

COMMENTS ON THE DRAFT CONSTITUTION

Page 1: Preamble.

The draft Preamble seems a bit too legalistic in form and text. It needs to be restructured so that it reflect the wisdom, history, culture and traditions, and political aspirations of the people of the Northern Mariana Islands. Although our history is not written, it is nevertheless colorful and filled with some 400 years of human experience and tribulations under the four major eras of foreign stewardship. Our ancestors, brave and peace loving, sailed the hostile sea in their canoes which they hewed with primitive tools and bare hands. Their skills were to be later augmented by new knowledge and wisdom brought into the islands by the ancestors of our Carolinian brothers and sisters. Together, we have learned to improve on what we had by preserving what we must and by adopting new skills learned from the Spaniards, Germans, Japanese, and now from our future American compatriots. Our contemporary language, culture, traditions and mores all have become depository of the past 400 years of our known existence. The story is there and it must be told. Following is a proposed revised version of the Preamble which I hope Consultants will expand and improve:

"We, the people of the Northern Mariana Islands, who cherish deeply the principles of social equality, individual freedom, liberty and the pursuit of happiness, who have lived the past under the yolk of foreign powers, who have from the past learned the wisdom to live the future in harmony, peace and security, and who now have proudly achieved our lifetime dream to live forever as a free people within the political family of the Greatest Nation on God's Earth, the United States of America, do hereby ordain and establish this Constitution for our Commonwealth and reaffirm our full allegiance to and respect for the Constitution of the United States of America. We declare our goal of establishing a Commonwealth Government in political union with the United States that preserves our personal liberty and social equality, our island heritage, our land and its resources, and our culture, history and traditions."

Page 4: Section 10: Free Public Education.

The final language of this Section should be made compatible with Article XV on Education. The term "free education" needs to be defined.

Page 5: Sections 2(b) and 3(b): Compositions of the Legislature.

The senatorial seats eligibility criteria for the northern islands, based on a 1,000 population, is at best unclear. Was it meant on the aggregate or individual island?

House seats allocation should be provided in the event the islands have become eligible for senatorial seats.

Page 8: Section 6: Local Laws.

The possibility of laws being enacted for Rota and Tinian by only

a handful of people (three in the case of Tinian and four for Rota, both numbers constitute single majority) is frightening. The present language of this Section permits it. The least the Delegates should do is to provide for a mandatory public hearing, on-island, prior to enactment of any substantive legislations, e.g. tax bills, appropriation bills, zoning bills, etc.

Page 11: Section 13: Legislative Immunity.

This Section provides a "carte blanche" immunity from arrest to members during session or committee meeting and while going to and from such a session or committee meeting. This immunity should not be extended to include commissions of felony, breach of the peace, or acts of treason against the Commonwealth or the United States.

Page 15: Section 6: Prohibition on Government Employment.

A careful review of the second sentence under this Section is necessary. It seems contradictory to allow the governor and lieutenant governor to seek other public offices.

Page 17: Section 9: Executive and Administrative Functions.

Sub-section (b), first sentence, the word "fiscal" should precede the word "year" wherever the latter appears to distinguish the difference between calendar and fiscal year.

Sub-section (d), the governor's power to grant reprieves, commutations and pardons should not be extended to convictions for acts of treason against the Commonwealth or the United States.

Page 18: Section 10: Emergency Powers of the Governor.

To prevent indiscriminate use of these powers, it is recommended that a time limitation be set after which the approval by the legislature to continue the state of emergency will be required. I propose sixty days duration as reasonable.

In addition to the types of calamity listed, I recommend that "man-made" disasters, public utilities, transportation and communications stoppages be included as well. Our recent experience with the Airline Pilots Association strike against Continental validates this concern.

Section 11: Attorney General.

The functions of law enforcement and fire protection should not be placed under the direct supervision of those charged with the responsibility for prosecution of crimes. By the very nature of their profession, attorneys are prone to plea-bargaining outside of court on cases prepared by police officers. This practice has caused morale problem among the police officers throughout the Trust Territory. Professional review of the existing police organization has recommended separation of the police

department from the TFG Attorney General's Office and to place it under the Office of the High Commissioner. The new Commonwealth Government will gain much to adopt this new concept.

Other Comments - general:

'Article II, The Legislative Branch of Government.

The combined membership of the Senate and House of Representatives seems unwieldy large for the size of the Commonwealth population. The attendant cost for the operation and maintenance of the legislature is similarly high.

The inclusion of the rate of compensation for the members in the Constitution seems to be a poor choice. Legislation would seem a better vehicle for it.

Granting of unconditional immunity to legislators appears to be another poor taste. My earlier comments on this matter remain valid.

The Draft Constitution makes references to regular session (page 12, Section 14), but is silent as to how, where, and for how long a regular session must convene. It is not unusual for a Constitution to establish a minimum number of days the legislature must remain in session and where. The electorate is entitled to some guarantee that the legislature meets in regular session to transact the business of the Commonwealth, and it would seem that the Constitution is the best vehicle to secure that assurance.

Article III, The Executive Branch of Government.

As in the case of the legislature, the compensation rates for the governor and lieutenant governor should be by legislation.

The order of succession, in the event of vacancy in both governor and lieutenant governor positions, should be first the presiding officer of the House of Representatives and second the presiding officer of the Senate in that order.

Except for the Public Auditor, all other heads of departments should be appointed by the governor with the advice and consent of the legislature. This uniformity in the appointment process is necessary to maintain the team integrity and public accountability of the governor and the executive branch. To treat few department heads (e.g. Attorney General and Director or Superintendent of Education) differently from the rest will encourage divisive attitudes and dissensions among the staff of the executive branch.

Article V, Washington Representative.

Longevity and tenure in the Nation's Capitol by our representative is in the best interest of the Commonwealth. The limitation of term of office for this position should be identical to the terms allowed for the governor and lieutenant governor. The qualifications criteria for the incumbent is sound but why impose on him only and not on the others.

Article XI, Public Lands.

This Article is too cluttered with items that can best be provided by legislations, e.g. creation of the Marianas Public Land Corporation and the Marianas Public Land Trust entities.

, Article XIV, Natural Resources.

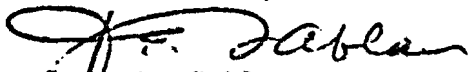
Similar comments as above. Sections 2 and 3, for instance, can best be covered by legislations.

Article XV, Education.

This Article should only provide for the basic public policy governing free universal education. All other provisions should be by legislations.

I am grateful for this opportunity to comment on the Draft Constitution and I am hopeful that my comments will prove helpful to the Delegates during their final deliberations.

Respectfully,


Juan A. Sablan

Questions, comments and recommendations relative to the Draft Constitution approved in Principle on first reading by the Northern Marianas Constitutional Convention as of November 14, 1976.

Sequentially:

Article I, Section 3(b) page 2, "No wiretapping or other comparable means of surveillance shall be used except pursuant to a Warrant".

Recommendation:

Place period after the word "used"; delete the phrase "except pursuant to a Warrant".

Comment:

Privacy and the right to be let alone are the most cherished rights of freemen.

Absent compelling reasons of national security and combating organized crime these rights should not be intruded upon. Recent disclosures in the U.S.A., the vaunted bastion of freemen, conclusively establish that even with the safeguard as provided in this section the above rights have been abused to a degree incompatible with the notions of a Republican form of government.

National Security is not a concern of the Commonwealth; neither is organized crime.

To provide the proverbial "inch" is invitation to attempt the mile.

In the unlikely event of drastic changes necessitating reconsideration why not leave the issue to the Legislature?

Article I, Section 12, Privacy, page 4, "The right of individual privacy shall not be infringed except upon a showing of compelling government interest".

Recommendation:

(a) Place a period after the word "infringed" and delete the remainder;

However, should this prove unpalatable to authoritarian tastes,

Then at minimum insert between the words "upon" and "showing", the phrase "an unequivocal", to read "...except upon an unequivocal showing of compelling government interest".

If past is prelude the comment to Section 3(b) above is equally applicable here. For a past number of years government interest needed only to be cursory to be construed compelling. Old habits die hard. More stringent safeguards precluding the possibility of cursory findings of compelling interest are needed.

Article II Legislative Branch of Government.

Comment:

Proposed constitution must pass muster with U.S. government. A 39 member legislature to make law for a population of 14,000 souls - might strike the reviewers as unduly irresponsible.

This could provide justification for the disgruntled to hold up approval or even trigger a refusal to approve unless modified. Why run the risk? Why not - if possible - trim initial membership to an unobjectable level with the view to increasing same as time and experience justify?

Article II, Section 2(^c) page 5.

Comment:

One of the elements for qualification is that an aspiring Senator must have been a resident of the Commonwealth for at least five (5) years immediately preceding his election.

Since the Commonwealth will not have been in existence five (5) years at the time of the first election, this wording will provide ammunition for pettifogging.

Article II, Legislative Branch, Section 3(c) page 6.

Comment:

Second sentence of Section 3(c) "...but no district on Rota and Saipan shall consist of more than one island".

Language obscure, difficult to grasp meaning. Could stand clarification.

Article II, Legislative Branch, Section 11, Legislative Compensation.

Comment:

The matter of Legislative Compensation should be the prerogative of the Legislature. Creation of an advisory commission merely adds to overall clumsiness in government and given the degree of partisanship which permeates local politics it could well prove to be unduly obstructionist regardless of the care and consideration expended in selecting the membership.

There is no reason to believe that any legislature would be so insensitive to public opinion as to risk ouster by the electorate on an issue invariably capitalized upon in campaign rhetoric. It is submitted that the legislature is as well qualified as a commission to set the compensation "of Commonwealth executive, legislative and judicial officers".

Section 13, Legislative Immunity.

Comment:

Blanket immunity as proposed is probably going a little too far. Surely immunity from arrest for the commission of a felony "while going or coming from a meeting of the legislature or a committee" is an unwarranted indulgence particularly when bestowed on the very persons who make and hence should be aware of the laws.

Section 15(a).

Recommendation:

In the second sentence, third clause, insert after the word "member" the phrase "upon conviction in a court of law". Strike the Article "a" before the word "felony" and strike the comma after the word "felony" and insert "or", and place a period after the word "peace". Expulsion for violation of legislative rules should be treated separately and the procedure delineated.

Comment:

The present posture of Section 15 (a) is too broad in that the legislature is empowered to expel for the commission of the enumerated offenses whether or not the offender was ever convicted in a court of law. Treason, felony and breach of the peace are crimes consisting of certain elements proof of which beyond reasonable doubt must be established preferably in a court of law.

Article III, Section 2.

Comment:

Same observation as made above relative to Senators and Representatives. The Commonwealth will not have been in existence for seven (7) years at the time of the first Commonwealth election; therefore, no person will have been a resident and domiciliary of the Commonwealth for the required length of time.

Section 3, Lieutenant Governor. Same as Section 2.

Section 5, Compensation of Governor and Lieutenant Governor.

Recommendation:

Compensation should be left to legislature. Reference to advisory commission deleted. See comments under Article II, Section 11, Legislative compensation.

Section 6, Prohibition on Government Employment.

Recommendation:

In the last sentence: Change the word "shall" to "may" to read "The legislature may enact a code, etc." Toward the end of the same sentence: delete the phrase "or other personal interests" or, alternatively, insert more specific guidelines. As written this provision invites abuse in the guise of zeal.

Section 8 (b).

In the last sentence, the court has jurisdiction to determine "all questions regarding (a) disability of the governor, (b) the existence of a vacancy in the office of governor, (c) the succession to office or its powers and duties".

Comment:

There can be little quarrel with (a) and (b) above, however, (c) raises the specter of violation relative to separation of powers.

The Constitution itself delineates the powers of the office of Chief Executive yet this section confers "final" jurisdiction on the court to determine "...succession to the that office or its powers and duties". Further the use of the conjunction "or" in the context is unfortunate because it serves only to add confusion. Substituting "and" for "or" in the phrase would clarify meaning but it still would not solve the conflict issue.

Recommendation:

Place a period after the word "office" and delete the phrase "or its powers and duties".

Section 11, Attorney General.

Comment:

Even though under this Section the Attorney General serves as legal advisor to the governor it should be made clear that the provision in no manner prohibits the governor from appointing a governor's legal counsel.

Section 12, Public Auditor.

Recommendation:

Delete Section 12 in its entirety.

Comment:

Government agencies have a strong tendency to perpetuate and proliferate without proportionate increase in efficiency, many times to the contrary.

Also, without conscious effort, these agencies of times identify with the

executive to the detriment of the other branches of government, or, conversely, they tend to encroach upon the executive. This area is best left to outside firms which will prove more detached and less costly over a span of time.

Section 13, Department of Education.

Recommendation:

In the last sentence of the Section after the word "composition" insert the words "and qualifications of the members".

Article IV, Judicial Branch of Government.

Section 2, Commonwealth Trial Court.

Recommendation:

That the Commonwealth Trial Court in addition to its original jurisdiction over all matters involving land be given original jurisdiction over all civil and criminal matters excepting, of course, jurisdiction over matters which are the proper concern of federal courts.

Comment:

The fact that this Section empowers the Legislature to increase the jurisdiction of the Commonwealth court after five years begs the questions: If eventually, why not from its establishment? What is magical about five years? Either a Judge is competent or he is not. If he is, there is little logic in denying him original general jurisdiction; if he is not, it appears the position of this section that if there are to be miscarriages of Justice the risk should lie with these who pursue small claims or face loss of freedom for five years or less. Hardly a tenable proposition. A poor man's efforts to recover for injury in the amount of \$5,000.00 is entitled to the same consideration as that of a corporation seeking redress in the amount of \$500,000.00; if a Judge is not qualified to handle the latter, he should not be foisted upon the former.

Again, this Section limits the jurisdiction of the Commonwealth Court to a degree that is not apparant on the surface. If one assumes a divorce action in which a property settlement in excess of \$5,000.00 is involved the Commonwealth court would have no jurisdiction; probate, alimony, separate support and maintenance, ditto. Reduced to the absurd, the Commonwealth court could even be deprived of jurisdiction in a child support matter should the award during the time span under consideration aggregate to more than the present jurisdictional amount of \$5,000.00. Additionally, should the present provision prevail, the courts would gradually settle into accepted roles rendering it difficult if not impossible to change the status quo.

The Commonwealth is worthy of local courts of general original jurisdiction from the start and not possibly in five years.

Section 4, Jurisdiction of U.S. District Court.

Recommendation:

U.S. District Court for the Northern Mariana should be restricted to the same trial jurisdiction as the U.S. District Court on Guam and appellate jurisdiction over appeals from Commonwealth courts of general jurisdiction.

Section 9, Rule making power.

Comment:

Unless the Commonwealth Trial Court is created a court of original general jurisdiction ab initio apathy will insure that the rule making power will remain unexercised thus enshrining the federal rules which make no concession to custom.

Article V. Washington Representative. Section 3: Qualifications.

Comment:

Same as qualifications relative to Senators and Representatives, Viz., no person

will have been a resident and domiciliary of the Commonwealth for seven years prior to the time of the first Commonwealth election.

Article VI, Local Government. Section 2(a).

Comment:

Same as above with respect to residency in the Commonwealth for at least three years prior to the first Commonwealth election.

Section 3. Responsibility of Mayor.

Comment:

Section 3(a), (b), (c), (d) and (e) completely innocuous; no teeth; Mayor's "Responsibilities" under these subsections illusory at best. He can go through the motions but no one need pay any heed.

Section 3(f), (g) and (h) not much better, Mayor still a figurehead, little real authority. For example, subsection (g) provides that the Mayor may appoint and supervise employees but note that if the legislature fails to provide or decides against providing such employees by law the Mayor could be a lonely man indeed.

Again, Section 3(f) provides that the Mayor may expend for local public purposes such revenues as are raised by local taxes designated by law for such purposes. Assuming the Legislature does not see fit to delegate taxing powers whatsoever to local government the Mayor will have little to expend. To continue, even if local governments were delegated a modicum of taxing power the Mayor's authority to expend revenues realized must be specifically authorized by the Legislature or by a majority of the Representatives and Senators representing the island served by the Mayor. Assuming disagreement between a majority in the legislature and the Representatives and Senators representing the island on the manner in which the Mayor is to expend money, the legislature might well rescind the delegated taxing power. Not likely but conceivable.

Section 4, Compensation of Mayor.

Comment:

Section provides that salaries and expenses for any assistants to the Mayor "shall be paid by local taxes designated by law for such purposes, etc.",

Comment:

Same as above.

Section 6. Other agencies of Local Government.

Comment:

Text of Section 6 supportive of comments to Sections 3 and 4 above.

Article XI, Public Lands.

Recommendations General:

Recommend a Constitutional provision reserving all land between high and low water mark to the people forever and providing for access thereto, ART XI, Sec (e) NOT WITH-
STANDING

Comment:

Article XII, notwithstanding, without such reservation to the people it will not be many years before all beach front property will be in the hands of developers, people of Northern Marianas descent will retain the privilege of observing tourists lolling on their beaches, but from a distance. The age old taken-for-granted right of access to all land between low and high water will become a thing at the past.

Section 5(a).

Recommendation:

Delete provision whereby homesteader prohibited from transferring title to homestead land for 10 years.

Comment:

In addition to possible Constitutional objections this provisions fails to take into account financial difficulties that might necessitate sale of homestead land.

So long as homesteader barred from conveying to one not of Chamorro or Carolinian blood this disability unwarranted; serves no useful purpose.

Section 5(e).

Query:

What will be the situation of those establishments (hotels) which already have "interest" in public lands to the high water mark?

Article XII, Restrictions Alienation of Land.

Recommendation:

This entire subject matter best left to the legislature.

Comment:

In the likely event the courts strike down these provisions it will create more confusion and consternation than if the courts were merely setting aside statutory law. In addition, Article XII is silent on the issue of lands currently in the hands of person who do not qualify under the Northern Marianas descent test, nor does it clarify the position of Non-qualified persons who -- on information and belief-- currently have interest in land through a "straw man".

Article XIII, Eminent Domain.

Section 3: Statute of Limitations.

Recommendation:

In the second sentence, to the phrase "but shall not affect any right in property that vested pursuant to the repealed statute of limitations" add "provided that, upon timely challenge the court shall find by a preponderance of evidence that the vesting pursuant to the repealed statute of limitations is upheld."

[Comments of Roger St. Pierre]