

November 11, 1976

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

Subject: COMMITTEE RECOMMENDATION Number 8:  
Restrictions on Land Alienation

The Committee on Personal Rights and Natural Resources recommends that the Convention adopt in principle the attached constitutional article 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 Mariana's 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.

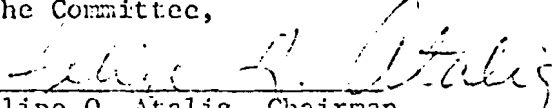
Delegate Proposals. The Committee considered delegate proposals numbered 8, 10, 37, 71, 74 and 122 that relate to land alienation.


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.

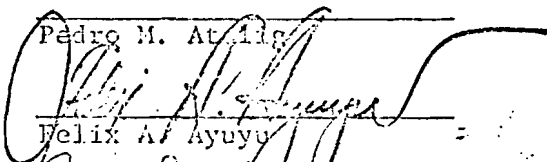


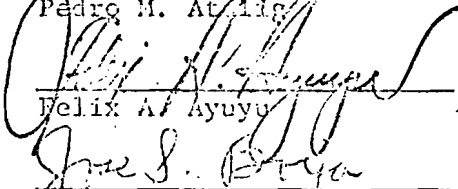
Delegate proposals 37, 71 and 122 are covered by the Committee's recommended constitutional article.

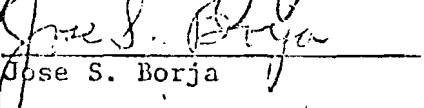
Respectfully submitted by  
the Committee,


  
Felipe Q. Atalig, Chairman

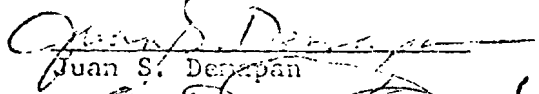
  
Francisco T. Palacios, Vice Chairman

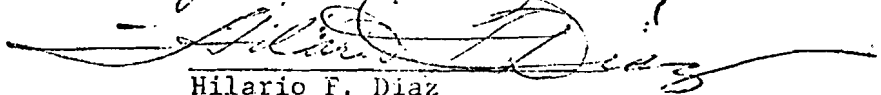
  
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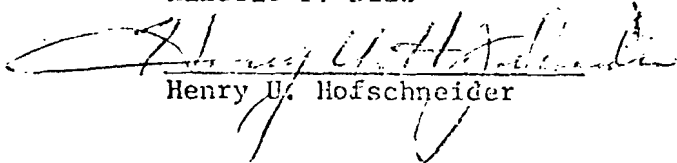
  
Felix A. Ayuya

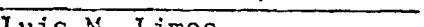
  
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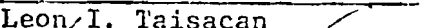
  
Daniel P. Castro

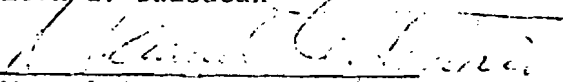
  
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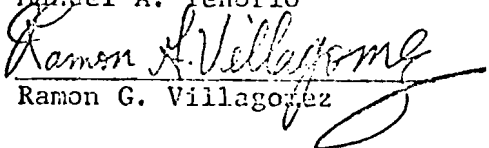
  
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