

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 or for recall of the directors because it believes 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. 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. 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) disqualified any person who has been convicted of a crime. Under this provision any director who was convicted 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; 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 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 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 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. Second, it 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. 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 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,

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

Leon I. Taisacan

Manuel A. Tenorio

Ramon G. Villagomez

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, 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 ten 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.

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.

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.

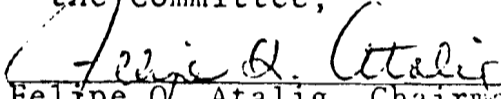
With respect to proposal number 25, Sections 1, 2, 3, and 5 are consistent with the Committee's proposed Constitutional provision. Section 7 of the proposal is covered in more limited form by Section 10 of the Committee's proposed provision. Consideration of Sections 6 and 9 was deferred.

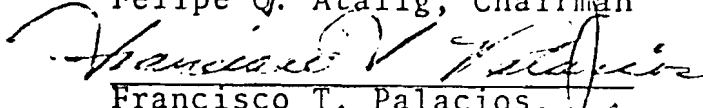
With respect to proposal number 31, this matter is covered in more limited form by Section 9 of the Committee's proposed provision.

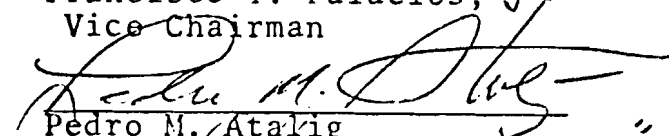
With respect to proposal number 67, Section 1 is covered by Section 4(a) and (d) of the Committee's proposed provision. Consideration of Section 2 has been deferred.

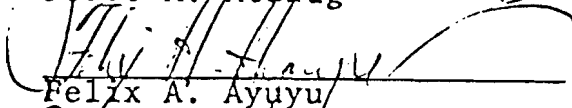
The Committee has deferred consideration of constitutional provisions with respect to the rights of juveniles and will consider that matter when it considers other delegate proposals dealing with personal rights.


Respectfully submitted by
the Committee,

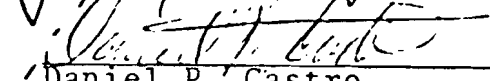

Felipe O. Atalig, Chairman

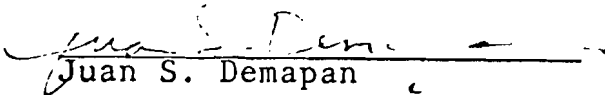

Francisco T. Palacios,
Vice Chairman


Pedro M. Atalig

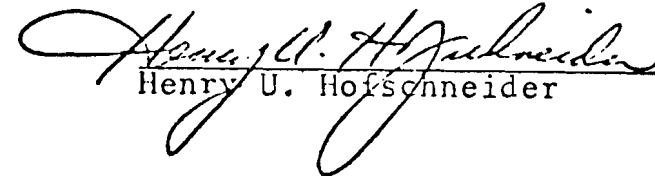

Felix A. Ayuyu



Jose S. Borja

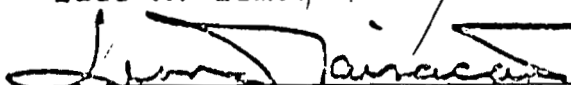

Daniel P. Castro


Juan S. Demapan

Hilario F. Diaz


Henry U. Hofschneider


Luis M. Limes

 - Rota
Leon I. Taisacan

Manuel A. Tenorio

Ramon G. Villagomez

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.