected representatives of the public and is more likely to be sensitive to the needs of the public. The range of changes that a constitutional convention might propose and the possibility that proposals upon petition of voters might reflect emotionally charged popular sentiment or tensions support the higher vote requirement in these instances (two-thirds of the votes cast rather than a simple majority for amendments that are legislatively initiated).

The Committee also reviewed and weighed many other provisions and details that might have been included in the proposed article on constitutional amendment. Highlights of these proposals and the reasons why they are not included in the proposed article follow:

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1/ Six state constitutions authorize the legislature to propose and approve a constitutional convention.

1. Constitutional Commission. This is a fourth method of initiating proposals for constitutional amendment. It usually involves legislative action establishing an appointed, rather than an elected, commission. Except in Florida, the work of the constitutional commission is not submitted directly to the voters for ratification but rather to the legislature, which can decide whether or not to submit proposals for ratification. There is much to commend this arrangement: it encourages the use of high government officials or specialists in the consideration of constitutional changes. Its work is likely to be objective and scholarly. We concluded, however, that there was no necessity for a constitutional provision on the subject. The legislature, under the traditional grant of legislative power, would be enabled to establish such commission by legislative action without specific constitutional authorization. This could be mandated only if the work of the constitutional commission were to be submitted directly to the voters for ratification -- the new Florida arrangement. In the Committee's judgment, direct submission by a non-elected body is not desirable.

2. Automatic Call for a Constitutional Convention. Fourteen state constitutions mandate the question of a call for a constitutional convention on a periodic basis, between ten and twenty years. This arrangement has the principal advantage of assuring serious consideration to the desirability

of a constitutional convention. On the other hand, even the submission of a call for a convention involves costs and concentration of energies. It is our judgment that after an initial mandatory requirement (at the end of the first seven years' experience under the Northern Marianas constitution) for a call for a constitutional convention, legislative discretion is better than mandatory periodic submission of proposals for a call. The Committee also considered whether any limitation should be placed on this legislative discretion, for example, by a constitutional provision limiting the number of calls. While it is possible that the legislature might propose calls too frequently, a constitutional restriction on potential excesses was not warranted.

3. Constitutional Provision on Preparatory Commission. Many states create agencies to undertake necessary preparatory work for pending constitutional conventions. This may be highly desirable, and in fact is reflected in the work of the recent "pre Con" commission. This can be left, however, to legislative discretion and need not be mandated or authorized in the constitution.

4. Organization of Constitutional Convention. The Committee reviewed arrangements under a number of state constitutions relative to details on the organization of constitutional conventions. They involve delegate qualifications, dual office holding, dates for election of delegates, filling of vacancies, appropriations to conduct the convention,

date and place for convening, and internal organization and procedure. Since conditions may change substantially over the years, most of this detail is best left to the determination of the legislature or, with the approval of the legislature when it proposes a constitutional convention, by the convention itself. In the case of popularly initiated constitutional conventions, the legislature would not be precluded from adopting legislation on necessary details to assure an orderly convention (some matters may be contained directly in the initiative petition). As noted, the Committee has proposed that the constitution specify the number of delegates and that election be non-partisan, but that most other matters need not be set forth in the constitution. Once a constitutional convention is authorized, it should be free to consider a wide range of potential revisions or amendments, subject of course to provisions of the Covenant and applicable provisions of the United States Constitution. Finally, it should be noted that while amendments to the constitution do not require formal approval of the United States Government, the federal courts would have jurisdiction under the Covenant to consider issues of federal constitutional validity. Restrictions on the scope or power of a constitutional convention was not considered warranted.

5. Second Approval by State Legislature. A number of states contain requirements that legislatively initiated constitutional amendments must be approved by two legislative sessions, with an intervening election of legislators. Some states have this type of provision plus higher voting requirements for passage of constitutional amendments. The Committee favored the higher voting requirement (a three-fourths vote in each house is proposed). It also considered second approval. However, this procedure would delay action, possibly for several years, since constitutional amendments would be submitted for voter ratification. On balance, it was the Committee's judgment that the combination of the higher vote and the ratification requirements were sufficient safeguards against untoward or dangerous constitutional amendments.

6. Effective Dates. Some state constitutions specify the number of days after voter ratification on which a constitutional amendment is effective, such as thirty days, or the first day of January after approval, etc. The proposing authority (e.g., the Constitutional convention or the legislature) can make such determination for each proposed amendment, or the amendment itself can state its effective date. A single effective date provision in the constitution could impair the value of the amendment. In some instances a longer or a shorter effective date may be

desirable. Hence, the Committee opted to omit any such provision from the constitution itself.

7. Legislative Veto. The constitutional amendment process is generally regarded as involving the ultimate approval of the voters. For this reason, the veto power of the governor usually is not authorized. While all of the reasons favoring gubernatorial veto of ordinary legislation might be applicable here, the pre-eminent consideration of preserving the public's direct control through voter ratification negated the intervention of the executive. Further, constitutions and constitutional amendments often deal with executive power and its abuses. The right of the governor to veto constitutional amendments might accentuate such abuses. For these reasons, the constitution would exclude the governor from the constitutional amendment process.

8. Choice of Alternative Methods of Amending the Constitution. The committee considered four basic alternatives for proposing constitutional amendments and chose three of them: constitutional conventions, legislative initiatives and popular initiatives. It rejected the fourth, constitutional commissions, for the reasons noted above. The Committee selected three alternatives because it concluded that different circumstances might justify such different approaches. These need not be mutually exclusive. In the case of a broad review

of the constitution, the constitutional convention method seems best suited. For amendments reflecting particularized concerns, legislative initiatives are a most expeditious way of proceeding. And as an ultimate means of overcoming legislative reluctance to act, the initiative authority of the public, both in proposing calls for constitutional convention and for specific constitutional amendments, is a participatory and democratic arrangement worth encouraging. Throughout the voter ratification method is preserved.

9. Special Elections to Ratify Calls and Amendments. The Committee favors voter consideration of proposals for a call for a constitutional convention and ratification of revisions or amendments to the constitution to be held on the regular general election day rather than at special elections. There is a distinct advantage to conducting such matters at a special election: it helps focus voter attention on the subject under consideration and prevent the distraction which might result from linking such a subject with the election of public officials or other referenda matters. These are important considerations but are outweighed in the Committee's judgment by the extra costs that are involved.

Respectfully submitted,

Benigno R. Fitial, Chairman

Pedro Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis Benavente

Juan Tenorio

Oscar C. Rasa

Vicente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho (subject to further comment)

ARTICLE __

CONSTITUTIONAL AMENDMENT

Section 1: Proposal of Amendments. Amendments to this constitution may be proposed by constitutional convention, legislative initiative or popular initiative.

Section 2: Constitutional Convention. (a) The legislature, by an affirmative vote of a majority of the members of each house, may submit to the qualified voters the question, "Shall there be a constitutional convention to propose amendments to the constitution?" Such question shall be submitted to the voters no later than seven years after ratification of the constitution and thereafter in the discretion of the legislature.

(b) The people by initiative petition may direct the legislature to submit to the voters the question, "Shall there be a constitutional convention to propose amendments to the constitution?" The petition shall be signed by at least three-fourths of the voters of any municipality registered at the time of the preceding general election. The Attorney General shall certify the filing of the petition and cause the question to be submitted at the next regular general election provided that the certification occurs at least thirty days before the election.

(c) If the question of holding a convention is approved by two-thirds of the votes cast, the legislature at the session following approval shall provide for the

(d) The number of delegates to the convention shall be equal to the number of members of the most populous house of the legislature. The delegates to the convention shall be elected on a nonpartisan basis.

(e) No call for a constitutional convention pursuant to this section shall be subject to a veto by the governor.

Section 3: Legislative Initiative. The legislature by an affirmative vote of three-fourths of the members of each house present and voting may propose amendments to this constitution. No proposed amendment shall embrace the subject matter of more than one article of the constitution.

Section 4: Popular Initiative. (a) The people may propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by qualified voters equal in number to at least fifty percent of the number of voters registered at the time of the preceding regular general election, including at least twenty-five percent of the voters so registered in each municipality. Such petition shall be filed with the attorney general no later than 180 days prior to the next regular general election.

(b) An amendment proposed by popular initiative shall be submitted to the legislature. If the proposal is agreed to by a majority vote of the legislature, the proposed amendment shall be submitted for ratification in the same

manner as amendments proposed by the legislature. The proposed amendment shall be submitted for ratification to the voters at the next regular general election with or without legislative approval.

Section 5: Ratification of Amendments. (a) A proposed amendment to this constitution shall be submitted to the qualified voters for ratification at the next regular general election.

(b) An amendment proposed by legislative initiative shall be approved if it receives an affirmative vote of a majority of the votes cast. An amendment proposed by constitutional convention or any amendment proposed by popular initiative shall be approved if it receives an affirmative vote of two-thirds of the votes cast.

(c) No proposal for amendment of the constitution shall be subject to a veto by the governor.

October 22, 1976

REPORT TO THE CONVENTION BY THE COMMITTEE
ON FINANCE, LOCAL GOVERNMENT AND OTHER MATTERS

Subject: Committee Recommendation No. 2: Education

The Committee recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to education.

The Committee has considered what provisions, if any, respecting the vital subject of education should be contained in the Constitution of the Northern Mariana Islands.

It was the unanimous view of the Committee that education is an extremely important function of the government. The Commonwealth is embarking upon a new era of self-government. In order to ensure the continued vitality and capability for self-government in the Commonwealth, the educational needs of young people must be met by a system that operates efficiently and provides service of high quality .

After careful review of provisions of the Mariana Islands District Code, the constitutions of the various states, and the constitution of the Commonwealth Puerto Rico, the Committee concluded that the Constitution should provide for free, compulsory, and public education and should endorse the provision of higher and adult education within the Mariana Islands. The Committee considered whether the provisions for compulsory education and higher education should include details

as to age levels and number of years of schooling. The Committee decided to leave these matters to the legislature so that these standards could be upgraded as promptly as the resources of the Commonwealth permit.

The Committee considered further whether it would be appropriate to include in the Constitution special requirements on equal opportunity for education, the structure of the educational system, financing, and aid to parochial schools.

The Committee recognizes that these subjects are of paramount importance and concern to the parents of school-age children, as well as to other residents. It is the judgment of the Committee that the Constitution should not contain language either of a permissive or restrictive nature in a separate article on education on these subjects. Each raises very difficult and often controversial matters. Some also raise complicated legal issues resulting from recent decisions of the United States Supreme Court. For these reasons, the Committee believes that these educational questions should be left to the Commonwealth legislature. This will preserve needed flexibility with regard to the educational policy of the Commonwealth and the special educational requirements of Rota, Saipan, and Tinian, and the residents of the northern islands.

The Committee recognizes that the terms "elementary" and "secondary" education are sufficiently well understood to withstand modern developments of school organization and consequential modification of terminology.

The Committee on Finance, Local Government and Other Matters urges that the Convention adopt in principle this recommendation.

Respectfully submitted,

Benigno P. Fitial, Chairman

Pedro Q. Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis A. Benavente

Juan P. Tenorio

Oscar C. Rasa

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho (SUBJECT to further comment)

Vicente M. Manglona

ARTICLE ___

Section 1: Education. (a) There shall be free, compulsory and public elementary and secondary education for the people of the Northern Mariana Islands within age and educational levels as provided by law.

(b) There shall be higher education and adult education within the Northern Mariana Islands, consistent with the needs and resources of the people, as provided by law.

October 25, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE, LOCAL
GOVERNMENT AND OTHER MATTERS

Subject: COMMITTEE RECOMMENDATION NO. 3: CORPORATIONS

Your Committee on Finance, Local Government and Other Matters recommends that the Convention meeting in Committee of the Whole adopt in principle the attached recommendation with respect to private business corporations.

The Committee examined a range of possible constitutional provisions respecting private business, non-profit, educational, and public benefit (governmental) corporations. It examined relevant constitutional provisions from the states and Puerto Rico, as well as provisions of law of the Trust Territory and the Mariana Islands District Codes. The principal issue that emerged from such reviews was the possible danger of misuse of private business corporate franchises and privileges. It was regarded by the Committee as important to establish a constitutional framework for attracting business investment while retaining essential controls over corporate activity for the protection of the Commonwealth..

The Committee recognized that the Constitution is a document of fundamental law and should contain basic principles and requirements. It should avoid, to the extent feasible, detail that properly belongs in statutes enacted by the legislature.

The Committee concluded that the Constitution should specify that, in regard to private business corporations, corporate charters be granted, amended or altered only pursuant to general laws. This would prevent individual corporations from being singled out for preferential or discriminatory treatment and would assure general applicability of corporation laws. Special laws dealing with individual business corporations would be prohibited by the Constitution.

The Committee considered further the feasibility of including constitutional provisions defining a "corporation," the subject of the status of pre-existing corporations, limitations of shareholder liability, consideration to be paid for corporate stock, ulta vires acts (that is, actions by a corporation beyond the scope of its corporate charter), and registration of "foreign" corporations to do business in the Commonwealth. In line with modern constitutional practice on business corporations, the Committee concluded that these detailed matters should be left to action by the Commonwealth legislature, within the recommended constitutional framework.

The Committee expressed concern regarding the possible utilization by non-Marianans of corporate entities as a device to acquire land. The Committee recognized that this matter will be dealt with by the Committee on Personal Rights and Natural Resources in its consideration of constitutional provisions in land alienation.

Finally, the Committee considered the subjects of nonprofit, educational, public (governmental) corporations. Because of their specialized nature and the limited experience of the Northern Mariana Islands respecting them, it was the Committee's judgment that these matters should not be encompassed within the scope of the Committee's recommendations. The legislature, within the general grant of legislative power to it, would have adequate authority to deal with such entities and any special problem regarding them. Accordingly, the Committee's attached proposed constitutional provision is directed to the private business corporations.

Respectfully submitted,

Benigno R. Fitial, Chairman

Pedro Q. Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis A. Benavente

Juan P. Tenorio

Oscar C. Rasa

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

Vincente M. Manglona

ARTICLE ___

CORPORATIONS

Section 1: Corporations Organized By General Laws. No private business corporation shall be organized and no existing corporate charter shall be extended or amended except by general laws.

October 27, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE, LOCAL
GOVERNMENT AND OTHER MATTERS

Subject: COMMITTEE RECOMMENDATION NO. 4: CONSTITUTIONAL AMENDMENT

The Committee on Finance, Local Government and Other Matters has explored various possibilities in seeking a consensus on a method for ratifying constitutional amendments. In its recommendation to the Convention, the Committee had proposed ratification by majorities of the votes cast in the Commonwealth as a whole (majority of the votes cast in the case of legislative initiative and a two-thirds vote in the case of proposals by constitutional convention or popular initiative).

As revised in the Committee of the Whole, a single ratification method would be used: approval by two-thirds of the votes cast in each of the three municipalities. The net result of the amended language would allow any one municipality to prevent ratification.

Subsequently, the Committee considered further rewording that would restore the majority vote for proposals by the legislative initiative. The Committee believes that the veto power of the smaller municipalities in the upper house of the legislature is sufficient protection for these municipalities under this method of proposing constitutional amendments. No proposed amendment that failed to pass the upper house would be submitted to the voters; therefore there is no need for the additional protection of majority approval by the voters of each island.

The Committee also considered revision of the method by which constitutional amendment proposed by constitutional convention or by popular initiative could be approved. The Committee believes that the proposal adopted by the Committee of the Whole presents significant problems because any one municipality could prevent ratification even though the voters of that municipality constituted only a small percentage of the total votes cast Commonwealth-wide. The Committee believes that for this reason the proposal should be reconsidered.

In considering proposed alternatives, the Committee took into consideration the significant problem raised under the United States Constitution of whether changes involving the Constitution of the Commonwealth of the Northern Mariana Islands should be permitted or denied contrary to the will of a clear majority, such as, for example, by a two-thirds vote within two of the three municipalities. Such actions contrary to the views of the majority of the voters, even while authorized by the Commonwealth Constitution, may raise serious problems under the United States Constitution. In Reynolds v. Sims */ the United States Supreme Court stated, "The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." The Court has repeated in a number of cases the principle that the views of the voters should be accorded as equal weight as possible, and that the failure to do so is a denial of equal protection of the laws. This, in brief, is the principle of "one man, one vote." In addition, there is a basic question, both governmental and political in

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*/ 377 U.S. 533, 567 (1964).

nature, of adherence to the principle of majority rule. This question might be raised when the Commonwealth Constitution is submitted for approval by the United States government. There is a strong expectation by the United States and the Northern Mariana Islands that an integrated Commonwealth government is being formed. To deny to the majority of the electorate the right to amend its own constitution might well be viewed as contrary to the concepts of representative democracy and equal voice in the governmental process.

Expectations of Commonwealth solidarity and majority rule should not ignore the separate and special needs of the individual municipalities of the Northern Mariana Islands. These needs are recognized in the Covenant and in the provisions on legislative representation. To accommodate both sets of interests, the Committee has adopted a provision for ratification of proposals resulting from constitutional convention or popular initiative that requires a majority of votes cast Commonwealth-wide and, within such majority, passage by at least two-thirds vote in at least two of the three municipalities.

Recognizing that at some future date the people of the Commonwealth of the Northern Mariana Islands may wish to increase the number of municipalities, the Committee wishes to express its intention that the ratio reflected in the proposed provision (two of the three municipalities) be preserved upon such increase in number.

Respectfully submitted,

Benigno P. Fitial, Chairman

Pedro Q. Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis A. Benavente

Juan P. Tenorio

Oscar C. Rasa

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

Vincente M. Manglona

ARTICLE _____

CONSTITUTIONAL AMENDMENT

It is proposed that Section 5(b) of the proposed article on Constitutional Amendment be further amended to read as follows:

Section 5: Ratification of Amendments.

* * * *

(b) An amendment proposed by legislative initiative shall be approved if it receives an affirmative vote of a majority of the votes cast. An amendment proposed by constitutional convention or by popular initiative shall become effective if approved by a majority of the votes cast and at least two-thirds of the votes cast in each of two of the three municipalities.

November 1, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE,
LOCAL GOVERNMENT AND OTHER MATTERS

Subject: Committee Recommendation Number Five: Commonwealth Taxation

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached constitutional provisions with respect to taxation.

The Committee has considered what provisions, if any, respecting taxation should be included in the Constitution of the Commonwealth of the Northern Mariana Islands. The Committee recognizes that taxation is a critical function of the government since it provides the means by which the Commonwealth delivers important services to its citizens. Funds must be raised, appropriated, spent and accounted for in responsible, controlled ways. The legislature's basic grant of power in the draft Constitutional provision on the legislative branch includes the right to raise revenue and appropriate funds. The Committee's concern is with special limitations or controls on such matters. The Committee's basic consideration was whether the Constitution should include provisions to guide the legislature and set the proper course for the new Commonwealth. The Constitution is neither the exclusive source of the law on the subject of taxation, nor a document intended for short-term use. It

should contain those critical basic matters that govern legislative and executive performance.

The Committee reviewed the current Trust Territory Code and Mariana Islands District Code, the briefing materials on taxation and taxation provisions in constitutions of the states and Puerto Rico.

The Committee decided that the Constitutional article on taxation should contain two provisions. The first provision makes clear that no tax shall be levied or appropriation shall be made except for a public purpose. This provision recognizes the general principle that public funds derived from tax revenues cannot be used for private purposes. This restriction does not apply to appropriations for assistance to industrial development projects in which private investors also participate when the undertaking serves a public purpose and the benefits to the community are direct and substantial. The Committee believes that the term "public purpose" is sufficiently well understood to enable the legislature to determine appropriate benchmarks for such matters.

The second provision on taxation recommended by the Committee is a requirement that every five years the governor submit to the legislature a report analyzing the impact of statutory tax exemptions. The Committee felt that the legislature's power to grant tax exemptions should not be limited by the Constitution, but that a mechanism should be provided for consideration periodically of the effect of

such exemptions, their continued viability, and their cumulative impact on the tax base. In many states exemptions were granted by laws over the years for what appeared to be worthy purposes (for example, homesteading, religious or educational activities and industrial development) but their cumulative effect subsequently posed serious handicaps to a balanced budget. In addition, the original social or economic purpose had changed but the exemption was not reconsidered. The Committee recognizes the need to avoid these problems but prefers not to place in the Constitution specific exemptions or prohibitions on them. The legislature should make such judgments with a constitutionally mandated review by the governor every five years.

The Committee considered further whether the Constitution should include a uniformity provision, limitations on tax rates, or details of specific taxes such as those on income, property, corporate income, sales of merchandise and exports and imports. The Committee decided that these subjects were better left to the discretion of the legislature.

Finally, the Committee considered "earmarking" of funds, that is, tying the revenue from a specified tax to the financing of a particular governmental project or function. The Committee decided that the disadvantage of limiting legislative control (and the possible creation of an imbalance

in financial planning) argued persuasively for the exclusion of earmarking from the Constitution. The Committee considered a prohibition on earmarking, but this too was seen as unduly limiting legislative discretion. The Committee believes that it is desirable to maximize the legislature's power to adjust the changing resources of the Commonwealth to meet its changing needs and the draft constitutional provisions recommended by the Committee reflect this decision.

Members of the Committee were concerned with the danger that funds appropriated by law would be reprogrammed for purposes not authorized in the appropriation act. The Committee concluded that the executive budget process should specify programs and geographical appropriations, and the legislature should control administrative discretion with regard to use of funds and reprogramming.

The Committee may reconsider its recommendations after completing its consideration of local government such as local property taxes and related matters.

Respectfully submitted by the Committee.

Benigno P. Fitial, Chairman

Pedro Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis Benavente

Juan Tenorio

Oscar C. Rasa

Vicente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

ARTICLE ___

TAXATION AND FINANCE

Section 1: Public Purpose. No tax shall be levied or appropriation of public money made, directly or indirectly, except for a public purpose.

Section 2: Report on Tax Exemptions. Every five years the governor shall prepare a report to the legislature that assesses the use and the social, fiscal and economic impact of any tax exemptions established by law. The report shall include any recommendations by the governor on exemption policy or laws.

November 1, 1976

REPORT TO THE CONVENTION
BY THE COMMITTEE ON FINANCE
LOCAL GOVERNMENT AND OTHER MATTERS

Subject: Committee Recommendation Number Six: Commonwealth Debt

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached Constitutional provisions with respect to public debt.

The Committee recognizes that bond issuance is an indispensable device to fund important capital projects undertaken by the Commonwealth or its political subdivisions. Borrowing is a well established means by which states and local governments secure funds for capital improvements such as public buildings, schools, health centers and the like. Given the high capital outlay required for construction, it is usually not feasible to finance such improvements directly from current tax receipts or other operating funds. Two types of bonds were considered by the Committee: general obligation bonds, in which the principal and interest for sums borrowed are repaid from annual appropriations from the general revenues of the Commonwealth; and revenue bonds, in which the principal and interest are repaid solely from the revenues derived from the capital improvement itself.

It is the Committee's view that under careful controls and safeguards both of these types of bonds can

serve a useful function in the economic development of the Commonwealth of the Northern Mariana Islands. In its review of constitutions of United States jurisdictions the Committee found that only a few states prohibit governmental borrowing. It was decided that a constitutional ban on Commonwealth debt is not a realistic alternative, since it would be impractical otherwise to finance capital improvements.

The Committee recognizes, however, that overborrowing can lead to undesirable results. The Committee's proposal includes two limitations on borrowing: (1) a limitation already contained in the Covenant, which is based on a percentage of the property valuation within the Commonwealth; and (2) a limitation that prohibits the use of debt for the regular operating expenses of the government of the Commonwealth. As a further control, the Committee recommends that no general obligation or revenue bond issue be authorized unless approved by a two-thirds vote of each house of the legislature.

The Committee decided that it would be appropriate to include in the Constitution not only a limitation on the amount of debt that could be incurred, but also a limitation on the means by which it could be incurred and the purpose for which it could be incurred.

Regarding the limitation on amount, several alternatives were discussed: a flat dollar amount; a limitation based on a percentage of the revenues received by the Commonwealth; a limitation based on percentage of the assessed valuation of property within the Northern Mariana Islands. The last approach is contained in the Covenant and is mandatory for the first seven years of federal financial assistance, and any subsequent periods of United States financial support. The Committee decided that this limitation would be suitable for the Commonwealth after the Covenant provision ceases to be applicable.

With respect to the means by which debt can be incurred, the Committee considered a requirement for approval by an extraordinary majority of one or both houses of the legislature, and the alternative of a requirement of the consent of the electorate through popular referendum. The Committee decided that an extraordinary majority of two-thirds of the members of each house would be sufficient protection while permitting the Commonwealth the flexibility to enact debt provisions promptly when the need arose.

The Committee believes it is appropriate to set a "live within our means" course for the Commonwealth. This is accomplished in the Committee's proposed Constitutional provision by a prohibition on borrowing to meet operating expenses because these should be paid from current tax receipts. There are some operating expenses normally

encompassed as a part of the actual construction of a capital improvement. These would not be prohibited but ordinary operating expenses of government would be.

The Committee analyzed another method to control debt used in a few jurisdictions: the regulation of bond maturities and repayment. The Committee decided not to utilize this approach because of the intricacies involved and possible fluctuations in the bond market.

Respectfully submitted by the Committee,

Benigno R. Fitial, Chairman

Pedro Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis Benavente

Juan Tenorio

Oscar C. Rasa

Vicente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

ARTICLE __

COMMONWEALTH DEBT

Section 1: Public Debt Limitation. No public indebtedness other than bonds or other obligations of the government payable solely from the revenues derived from any public improvement or undertaking shall be authorized in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands or for any operating expenses of the Commonwealth government or its political subdivisions.

Section 2: Public Debt Authorization. No public debt shall be authorized or incurred unless approved by two-thirds (2/3) of the members in each house of the legislature.

November 8, 1976

REPORT TO THE CONVENTION OF THE
COMMITTEE ON FINANCE, LOCAL GOVERNMENT,
AND OTHER MATTERS

Subject: Committee Recommendation Number 7:
Oath of Office

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached constitutional provision with respect to the oath of office for officials of the government of the Commonwealth of the Northern Mariana Islands.

Section 204 of the Covenant requires that all members of the legislature and all officers and employees of the government will take an oath or affirmation to support the Covenant, the Commonwealth Constitution and the applicable provisions of the United States Constitution and treaties. A solemn commitment to public service is the basis of entrusting powers and duties to officers and employees of the government. To reflect this commitment and to conform with Covenant guidelines, the Committee proposes a constitutional oath of office. The inclusion in the Constitution of the precise wording of the oath assures uniformity.

The oath includes an affirmation of support for the Commonwealth Constitution and laws, the Covenant, the United States Constitution, and those treaties and laws of the United States that are applicable to the Northern Mariana Islands.

Respectfully submitted,

Benigno R. Fitial, Chairman

Pedro C. Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis A. Benavente

Juan P. Tenorio

Oscar C. Rasa

Vincente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

ARTICLE __

OATH OF OFFICE

Section 1: Oath of Office. All members of the legislature and officers and employees of the Commonwealth government and its political subdivisions taking office shall take and subscribe to the following oath or affirmation:

> I do solemnly swear (or affirm) that I will support and defend the Constitution and laws of the Commonwealth of the Northern Mariana Islands, the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the Constitution of the United States of America, and the treaties and laws of the United States applicable to the Northern Mariana Islands, and that I will faithfully discharge my duties to the best of my ability (so help me God).

REPORT TO THE CONVENTION BY THE
COMMITTEE ON FINANCE, LOCAL GOVERNMENT
AND OTHER MATTERS

Subject: Committee Recommendation Number Eight:
Local Government

The Committee on Finance, Local Government and Other Matters recommends that the Convention meeting in Committee of the Whole adopt in principle the attached recommendation with respect to local government.

The Committee's approach to local government is an effort to accommodate the desires and needs of individual islands while recognizing the limited population and resources of the new Commonwealth. In the process of its deliberations on this complex subject the Committee met with representatives of the current municipal governments and met jointly with the Committee on Governmental Institutions on two occasions. Many alternative approaches were scrutinized and evaluated from the viewpoint of responsiveness to local needs, efficiency in delivery of services, and economy. The Committee's recommendations include a proposed article on local government in six sections that provides for local government, establishes the office of mayor of Rota, Saipan, Tinian and the islands north of Saipan, specifies his duties, provides for his compensation, creates a Governor's Council of Mayors, terminates the present form of municipal government, and authorizes the legislature to create new agencies of local government if needed five years

after the effective date of the Constitution. As part of the proposals on local government the Committee submits also two sections for inclusion in other constitutional articles, one providing for the enactment of local laws by the representatives and senators from a particular island and the other designed to ensure that Commonwealth services are provided on a responsive and equitable basis to all citizens throughout the Commonwealth

Section 1: Local Government. This section states clearly and affirmatively that there shall be local government established by this article.

Section 2: Election of Mayor. This section creates one of the two new institutions which the Convention believes are required to meet the local government needs of the separate islands in the Commonwealth. It provides for a mayor in Rota, Saipan, Tinian and the islands north of Saipan to be elected by the voters in each jurisdiction. Because the official is responsible to the people who elected him rather than to the governor and is not an official of the executive branch of the Commonwealth government, the Committee concluded that the title of lieutenant governor would be inappropriate. The Committee was concerned also about the possible adverse reaction to the authorization of three or four lieutenant governors in the Constitution in light of the small geographical areas and limited population involved. Although the Committee is aware that mayors in the Northern Marianas have heretofore had limited powers (and

prestige), it believes that the title still remains the most appropriate for the newly created and prestigious position being proposed by the Committee.

Subsection (a) provides for the qualifications of the mayor. The mayor must be a qualified voter of the Commonwealth, a United States citizen or national, at least twenty-five years of age and a resident of the Commonwealth for at least three years. The legislature would be free to specify additional qualifications, such as a period of residency on the particular island involved. The age requirement is the same as for senators in the legislature and the residency is the same as that proposed for representatives. The Committee believes that these qualifications are sufficiently stringent for the office of mayor.

Subsection (b) provides that the mayor has a term of office of four years, the same term as tentatively provided for senators in the legislature. It also provides for filling vacancies by special election if more than half the term remains, on the rationale that the people should have the opportunity to fill the office under such circumstances. If less than one half of the term remains, the legislature would provide a method for filling it, either by appointment or by election. This subsection makes clear that the mayor is subject to recall by the voters. The mayor cannot be removed by the governor, however, since granting the governor such a power would tend

to impair the mayor's effectiveness as an independent spokesman for the island he represents and thereby defeat the purpose of creating such as office.

Section 3: Responsibilities of Mayor. This section specifies the responsibilities of the mayor.

Subsection (a) provides that the mayor shall serve on the governor's council of mayors created by section 5 of the article. As discussed below, it is the Committee's view that this council can be an important mechanism for assuring that the views and separate interests of the individual islands are presented effectively at the highest level of the executive branch of the Commonwealth government.

Subsection (b) requires the mayor to review the adequacy of the governmental services and appropriations provided for the island or islands he serves and to submit any findings or recommendations on these subjects to the governor. This provision is designed to meet the concerns expressed by representatives of Rota and Tinian in particular regarding past inadequate services for their islands. This subsection gives the mayor an important oversight responsibility for Commonwealth services on his island. Although the mayor would not have day to day supervisory responsibilities for Commonwealth services being provided through departments within the Commonwealth executive branch, he would have the authority to ascertain whether in fact such services are

being provided at the authorized level, are being administered according to law, and are meeting the needs of the island's residents. If not, this subsection makes clear that the mayor would have the capacity to voice his dissatisfaction directly and forcefully. In the Committee's view, the very assignment of the power to the mayor will help ensure that department officials will make every possible effort to improve the quality of services and thereby avoid criticism of their programs or personnel by the mayor.

Subsection (c) grants the mayor broad investigatory powers to identify problems of local concern and to make recommendations to the governor or other executive branch officials. In essence, the mayor would serve as an ombudsman for his community, investigating complaints, ferreting out wrongdoing, and proposing new legislative measures or executive actions to remedy any deficiencies. If used aggressively, this power could serve as a powerful stimulant for lethargic representatives in the legislature or officials in the executive branch.

Subsection (d) guarantees the mayor an important role in the budgetary process. It gives the mayor the right to propose a budget for his island, to review the Commonwealth budget before its submission to the legislature, and to recommend changes in the budget relating to his island.

In the Committee's view, this requirement ensures that the mayor's recommendations will not be lightly treated. The Committee recognizes, of course, that the Commonwealth has limited resources to meet the needs of its citizens and that compromises must be made in the development of an overall Commonwealth budget. Nevertheless, the Committee concluded that some mechanism was needed to make certain that the mayor of each island would have an adequate opportunity to press his budgetary recommendations within the executive branch and that such recommendations would be given a fair hearing before the budget was presented to the legislature. The most important protection for Rota and Tinian with respect to the budget, of course, is the requirement that any budget be approved by both houses of the legislature. If the executive branch does not fairly consider the budgetary needs of these islands, it will endanger approval of the budget by the legislature.

Subsection (e) gives the mayor rule-making authority on local matters as defined by law. As discussed below, the Committee concluded that local municipal councils of the kind currently in effect should be abolished. Since such councils do enact rules or ordinances on local matters, the Committee believed it would be desirable to provide for some substitute mechanism for meeting this traditional local need. Granting

such power to the mayor within constraints to be defined by the legislature is an efficient and practical way to provide for local rules on such matters as curfews, hunting seasons and other subjects of exclusively local concern. The Committee believes that it would be difficult to define the scope of this rule-making authority more precisely in the Constitution and for that reason recommends that it be left to the legislature.

Subsection (f) gives the mayor responsibility for expending money for public purposes in his locality pursuant to direction by the legislature or by a majority of the representatives and senators from the island or islands involved. The Committee's recommendation requires the legislature to designate certain local taxes as available for such purposes before they can be expended. Some flexibility appears desirable because of the need to evaluate the overall tax burden on the Commonwealth's citizens once the territorial income tax provided for in the Covenant comes into effect. Although it is probable that some local taxes (such as license fees or fuel taxes) will be continued, the Committee did not wish to prejudge this issue by providing in the Constitution that such taxes should be continued. The use of the senators and the representatives in the way proposed by subsection (f) reflects the Committee's decision to abolish municipal councils and to provide a feasible mechanism for making appropriations decisions on purely local matters.

Subsection (g) empowers the mayor to appoint and supervise such employees as are provided by law to assist him. The Committee is concerned about the misuse of this authority, since the employment of numerous assistants by the mayors would defeat the economies hoped for as a result of the abolition of the present municipal governments. It also entails the risk of a duplicative bureacracy which may impair the effective delivery of Commonwealth services within each island. Nevertheless, the Committee recognizes that the mayors may need assistance in the performance of their duties and has concluded that the legislature should be entrusted with the responsibility of ensuring that this authority is used wisely and economically.

Subsection (h) provides that the mayor shall perform such other responsibilities as are specified by law. The Committee wants to provide this flexibility because of the possibility that the mayors may be able to perform other functions in the future. As the Commonwealth develops and new needs arise, the legislature should have the authority to assign other duties consistent with the mayors' roles as popularly elected leaders in their communities.

Section 4: Compensation of Mayor. This section provides that the mayor shall be given an annual salary and reasonable expenses from Commonwealth revenues as provided by law. The Committee concluded that Commonwealth revenues could properly be used to compensate the mayors even though they are not officials of the Commonwealth government, because they are being vested with significant responsibilities under this article. The mayor's salary cannot be decreased during his term of office, in order to eliminate any effort by the legislature to penalize a mayor for aggressive performance of his responsibilities on behalf of his constituents. As to the compensation and expenses of the mayor's assistants, the Committee concluded that these revenues should be raised through local taxes. The Committee believes that this power will be used more economically if the employment of assistants for the mayor must be accomplished through the use of locally raised revenues.

Section 5: Governor's Council of Mayors. This section establishes the second new governmental institution to meet some of the needs of the separate islands comprising the Commonwealth. It provides that the mayors elected pursuant to section two and the governor shall constitute a council of mayors to advise the governor on local matters. The governor shall preside over the council, which shall meet at least four times each year to consider any matter relating to the relationship between the Commonwealth

and its separate islands that the members place on the council's agenda. It is the Committee's view that such a council can develop into an effective device for ensuring that the governor is aware of local problems and sentiments. Although the governor has many sources for such input, the elected mayors should be able to use this council to present their views on a systematic and regular basis directly to the governor. The proposed provision is deliberately general as to the subjects which can be discussed in this forum; the council's agenda could include budgetary matters, specific complaints regarding the delivery of services, or a legislative program aimed at meeting the needs of one or more islands within the Commonwealth.

Section 6: Other Agencies of Local Government. Subsection (a) provides that the current chartered municipalities on Rota, Saipan and Tinian shall be abolished on the effective date of this Constitution. This reflects the Committee's basic judgment that preserving the present form of local government in the new Commonwealth is unnecessary, expensive and duplicative. The Committee examined the current local government entities and concluded that services in the new Commonwealth could be provided more efficiently and equitably through a central delivery system rather than through local governments. The Committee also concluded that the agencies of local government created

in the article are sufficient for the immediate future. If the present municipal councils and mayors were to be continued, the Committee believes that it would make little sense to create the new offices and powers provided for in this article. The subsection provides that the local taxes currently being used to support the existing local government and to finance services provided by them should be continued unless the Commonwealth legislature provides otherwise. It is the Committee's view that if such taxes continue to be collected they should be used for the benefit of the community generating the revenues, either at the direction of the legislature or a majority of the legislative delegation from the particular island. The subsection also provides that the local rules or ordinances enacted by the existing municipal councils shall remain in effect until superseded by Commonwealth law.

Subsection (b) authorizes the creation of new agencies of local government after five years with the approval of two-thirds of the qualified voters in the community involved. After this period the legislature may enact enabling legislation for the establishment of new local governments within guidelines regarding form, method of incorporation, powers, officers and financing. A limitation on more than one municipality in one island is imposed to avoid proliferation of costly and duplicative governmental units. The proposed constitutional article would require any system of local government to assure integration between the new office of mayor and new local units.

The Committee recognizes that it cannot ignore political realities and differences. Established governmental institutions and practices always are difficult to change. We respect the desire of the people of Rota and Tinian to maintain their identity as communities. We respect the needs and interests of Saipan and its communities. And we respect the special requirements of the inhabitants of the northern islands. We have sought to develop a governmental system which reflects these desires while permitting a united and workable Commonwealth.

New local governments may be needed in the future. It may be that a county government system should be instituted, or new municipalities created that build on the extensive American council-manager systems. The Committee concluded that it would be premature and constraining to specify any particular forms of local government in this provision. Any new arrangement should be instituted under two conditions: (1) there must be an adequate opportunity for the new Commonwealth government to do its job before allowing new institutions to be created; and (2) there must be no local governments imposed on the people without their consent.

Section : Local Laws. This section is proposed by the Committee for inclusion in the article on the

legislative branch. It provides that laws relating exclusively to local matters on Rota, Saipan, Tinian or the islands north of Saipan may be enacted by the legislature or by a majority of the representatives and senators from the respective island or islands. The section also requires the legislature to define the scope of local laws that may be enacted by this provision, or be encompassed in rules and regulations by the mayor under Article VI, Section 3(d), or local laws or ordinances by future agencies of local government. This provision in local laws enacted by the legislature or legislative delegation fulfills a need previously met by the municipal councils in the Northern Marianas. Regardless of the manner in which the law is enacted, it is a Commonwealth law enforced by Commonwealth executive and judicial authorities. Both means are provided for expedition and to guard against the remote possibility that the legislative delegates from two of the three major islands might try to prevent the third delegation from passing a local law applicable only to its own community. The Committee believes that this authority in the legislative delegations, plus the rule-making authority of the mayor discussed above, will provide for responsive and efficient law-making on matters traditionally reserved for local government.

Section : Commonwealth Services. This section is proposed by the Committee for inclusion in the article on the executive branch. It provides that public services

authorized by law shall be provided on a fair and equitable basis to all the citizens of the Commonwealth, that the legislature may require that such services be provided through decentralized administrative arrangements, and that the governor shall make any necessary recommendation to the legislature to accomplish these objectives. Although the Committee recognizes that there cannot be exact per capita distribution of Commonwealth revenues, this section is designed to assure equity in the budgetary allocations among islands and community groups. It may be necessary and desirable to allocate funds for special or additional services as a means of achieving comparable standards of health, education and other services. But this does not mandate that each geographical area must or should have the same facility, which would be both duplicative and expensive. Representation and assurance of equity in the allocation of funds and services were the principal concerns of the delegates from Rota and Tinian and the suggested language provides a basis for fairness for all parts of the Commonwealth. It also enables the legislature to require decentralized service delivery mechanisms for the Commonwealth government. In this way the difficulties of communication for the outer islands can be reduced without the necessity of establishing separate autonomous municipalities.

The Committee's proposals on local government should properly be treated as a single package designed to provide a practical compromise among the competing objectives

advanced by delegates to this Convention. The Committee believes that the recommended provisions are a meaningful response to the special concerns advanced by the representatives of Rota and Tinian and are still consistent with the objective of a unified and coherent Commonwealth government.

Respectfully submitted,

Benigno R. Fitial, Chairman

Pedro Q. Dela Cruz, Vice Chairman (with reservation)

Pedro M. Ogo

Esteven M. King (with reservation)

Luis A. Benavente

Juan P. Tenorio

Oscar C. Rasa

Vincente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

ARTICLE VI

LOCAL GOVERNMENT

Section 1: Local Government. There shall be local government established by this article.

Section 2: Election of Mayor. The qualified voters of Rota, Saipan, Tinian and the islands north of Saipan shall elect a mayor to perform the responsibilities specified in this article for each island or group of islands.

a) A mayor shall be a qualified voter of the Commonwealth, a United States citizen or national, at least twenty-five (25) years of age, a resident of the Commonwealth for at least three (3) years, and shall meet such other qualifications as may be provided by law.

b) A mayor shall be elected at a regular general election for a term of office of four (4) years. A vacancy in the office of mayor shall be filled by special election if more than one-half (1/2) of the term remains and otherwise as provided by law. A mayor may be subject to recall under the provisions of article IX .

Section 3: Responsibilities of Mayor.

a) The mayor shall serve on the governor's council of mayors provided by section 5 of this article.

b) The mayor shall review the adequacy of the governmental services and the appropriations provided by law

for the island or islands he serves and may submit any findings or recommendations regarding these services or appropriations to the governor.

c) The mayor may investigate complaints and conduct public hearings regarding any matter of local concern and submit any findings or recommendations on such subject to the governor and other appropriate agencies of the Commonwealth.

d) The mayor may propose items for inclusion in the annual budget, review the budget before its submission by the governor to the legislature, and recommend amendments in the budget relating to the island or islands served by the mayor.

e) The mayor may promulgate rules and regulations on local matters pursuant to authority provided by law.

f) The mayor may expend for local public purposes such revenues as are raised by local taxes designated by law for such purposes provided, however, that these expenditures shall be specifically authorized by the legislature or by a majority of the representatives

and senators representing the island or islands served by the mayor.

g) The mayor may appoint and supervise such employees as are provided by law to assist in the performance of his responsibilities.

h) The mayor shall perform such other responsibilities as are specified by law.

Section 4: Compensation of Mayor. The mayor shall receive an annual salary and a reasonable allowance for expenses from Commonwealth revenues as provided by law. The salary of the mayor may not be decreased during his term of office. Salaries and expenses for any assistants to the mayor shall be paid by local taxes designated by law for such purposes provided, however, that these salaries and expenses shall be specifically authorized by the legislature or by a majority of the representatives and senators representing the island or islands served by the mayor.

Section 5: Governor's Council of Mayors. The mayors elected pursuant to section 2 and the governor shall constitute a council of mayors to advise the governor on local matters. The governor shall preside over the council which shall meet at least four (4) times each year to consider any matter relating to the relationship between the Commonwealth and its separate islands as the members place on the council's agenda.

Section 6: Other Agencies of Local Government.

a) The chartered municipality form of local government shall cease to exist on the effective date of this Constitution. Local taxes paid to the chartered municipal governments on Rota, Saipan and Tinian shall remain in effect until otherwise provided by law and shall be expended if authorized by the legislature or by a majority of the representatives and senators from the island or islands for local public purposes on the island or islands producing such revenues. Ordinances and other rules enacted by municipal councils on Rota, Saipan and Tinian that are consistent with this Constitution shall remain in effect until superseded by Commonwealth law.

b) No additional agency of local government shall be established for at least five (5) years from the effective date of the Constitution. The legislature may then establish agencies of local government in place of or in addition to the agencies provided for in this article with such powers, elected officers and financing as may be provided by law. Not more than one local government shall be established for Rota, Saipan or Tinian or for the islands north of Saipan. No new agencies of local government shall be established without the approval of two-thirds (2/3) of the qualified voters residing on the island or islands to be served by the agency of local government.

ARTICLE II

THE LEGISLATIVE BRANCH

Section : Local Laws. Laws that relate exclusively to local matters on Rota, Saipan, Tinian or the islands north of Saipan may be enacted by the legislature or by a majority of the representatives and senators from the respective island or islands. The legislature shall define such local matters that can be the subject of legislation enacted by a majority of the representative and senators from its respective island or islands, rules or regulations promulgated by a mayor pursuant to Article VI, Section 3(e), or local laws or ordinances adopted by agencies of local government that may be established pursuant to Article VI, Section 1(b).

ARTICLE III

THE EXECUTIVE BRANCH

Section : Commonwealth Services. Public services authorized by law shall be provided on a fair and equitable basis to all the citizens of the Commonwealth. The legislature may require that such services be provided through decentralized administrative arrangements. The governor shall make any necessary recommendations to the legislature in order to accomplish these objectives.

November 12, 1976

REPORT TO THE CONVENTION BY THE
COMMITTEE ON FINANCE, LOCAL GOVERNMENT AND
OTHER MATTERS

Subject: Committee Recommendation Number 9:
Preamble

The Committee on Finance, Local Government and Other Matters recommends that the Convention adopt in principle the attached Preamble to the Constitution of the Commonwealth of the Northern Mariana Islands.

The Committee believes that the Preamble should set the tone of the Constitution by being a dignified expression of the general commitment and ideals of the people of the Northern Mariana Islands. To reflect these values, the Preamble recommended by the Committee contains wording that proclaims the establishment of the Constitution, the commitment to political union with the United States of America, and the desire for a government that respects individual liberty, social equality, the Chamorro and Carolinian heritage, the preciousness of the land and resources of the Northern Mariana Islands, and the culture, history, and traditions of the people of the new Commonwealth.

Respectfully submitted,

Benigno R. Fitial, Chairman

Pedro Dela Cruz, Vice Chairman

Pedro M. Ogo

Esteven M. King

Luis Benavente

Juan Tenorio

Oscar C. Rasa

Vicente M. Manglona

Jesus G. Villagomez

Magdalena C. Camacho

Juan DLG. Demapan

Carlos S. Camacho

## PREAMBLE

We, the people of the Northern Mariana Islands, ordain and establish this Constitution for our Commonwealth and reaffirm our adherence to the Constitution of the United States of America. We declare our goal of establishing a government in political union with the United States that respects and preserves our personal liberty and social equality, our Chamorro and Carolinian heritage, our land and its resources, and our culture, history and traditions.