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The Honorable Felicidad T. Ogumoro
Delegate
NMI Constitutional Convention
House of Taga, San Vicente
Saipan, CM 96950

Dear Delegate Ogumoro:

Re: Comments on Northern Marianas Citizenship Proposal

Please permit me to comment on your proposal to define Citizenship of the Northern Mariana Islands. The term really needs defining because, although the Covenant uses that term in Section 304, it has failed to define it.

But the problem with defining a term that is in the Covenant is that the principle of separation of powers among the three branches of the CNMI government vests the power to define terms of an already existing law to the courts. The Covenant is not being amended in this Constitutional Convention. Only the Constitution is, and that is where the problem lies. Therefore, in order to be consistent with the Covenant, your definition of a term in the Covenant such as "Citizen of the Northern Mariana Islands" must be close to what the definition that the courts might give. Or better still, avoid defining the term at all. The first Constitutional Convention that we had did in fact avoid defining the term, "Citizen of the Northern Mariana Islands." Instead, they adopted the term "Interim U.S. citizenship" which is now found in Section 8 of the Schedule on Transitional Matters.

I am happy to agree with you that Section 8 of the Schedule needs to be amended if this is what you are trying to do. This is because Section 8 has simply failed to provide for Trust Territory citizens who are born in the Northern Mariana Islands after the adoption of the Constitution. The Constitution only makes interim U.S. citizens out of persons born in the Northern Mariana Islands and who are citizens at the time of the adoption of the Constitution, but it does not say anything about those who are born in the CNMI after the adoption of the Constitution. The result of this is that the Attorney General's Office has recently ruled that Trust Territory citizens born in the Northern Mariana Islands after the adoption of the Constitution are not entitled to a certificate of identity. See attachment. This is because the Certificate of Identity Act copied Section 8 of the Schedule verbatim,

and I believe that it could not have done anything more.

The intent of your proposal is good. I think something should be done about those children and about those stateless persons who will derive U.S. citizenship at the termination of the Trusteeship Agreement. But in making these amendments it is important that the Covenant and the U.S. Constitution are not violated. Your proposal for instance giving interim U.S. citizenship (or NMI citizenship as the newspaper puts it) to persons who, although not a TT citizen, was continuously domiciled in the Northern Marianas between January 1, 1974 and January 8, 1978 will create a conflict at the termination of the Trusteeship Agreement. Such persons would not become U.S. citizens at the termination of the Trusteeship Agreement, because such group of persons does not belong to any of the three groups of persons enumerated in Section 301 of the Covenant. Section 301 (c) includes only persons who are not TT citizens and who have been domiciled in the Northern Mariana Islands since prior to January 1, 1974 and on the day preceding the the termination of the Trusteeship Agreement have been domiciled continuously in the Northern Mariana Islands.

Your proposal which gives Northern Marianas citizenship to a "person who is born in or outside of the Commonwealth of at least one parent of Northern Marianas ancestry" will again create a conflict with the Covenant in that the Covenant requires that all T.T. citizens born in the Northern Mariana Islands must be domiciled in the Northern Mariana Islands or in any part of the United States on the day preceding the termination of the Trusteeship Agreement. See Section 301(a) of the Covenant. Therefore a general statement that a person is born in the Northern Mariana Islands of a parent of Northern Marianas ancestry would not be consistent with the Covenant. The Covenant is silent on persons born of a parent of Northern Marianas ancestry unless the parent is one of those enumerated in Section 301 of the Covenant and unless the person in question is under 18 years of age.

Your proposal grants CNMI citizenship to a person born of a parent of Northern Marianas ancestry, and of a parent who is a U.S. citizen. Your proposal excludes all other T.T. citizens born in the Northern Mariana Islands. This exclusion is an invidious and racial discrimination that will never withstand the constitutional test under the Due Process Clause of the Constitution of the United States.

I think that the safe inclusion of the amendment of this sort requires a close adherence to Section 301 of the

Covenant and for that reason, I would like to suggest that the amendment be worded as follows:

"SCHEDULE ON TRANSITIONAL MATTERS

Section 8. Interim Definition of Citizenship.

For the period from the approval of the Constitution by the people of the Northern Mariana Islands to the termination of the Trusteeship Agreement, the term United States citizen or United States national as used in the Constitution includes those persons, who on or after the date of the approval of the Constitution by the people of the Northern Mariana Islands, do not owe allegiance to any foreign state and who qualify under one of the following criteria:

a) persons who were born in the Northern Mariana Islands, who are citizens of the Trust Territory of the Pacific Islands on or after the date of the approval of the Constitution by the people of the Northern Mariana Islands, and who on or after that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

b) persons who are citizens of the Trust Territory of the Pacific Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975;

c) persons domiciled in the Northern Mariana Islands on the date of the approval of the Constitution by the people of the Northern Mariana Islands who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974; or

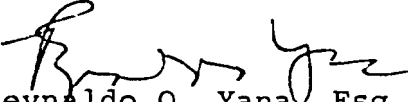
d) A United States citizen who has established a principal domicile in the Northern Marianas for at least one year."

Your concern for persons one of whose parents is of Northern Marianas ancestry might be solved if they belong to any of the groups above. If some do not, an amendment which would give such persons automatic permanent residency in the Northern Mariana Islands would put these persons in a situation where they can automatically become U.S. permanent residents

at the termination of the Trusteeship Agreement pursuant to Section 506(c) of the Covenant, not to mention Section 506(b) of the Covenant which also provides U.S. permanent residency for these persons even though they are not permanent residents of the CNMI at the termination of the Trusteeship Agreement. Becoming U.S. permanent residents would lead to U.S. citizenship eventually.

In conclusion I would like to thank you for giving me this opportunity to make these comments. Whether my comments are given any weight, I am sure that by doing these I will have contributed to the making of our soon-to-be amended Constitution.

Very truly yours,


Reynaldo O. Yana Esq.