

THIRD NORTHERN
MARIANA ISLANDS
CONSTITUTIONAL CONVENTION

DAILY JOURNAL

FIFTY-SEVENTH DAY

Monday, July 31, 1995

PRESIDENT GUERRERO: The 57th day of the Third Northern Marianas Constitutional Convention is hereby called to order.

Please stand for a moment of silence.

(A moment of silence was had.)

PRESIDENT GUERRERO: Thank you.

Con-Con clerk, roll call, please.

(Convention Clerk called the roll).

CONVENTION CLERK: Mr. President, we have 21 members present; six members absent.

PRESIDENT GUERRERO: Delegate Mariano Taitano is still sick; so he is excused.

Delegate Donald Mendiola.

DELEGATE MENDIOLA: (Statements made in Chamorro).

PRESIDENT GUERRERO: The Tinian delegation apparently had a meeting this morning and Delegate Hofschneider was trying to talk to his chair along with the other two members trying to convince the chair to

also come and attend the meeting, and I have just been informed that apparently just before 2:00 the Mayor of Tinian and the chair of the Municipal Council and one of the senators from Tinian formally requested that they meet with them immediately, and the communication came in around perhaps almost 2:00.

So I don't know whether they went to Tinian or not.

DELEGATE D. MENDIOLA: Is that a conspiracy not to be here?

PRESIDENT GUERRERO: No. Delegate Hofschneider mentioned that he wants to attend the session, but he is also trying to convince --

DELEGATE D. MENDIOLA: It is just that they are setting their meeting when there is a session time in the chamber at this Convention.

Thank you.

PRESIDENT GUERRERO: Thank you.

Delegate Tomas Aldan.

DELEGATE T. ALDAN: Mr. President, our Rule 4 requires at least one delegate from each island for a quorum. That rule was adopted because the enabling act, Public Law 9-18, required it. I think that requirement in Public Law 9-18 is unconstitutional.

All the legislature had to do was to provide for a Convention; it had no business deciding our quorum requirement. Only the Constitution and the people can tell us how we are to do our business.

The requirement is frustrating; it is frustrating the wishes of the people in voting for this Convention. It should not be used to prevent the people from voting on our work.

I, therefore, move under rule 62(c) to temporarily suspend the last clause of Rule 4 until the delegates from Tinian show up.

If you agree, this will enable us to complete our agenda. A quorum would be a simple majority of the delegates or 14.

That is a motion, Mr. President.

(The motion was seconded).

PRESIDENT GUERRERO: Discussion?

Well, it has been moved and seconded to suspend rule 62(c).

MR. ZIMMERMAN: Suspend rule 4.

PRESIDENT GUERRERO: To suspend Rule 4.

Let me first recognize the Floor Leader.

DELEGATE HOCOG: Yes, Mr. President, I urge the Committee that before the delegates vote on the motion

I would like to request a legal opinion from our counsel whether or not the public law that provides quorum is unconstitutional.

PRESIDENT GUERRERO: Mr. Counsel, will you please respond to the question.

MR. WILLENS: It is our judgment that the enabling act does raise a substantial question under the Constitution of the United States and the Constitution of the Northern Mariana Islands and the Covenant. The issues have never been litigated; they have never been raised; and one could hope that they never have to be raised. The premise underlying the motion is that this body cannot go forward informally as a Committee of the Whole to discuss the agenda items that are now before you. I think that is an incorrect premise. I think the chair can rule that this Convention can sit as a Committee of the Whole and consider and deliberate today, and the only possible question that can be ~~raised~~ is whether any vote taken today with respect to accepting any proposed amendment is valid or invalid.

So I think that the Committee does have a judgment before it and the chair can rule that you can go forward with your agenda items today and then decide if no one from Tinian appears whether you want to go

forward and take a vote. If you do go ahead and take a vote it might be appropriate at some subsequent time, when a member of the Tinian delegation appears, to take another vote in which that delegate from Tinian participates so as to ratify and make certain so there is no question about what you have done. But we only have three days remaining in the Convention. There is much deliberation required on Article 12 in particular and it seems to me this Convention can find a way to go forward and deliberate on those issues.

Mr. Floor Leader, the question is an extremely complicated one. I have suggested to you our judgment that there are indeed very substantial legal questions that might have to be raised if this Convention went ahead with its business without a quorum as defined by the statute and it was subsequently challenged.

PRESIDENT GUERRERO: Please continue.

DELEGATE HOCOG: Mr. Chair, our legal counsel just stated that the public law that provides the member quorum has not yet been litigated.

If we are to move forward and do actions that require the presence of the delegates today to vote, another question comes up to my head: What if the

Tinian delegation will not show for the rest of the remaining days? How would our action then be so-called legitimate and legal?

I would like to think that if the Tinian delegates would like to come after we voted on any measure before us today, and to vote the way they feel on the measure, perhaps that can constitute some legal action taken by this Convention. My question is, if they do not show up, how would our action be interpreted?

Again, we are inviting court litigation on the Convention action by the members of the Tinian delegates if the Convention proceeds with its business to vote accordingly on the issues and the agenda before us today. So I ask with caution that we take our judgment to be legal rather than to be questioned, and if I may, it all depends on the decision on the motion before this delegation. I can perhaps provide other ~~recommendation~~ or resolution to ensure that we carry out the mandate of this Constitutional Convention.

Thank you, Mr. President.

PRESIDENT GUERRERO: Let me recognize first Delegate Camacho and then Villagomez and Quitugua.

DELEGATE CAMACHO: I yield to Delegate Quitugua.

PRESIDENT GUERRERO: May I recognize first Delegate Villagomez before.

PRESIDENT GUERRERO: Delegate Villagomez.

DELEGATE VILLAGOMEZ: Thank you, Delegate Quitugua, but I would like to come back, Mr. President, and say my piece.

PRESIDENT GUERRERO: Delegate Quitugua.

DELEGATE QUITUGUA: Thank you, Mr. President. There were some questions during the past meetings on the constitutionality of some issues, and it was even brought up that actually nobody can really say that such an issue is unconstitutional unless the court makes a decision. I would like to know, that if we proceed with the Convention without having a quorum according to the public law, whether I am abusing my fiduciary responsibility as a delegate by contradicting that public law.

PRESIDENT GUERRERO: Thank you.

Let me recognize Delegate Tomas Aldan and then Delegate Villagomez.

DELEGATE T. ALDAN: Mr. President, I don't think it is constitutional to allow the minority members by ignoring their responsibility to stop the session and the work of this Convention from continuing.

In my opinion as a layman, it is illegal if not downright improper. We all take an oath to faithfully carry out our duties pursuant to Commonwealth laws, the Constitution.

We were elected to do a job and that veto power is not judicious in my opinion.

I think that if we proceed, at least we can accomplish what the people voted us to do. Let the people, if there should be any challenge, vote on amendments we entertain from here on forward if and when the delegates from Tinian do not show up; however, I would like to recommend that if and when the delegates from Tinian do come and attend the session that we take the position that we will reaffirm whatever actions we take today.

I think the burden of proof if anyone seeks to undo what we do today, or from here on, will be upheld by the court because we acted in good faith and with a majority behind the Convention.

This is 100 times better than to sit and do nothing. I think I owe those people who voted us into this office, however short it may be, to do our work and the only way we can do that is to proceed.

Thank you.

PRESIDENT GUERRERO: Let me recognize Delegate Camacho since he yielded to Delegate Quitugua earlier.

DELEGATE CAMACHO: Thank you, Mr. President.

This will be the second crisis of this Con-Con. The first one was, I thought of greater magnitude than the second one, and you resolved it diplomatically without opening ourselves to not only criticism but possibly legal action later on.

Mr. President, the only information we got is that the mayor called them. There must be something important and urgent for the mayor of the island of Tinian to call his delegation. It is done everywhere -- in the United Nations and in governments -- where they call the ambassador to come and consult, but they do go back and I think you can do it; you can always contact the mayor and say are you walking out permanently or are you going to go back.

You mentioned that Delegate Hofschneider ~~wanted~~ wanted to not only attend the meeting but to try and convince his colleagues to come back. The best approach that I foresee is for the leadership to contact Tinian and get additional information and delay the meeting so they can participate. I urge you and ask you can do that. As I mentioned earlier, this is

where we differentiate the boys from the statesmen and you are a statesman.

Thank you.

PRESIDENT GUERRERO: Thank you, Delegate Camacho.

Delegate Hocog, you have some suggestion that you mentioned earlier.

Would you like to be explicit in terms of those suggestions?

DELEGATE HOCOG: If by the permission of this Convention, Mr. Chair, I will volunteer myself to meet with them, with their elected officials in Tinian, and we will come back together. If I may request for a recess, probably two hours, before we can reconvene and I will ensure their presence here this afternoon.

PRESIDENT GUERRERO: Can we compromise an hour and a half?

DELEGATE HOCOG: From here to the airport, it is about 15 minutes; from the airport to Tinian is another 10 minutes. Then the negotiation is kind of difficult, Mr. Chair, to really bring them back, but I will try my best to come back within one hour and a half.

PRESIDENT GUERRERO: I think it is justifiable then to have two hours.

Let me recognize Delegate Villagomez and then

Delegate Tenorio.

DELEGATE VILLAGOMEZ: Mr. President, there is a motion. I think you should ask the mover whether he wants to withdraw and if he is going to withdraw, I am willing to allow my good friend Delegate Hocog to go there and negotiate. I think it would be good, too, Mr. President, that someone from Saipan, perhaps you, join him and bring our friends back, you know, to welcome them and we have two very important articles that we are acting on second reading. It is incumbent, especially Article 6 which deals with local government. We would like to know how they feel. We welcome their views and we use this quorum here to discuss and carry on.

I agree with the diplomatic approach and I am willing to wait even up until midnight. Unless my Delegate Aldan withdraws, you would have to ask for the motion.

PRESIDENT GUERRERO: There was no second. I didn't hear a second.

DELEGATE VILLAGOMEZ: I did. I seconded.

PRESIDENT GUERRERO: Oh, you did. Excuse me then.

Delegate Aldan, are you withdrawing the

motion?

DELEGATE T. ALDAN: No. I would like to think that we will recess and consider that in two hours today.

PRESIDENT GUERRERO: I will recognize Juan Tenorio.

DELEGATE JUAN S. TENORIO: Delegate Villagomez, you have said everything and you should maybe follow Delegate Hocog. Please let us know. Don't let us wait here until tonight or tomorrow. Whatever the negotiation, if there is no negotiation, call us so maybe we can cancel the meeting until tomorrow.

PRESIDENT GUERRERO: Delegate Hocog, do you have any other person that you would like to come.

DELEGATE HOCOG: I don't mind anybody here. I am fine. Fine with me, Mr. Chair.

PRESIDENT GUERRERO: Delegate Igitol.

DELEGATE IGITOL: Mr. President, maybe you can ask Delegate Hocog to call first the mayor and get the commitment for him to meet them today and then move if that is possible.

DELEGATE HOCOG: If they close the door and they don't want me in, I will just come back and report.

PRESIDENT GUERRERO: That's better. Let's leave

it to the discretion of our good Floor Leader.

Yes, Delegate Juan Tenorio.

DELEGATE JUAN S. TENORIO: I move to recess

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded we are going to recess for at least 2 hours until about 5:00.

Thank you. We are in recess.

(The Convention adjourned at 3:10 p.m. to 5:35).

PRESIDENT GUERRERO: The plenary session is called back to order.

Before we move on can I get the Con-Con clerk to do roll call again.

(Convention Clerk called the roll).

CONVENTION CLERK: Mr. President, 25 members present and two absent.

PRESIDENT GUERRERO: Thank you. We have a quorum to conduct business.

Mr. Floor Leader.

DELEGATE HOCOG: Yes, Mr. President, I am happy now to adopt Daily Journal from July 26th, 27th, 28th and 29th

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and

seconded to adopt the Daily Journal from July 26, 27, 28 and 29.

Discussion?

If not those in favor of the motion say "Aye." Those who oppose say "Nay."

Motion carried. Mr. Floor Leader.

DELEGATE HOCOG: Yes, Mr. President, I am very very happy to adopt Summary Journal of July 28 and 29.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded to adopt the Summary Journal from July 28 and 29.

Discussion? If not, those in favor of the motion say "Aye." Those who oppose say "Nay."

Motion carried.

Now we move on to the reports of the committees.

The Committee on Organization and Procedure. Basically we are moving ahead with our schedule, and I want to commend the delegates again for the tremendous effort that they are putting into this Convention.

We will finish Article 6 and Article 12 hopefully, today.

Then tomorrow we will take up the schedule on

transitional matters and start working on the analysis. Once we get the schedule and analysis done we will be ready for signing. Our last day is Thursday, August 3rd. The Style Committee should decide how the Constitution is going to be printed and signed; and I would like to commend the Convention secretary, Delegate Gonzales who did an excellent job of getting the Chamorro version of the Constitution ready so it could be published. Due to some delay with the newspaper it won't come out until tomorrow.

Now he will get back to his computer and put in the changes on second reading that so we can have a Chamorro version when we finish. We haven't made too many changes, so hopefully, Delegate Gonzales can have the Chamorro version on Wednesday.

If you have suggestions for the analysis, I ask you to see perhaps Deanne or Howard, Bernie or Grace. I ask that we get the suggestions incorporated as much as we can today so we can look at a cleanup version tomorrow.

The analysis was passed out on Saturday. It still has some reports from first reading in it. What we agreed to on the floor has not yet been added and the legal team is putting all those into today's

version. When we get Articles 12 and 6 we are going to get the final version of the analysis put together as quickly as we can.

That is about it. Let's move on with the Committee on Land and Personal Rights.

I call Chairman Lifoifoi.

DELEGATE LIFOIFOI: Thank you, Mr. President. Your Committee on Land and Personal Rights have met since last Saturday and continued this morning and we finally completed our discussion of Article 12. Further, we have calendared Article 12 for the Committee of the Whole and hopefully, after the Committee of the Whole we will be able to pass it on second and final reading.

Thank you, Mr. President.

PRESIDENT GUERRERO: Thank you, Chairman Lifoifoi, and I call on the chair of Legislative Branch and Public Finance, Delegate Tomas Aldan.

DELEGATE T. ALDAN: Thank you, Mr. President, your Committee on Legislative Branch and Public Finance met this afternoon around 4:00, and we went through the schedule on transition. I think we still need to meet one more time to finalize the report for the recommendation of the Committee.

Thank you.

PRESIDENT GUERRERO: Thank you, Delegate Aldan. I call on the chair of Executive Branch and Local Government.

DELEGATE NOGIS: Thank you, Mr. President. Your Committee on Executive Branch and Local Government is still considering some changes under Article 6. We will get into the specifics when we convene in the Committee of the Whole.

Thank you.

PRESIDENT GUERRERO: Thank you, Delegate Felix Nogis.

I call now on Chairman Hofschneider to report on the Judiciary and Other Elected Offices.

DELEGATE HOFSCHEIDER: Thank you, Mr. President. Mr. President, your Committee on Judiciary and Other Elected Offices has completed its work and would like to request, if possible, tomorrow morning at 9:00, if there is no conflict in the schedule so we can meet and finalize the review of transitional matters on Article 4 and also the education portion.

That's all, Mr. President.

PRESIDENT GUERRERO: Thank you, Delegate Hofschneider.

We now move to item 6, introduction of delegate amendments.

Let me first recognize Delegate Esther Fleming.

DELEGATE FLEMING: Thank you, Mr. President. I have Delegate Amendment No. 39 for an amendment to be included under the schedule of transitional matters.

Thank you, that is all.

PRESIDENT GUERRERO: I call on Delegate Aldan-Pierce.

DELEGATE ALDAN-PIERCE: Thank you. I have Delegate Amendment No. 45 for the schedule on transitional matters with respect to Article 12.

PRESIDENT GUERRERO: I call on Delegate Tomas Aldan.

DELEGATE T. ALDAN: Mr. President, I want to make an amendment, propose an amendment, but it is not numbered yet, but the matter will be discussed this afternoon and this amendment will change section 7(b) of Article 6, local government.

PRESIDENT GUERRERO: Thank you. I call on Delegate Camacho.

DELEGATE CAMACHO: Mr. President, I have an amendment also that is related to Article 12 in the

form of substitution and it is not numbered yet, and I would like to comment on it in the Committee of the Whole.

I have the amendment here. If you want me to pass it out, I will be more than happy to.

PRESIDENT GUERRERO: Perhaps you can either pass it now or at the Committee of the Whole.

DELEGATE CAMACHO: Thank you, Mr. President. I will wait and pass it in the Committee of the Whole.

PRESIDENT GUERRERO: All right.

I call on Delegate Villagomez.

DELEGATE VILLAGOMEZ: Thank you, Mr. President.

I have amendment No. 43 regarding section 6 on Article 12.

Also, earlier I introduced amendment 29 that I would like to bring up with regard to transitional provisions to Article 12.

Thank you, Mr. President.

PRESIDENT GUERRERO: Any other delegate amendments?

Yes, Delegate Hocog.

DELEGATE HOCOG: Yes, Mr. President. I have Delegate Amendment No. 44 as it relates to Article 12, section 6.

PRESIDENT GUERRERO: Thank you.

Any other delegate amendments?

If not, we move on to motions and resolutions.

DELEGATE HOCOG: Mr. President.

PRESIDENT GUERRERO: Yes.

DELEGATE HOCOG: Prior to our recess today we had a motion on the floor and I ask the mover of that motion to withdraw it.

PRESIDENT GUERRERO: Delegate Tomas Aldan.

DELEGATE T. ALDAN: Mr. President, I am pleased to withdraw my motion made earlier this afternoon. In addition to that, Mr. President, I would like to give notice of motion for reconsideration of section 3 of Article 2 that relates to the length of the term of the House of Representatives.

Thank you.

PRESIDENT GUERRERO: So noted.

Yes, Delegate Igitol.

DELEGATE IGITOL: Mr. President, I have Delegate Amendment No. 41 to submit today.

With that under Item 7, Mr. President, I move under Rule 50 to reconsider Article 16 on corporations. I would like to have the Convention

consider our amendment 41 which would add just one sentence to Article 16. I don't think this will be controversial. I should have raised it earlier but I did not realize that it should go into Article 16.

As I understand Rule 50, this motion will be considered tomorrow, because it cannot be called up until the second session day after it is moved.

My understanding is that today is the first day and tomorrow is the second day. I am not asking to suspend the rules so that we can consider it now, but I would appreciate if this could be considered in the Committee of the Whole and at the plenary session tomorrow.

Thank you.

PRESIDENT GUERRERO: So are you giving notice for reconsideration of Article 16?

DELEGATE IGITOL: Yes.

PRESIDENT GUERRERO: It is so noted.

-- Any other motions?

If not, we move on to unfinished business.

Yes, Delegate Villagomez, you have unfinished business?

DELEGATE VILLAGOMEZ: Mr. President, maybe I will bring up my notice to amend the rule when the proper

subject comes up or should I make it now?

This was prefiled on July 6, 1995; that was day one. We have met the five days' notice. As I understand the rule, you can bring it up any day after the fifth day.

PRESIDENT GUERRERO: You can bring it under 7 and you can bring it up under 8, under unfinished business.

DELEGATE VILLAGOMEZ: Does everybody have a copy?

DELEGATE HOCOG: We really don't know Delegate Aldan -- I mean. Sorry.

PRESIDENT GUERRERO: This is the conflict of interest, proposed amendment to the rules.

Delegate Villagomez, do you want to make a motion?

DELEGATE VILLAGOMEZ: I so move, Mr. President, to amend section 5 and section 6 of the Convention rules to provide for conflict of interest provision to read as in my amendment.

Mr. President, I will come back to it later.

DELEGATE HOCOG: Do you withdraw your motion for now?

DELEGATE VILLAGOMEZ: I withdraw my motion.

DELEGATE HOCOG: Thank you.

PRESIDENT GUERRERO: There was no second.

We move to Item 9.

Mr. Floor Leader.

DELEGATE HOCOG: Mr. President, I would like the Committee now to resolve into the Committee of the Whole to consider discussion on Article 6, local government and Article 12 on restrictions on alienation of land.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded to resolve into the Committee of the Whole to entertain Article 6, local government and Article 12, restrictions on alienation of land.

Discussion?

If not those in favor of the motion say "Aye." Those opposed say "Nay."

Motion carried.

At this time I would like to appoint Esther Fleming to ~~preside~~ over the Committee of the Whole.

Please come up.

DELEGATE FLEMING: Mr. President, can we call for a five-minute break.

PRESIDENT GUERRERO: Five-minute break.

(Recess taken from 5:50 p.m. to 6:00 p.m.)

CHAIR FLEMING: The Committee of the Whole will now convene and I hope everybody has their papers. The first is Article 6 on local government and we will follow up with Article 12, restrictions on land alienation.

I would like to assure legal counsel Willens that I may call for a recess. So you should be happy for that.

At this time I would like to call for Article 6, local government, Chairman Aldan, to explain his proposed amendment to Article 6.

DELEGATE T. ALDAN: Madam Chair, under Article 6, section 7(b), I would like to have it amended so it will read: "Commonwealth funding of local government shall not exceed the funding for local government in fiscal year, 1996 until January 1, 1998 and thereafter shall be reduced by the amount of revenues raised locally as certified by the public auditor in each of the succeeding five years."

(The motion was seconded).

DELEGATE T. ALDAN: The other language is the same.

CHAIR FLEMING: Delegate Aldan, are you making that into a motion for adoption?

DELEGATE T. ALDAN: Yes, so moved.

(The motion was seconded).

CHAIR FLEMING: Discussion?

Yes, Delegate Tenorio.

DELEGATE JUAN S. TENORIO: Let me ask the mover, Delegate Aldan, is there any limit, because the government shall not exceed funding for local government in fiscal year 1996 until January 1998. Is that two years?

DELEGATE T. ALDAN: In other words, the provision here would provide that reductions will commence January 1998.

DELEGATE JUAN S. TENORIO: What I am trying to get is whether the amount is ballooning and that is two years. That's the way I am reading it, and maybe we should ask counsel to clarify more.

CHAIR FLEMING: Counsel Willens, you may proceed.

MR. WILLENS: It seems to me the language requires -- that the level of Commonwealth funding remain at its present level until January 1, 1998 and thereafter it will be reduced by the amount of locally raised revenues which I understand is the intent of the mover.

DELEGATE JUAN S. TENORIO: So they are going to be

basing it on the annual, not two years?

MR. WILLENS: That is correct. There was a compromise in the Committee and the Committee decided to fix January 1, 1998 as the conclusion of the grace period as it was called and thereafter the reduction will be put into place.

DELEGATE JUAN S. TENORIO: Thank you.

CHAIR FLEMING: Any more?

Yes, Delegate Gonzales.

DELEGATE GONZALES: Let me just follow up on that very question.

In plain language this allows that the current level cap on personnel would be allowed up until January 1, 1998.

Would that be true?

PRESIDENT GUERRERO: No.

MR. WILLENS: If the question is being addressed to me, that is not the way I understand the provision, Delegate Gonzales, because subsection (c) of section 7 imposes a cap on personnel funded by Commonwealth funds at the number of personnel so employed as of June 5, 1995. So the personnel cap remains in place and is effective if this amendment is approved by the people.

DELEGATE GONZALES: I apologize, Counsel Willens.

Let me retract and rephrase it. The Commonwealth funding would remain, shall not exceed the funding for local government up until January 1, 1998. Suppose let's say, for example, up until December 31st, '97, are we going to allow, as Delegate Tenorio mentioned, a ballooning of the government and starting January 1, 1998 what if the funding exceeds, comes to an exorbitant amount, would this be reduced January 1, 1998 thereafter? How do you control it?

CHAIR FLEMING: Delegate Aldan, you would like to respond to that?

DELEGATE T. ALDAN: Yes.

Let me make it very slow so my good delegate can understand it. The cost of running the local government as of fiscal year '96 will remain the same, until January 1998. Beginning January 1998, that reduction will come into place, the proposed reduction will be in effect.

In other words, the local government cannot have more funding than what is appropriated as of fiscal year 1996. Clear?

DELEGATE GONZALES: Crystal clear. Thank you for speaking slower, too. Thank you.

CHAIR FLEMING: Change of tape.

(Pause).

CHAIR FLEMING: There is a motion for a proposed amendment to section 7(b) of Article 6. All those in favor of the proposed amendment say "Aye." Those opposed say "Nay."

Motion carried.

May I call now on the chairman of the Executive Branch Committee for a motion to adopt.

DELEGATE NOGIS: Yes, Madam Chair, we are making a motion to adopt Article 6 with the amendment to be included.

(The motion was seconded).

CHAIR FLEMING: Discussion?

All those in favor to include the new proposed amendment to Article 6, and to approve the whole of Article 6 say "Aye."

All those opposed?

Motion carries. Thank you.

-- Now we are going to move on to Article 12, Restrictions on the Alienation of Land. I would like to call on Chairman Lifoifoi.

DELEGATE LIFOIFOI: Madam Chair, the Committee is prepared to entertain the amendments that are being introduced.

As you are aware, Madam Chair, the Committee met this morning again and went through all the sections on Article 12. So we are now ready to entertain any amendments.

Thank you.

CHAIR FLEMING: Mr. Chairman, is it possible for us to go section by section? Can you provide the delegation with the changes that we have so far under section 1 and we will go down?

DELEGATE LIFOIFOI: Yes, Madam Chair.

We are ready for discussion.

We do have a proposed amendment by Delegate Villagomez under section 1.

CHAIR FLEMING: Would you like to address that?

Yes, Delegate Camacho.

DELEGATE CAMACHO: I was just going to say, Madam Chair, I have also an amendment.

CHAIR FLEMING: I guess Delegate Villagomez is not ready yet. ~~Would you like to go ahead with yours?~~

DELEGATE CAMACHO: Thank you, Madam Chair. I would like to move that Article 12 land alienation that the Committee has presented to the Committee of the Whole be amended through a substitution on Article 12 which I would like to distribute now.

CHAIR FLEMING: Do you have enough copies for everybody? Have you passed any out?

DELEGATE CAMACHO: Madam Chair, I would like to, once it is seconded, to comment.

CHAIR FLEMING: Do I hear anybody second it?

(The motion was seconded).

DELEGATE CAMACHO: Madam Chair.

CHAIR FLEMING: You may proceed.

DELEGATE CAMACHO: I was going to say I have brought additional documents. In particular, the court decision on the Agulto case that is very meaningful to my proposed amendment. I am only sorry I didn't bring enough copies, but I would like to have this circulated also, and I would like to have somebody make additional copies so everybody can have copies of it.

CHAIR FLEMING: Delegate Camacho you may proceed with your proposed amendment.

DELEGATE CAMACHO: Thank you.

CHAIR FLEMING: I would ~~like~~ like to stick to section 1, please.

DELEGATE CAMACHO: My proposed amendment is a substitution for the whole of Article 12, and I would like Madam Chair, to be allowed to speak on that rather than breaking it up into section by section. If

necessary, later on I would like to be allowed to comment as you asked, section by section so that the delegates will have an opportunity to look at the document that is being presented.

Would you allow me to do that?

CHAIR FLEMING: I would like to request that we do it section by section so that we can get everybody's input and adopt section by section.

DELEGATE ALDAN-PIERCE: Now, wait a minute.

DELEGATE CAMACHO: The statement I am making on the whole thing is a general statement, very brief. It is not sectionalized based on that.

Would you please allow me to make my statement based on how I would like to present it?

CHAIR FLEMING: Yes, I guess we can go ahead by doing your statement and then we will go down section by section.

Go ahead.

DELEGATE CAMACHO: Thank you, Madam Chair.

During the campaign which resulted in our coming here and during the time we have spent in public hearings and in discussion in the community, we have heard over and over again from the people: We want Article 12 retained and strengthened.

Many of our people have become frustrated with the slow pace of the efforts in the courts to enforce Article 12. Any court case can take a long time. The article 12 cases have taken far longer because of the tremendous opposition to the enforcement of Article 12 for the individual and collective benefit of our people.

Article 12 is the heart of our Constitution. It is the cornerstone of our society and our culture. Without it our children will find themselves without land sufficient for their needs.

They will be guests of the outsiders who have bought up all the land and control it forever. To accomplish its purpose, Article 12 must be carefully written in carefully chosen legal terms. There is not a single one of us in this chamber who has the knowledge and the experience to be sure that the article 12 we adopt will achieve the goal we all share.

We have no choice but to take it on faith from one or another expert that the article 12 we want is the one that we are approving.

The text of the article and the official explanation are really important. I offer this

amendment because I have learned one thing from listening and reading for many hours. The article 12 that has been recommended by the Committee on Land and Personal Rights does not strengthen Article 12. It weakens it. It gives far too much consideration to those who have been violating Article 12 and fighting against its enforcement in the courts for the past 16 years. It gives far too little consideration to the rights of our people who have lost their land and the rights of all future generations to have enough land to sustain them and their families.

If we are serious about our right to hold on to our land then we should not weaken Article 12. We should keep it strong. If we weaken it, the federal courts might say that we ourselves have decided that we really don't need the protection any more.

Madam Chair, I cannot debate the pros and cons of the Committee recommendation with our legal counsel. She has all the legal knowledge and skill to dispute me no matter what I say. I cannot do that. None of us can do that. But I know that the Committee recommendation does not protect the people of the Northern Marianas who are the intended beneficiaries of Article 12.

Why should we take a chance with such an important matter? Therefore, I have commissioned the substitute Article 12 which you now have before you.

If you want a stronger, clearer Article 12, if you want an Article 12 that will be enforceable by the courts, then you should vote for this amendment in the nature of a substitute.

Because of the technical nature of this complicated subject, there is no doubt that you will have to take it on faith that this article 12 is better than the Committee version, but I challenge you, unless you know of your own knowledge that you will not regret voting for the Committee version, then you are well advised to vote for this substitute.

This article 12 is consistent with the very first decision on Article 12 by our former chief justice. I have provided you a copy of the decision in the case of Agulto vs. Villaluz that is the first and best decision on the subject.

But there is one very important new provision in the substitute Article 12 which I want to call to your attention. You will find it in section 6.

It provides for trial by jury in every Article 12 case. It provides that every Article 12

issue will be decided by a jury of our peers. This is a time honored way of deciding cases and it is especially appropriate in this kind of case. This is a pure Article 12, a strong Article 12. It is an Article 12 that you will never be ashamed of as the years go by and you see the cases unfold in court, as you see Article 12 produce the real benefit in the lives of our people that it was intended to do in the beginning. I, therefore, move for the adoption of this amendment in the nature of a substitute.

Madam Chair, in closing, I want you to know that several of the sections that are in the Committee report are also in line with this substitute amendment.

I thank you.

CHAIR FLEMING: Thank you, Delegate Camacho.

As I stated earlier, we will take it section by section and your comments will be taken into consideration also during that time.

Your comments will continue to be solicited if you want to come in to discuss in between the sections.

At this time I would like to recognize Delegate Aldan.

DELEGATE T. ALDAN: Thank you, Madam Chair.

I hope the delegates do not support what you are saying, that we go section by section. I would like to think that the Committee has put a lot of work on this piece of proposal before us, and I would like to approach it in a manner consistent with what the Committee is recommending and, for that matter, what we have adopted on first reading.

As such, I strongly recommend that we take a vote on the motion and I would like to go back on track to entertain the Committee's report on a section-by-section approach rather than to take what Delegate Camacho has submitted as an amendment. During the deliberation section by section of the Committee's submission, Delegate Camacho can come in and provide comments or support or nonsupport of that section.

I think that is the most ideal approach because, number one, the Committee has put a lot of work and the Committee in fact has had these delegates vote on that already once and as such I think that is the most appropriate route to take.

Thank you.

CHAIR FLEMING: Thank you, Delegate Aldan.

I guess what we are doing right here is we are taking the Committee's report and reporting them

section by section as to the changes that they are making.

DELEGATE T. ALDAN: Yes, but there is a motion by Delegate Camacho to substitute -- no.

DELEGATE ALDAN-PIERCE: Yes.

DELEGATE T. ALDAN: -- to substitute the Committee's report for consideration instead of the Committee's report.

My understanding, if I am wrong, I stand to be corrected, but I thought that is the motion made by Delegate Camacho.

CHAIR FLEMING: Yes. May I recognize now Delegate Hofschneider.

You had your hand up.

DELEGATE HOFSCHEIDER: Yes. Thank you, Madam Chair.

I do share the concern that Delegate Thomas Aldan just stated to you. In previous Committee of the Whole sessions, Committee reports are those that are presented on the floor; whether they be presented section by section or in its entirety is debatable and that as such any delegate can propose a subsidiary motion to any section as deemed necessary, and the question there is to pass or disapprove that particular

section.

I was going to raise that concern that I don't think it is proper for us to have a substitute article in front of us to be debating. I think we should be debating on the first reading report that was passed previously. So I share the sentiments of Chairman Aldan and I would like to be guided but recommend that this Committee of the Whole go back on track.

Thank you.

CHAIR FLEMING: Delegate Aldan-Pierce.

DELEGATE ALDAN-PIERCE: Thank you, Madam Chair.

You know, Delegate Camacho has said time and time again that understanding Article 12 takes a while. The Committee has been working on what is being presented now for second and final reading for days and days and days and he expects us to be able to comprehend 12 pages of analysis written by a lawyer.

~~The Committee~~ report has been discussed page by page for days and if he had had any problems with that at the time he should should have said something. Instead he chose to come in when he wanted and he chose to leave before the Committee meeting was over.

CHAIR FLEMING: Yes, Delegate Quitugua.

DELEGATE QUITUGUA: Thank you, Madam Chair. I think Delegate Camacho is only asking for a vote whether to accept his motion or not to replace the Committee report. So I would like to suggest that we vote on this motion that he is asking. Then we can go on with the discussion on the Committee's report.

CHAIR FLEMING: I need some direction here.

DELEGATE HOFSCHEIDER: I so move.

(The motion was seconded).

CHAIR FLEMING: What is everybody's consensus on this?

Do you want to vote on the amendment?

DELEGATE HOCOG: Ready. Madam Chair?

CHAIR FLEMING: Yes.

DELEGATE HOCOG: I believe the motion is in order. It has been seconded and it is open for discussion.

It is up to you, Madam Chair, to allow how much discussion to flow on the floor before we take a vote but definitely we have to dispose of the motion.

CHAIR FLEMING: Yes.

Yes, Delegate Camacho.

DELEGATE CAMACHO: Madam Chair. This is a very weird situation. Here is an amendment and we are going

to vote even without discussing it? This is what Delegate Marian Pierce is saying. This vote without even discussing it, I don't think it is proper. Admittedly, you can control or compel the amount of time that will be devoted to discussing the issue. But I thought the normal procedure is after a motion is brought is for discussion.

I mentioned earlier that three sections, sections 1, 2 and 4 are identical or in line with the substitute version of Article 12 that has been introduced.

So we are only talking actually about 3, 5, and 6.

Can you open the floor for other people to comment? Admittedly the time that was given to review the document is very limited. If you think there is a need for more time, maybe we should recess for a few minutes and other delegates will have an opportunity to look. If you don't think it is necessary we can go ahead and discuss it.

CHAIR FLEMING: Let me get some direction from legal counsel Siemer. Would you like to comment before I give the floor to the delegates?

MS. SIEMER: My suggestion Madam Chair, is that you

vote Dr. Camacho's motion up or down. If you vote for Camacho's motion you will be voting to discuss his version section by section. If you vote against it you will be discussing the Committee's version section by session.

-- Dr. Camacho's version, everything in Camacho's version, can be brought up during the discussion of the Committee's version section by section and it can be discussed then.

So all you are voting on now is, do you want to go section by section in Dr. Camacho's new substitute version or do you want to go back to the Committee's version.

CHAIR FLEMING: Discussion?

There is a motion on the floor to use Delegate Camacho's document, to use it for discussion section by section. All those in favor of the motion say "Aye."

Those who oppose say, "No."

Motion defeated.

We will go back to the main motion and we will discuss the Committee's report section by section.

Discussion? Section 1.

Any proposed amendment? I think we do have a proposed amendment by Delegate Villagomez.

DELEGATE VILLAGOMEZ: I am withdrawing that.

CHAIR FLEMING: Any discussion on section 1.

PRESIDENT GUERRERO: Point of clarification.

CHAIR FLEMING: Yes.

PRESIDENT GUERRERO: I don't know which copy we are entertaining but can the chair enlighten us whether there are any changes in the current section 1 from what was approved during first reading?

MS. SIEMER: The draft that the Committee has prepared on second reading is labeled "Committee Draft July 29, 1995" and with respect to section 1, the Committee draft is no different than the 1976 version of the Constitution.

There have been no changes.

PRESIDENT GUERRERO: Has a copy been passed to the members?

DELEGATE HOFSCHEIDER: Yes, it has passed.

PRESIDENT GUERRERO: I don't have a copy.

DELEGATE HOCOG: I vote for two-minute recess.

(The motion was seconded).

CHAIR FLEMING: Okay.

(Recess taken from 6:35 p.m. to 6:40 p.m.)

CHAIR FLEMING: The Committee of the Whole will reconvene.

If there is no comment on section 1, we will go on to section 2, if anybody wants to make any comment under section 2.

Everybody should have a copy now.— This is the Committee report draft, dated July 29, 1995.

Does anybody want to make any comment on section 2 so we can move on to the next one?

None?

Section 3, permanent and long-term interest in real property.

Discussion?

Yes, Delegate Manglona.

DELEGATE MANGLONA: I was comparing the Committee draft with the defeated motion by Delegate Camacho and the other difference between the two is we had on the Committee version "and related obligations." I wonder if our legal counsel would explain why we are bound by the three words rather than putting a period after "rights."

CHAIR FLEMING: You may proceed, Counsel Siemer.

MS. SIEMER: The purpose of the words "and related obligations," Delegate Manglona, as we discussed, is to

get at efforts to extend leases beyond 55 years and to cut off the effectiveness of any way of getting beyond 55 years. There are two types of things that one could do to get beyond 55 years. The first is something in the lease document itself, and that would be some kind of renewal right or something else in the lease document itself. But there can be outside agreements, things outside the lease, a related obligation, that would force the landowner, force or persuade or exert leverage on the landowner, to go beyond the 55 years. So it is an effort to get at any way that someone tries to get a landowner to go beyond the maximum term of 55 years.

DELEGATE MANGLONA: So, in other words, this relates to the Committee's concern that after the 55 years lease expired the property should revert back to the owner; is that correct?

MS. SIEMER: That is correct, without any strings attached.

DELEGATE MANGLONA: Thank you.

CHAIR FLEMING: Delegate Aldan.

DELEGATE V. ALDAN: Deanne, the related obligation, does that cover the successive leases if they are going to circumvent the 55-year or is it

renewable?

MS. SIEMER: Between the two phrases "renewal rights," which involves the lease itself, and "related obligations," which involves anything else, would together catch any practice that would try to get beyond the 55 years.

Delegate Aldan, I might explain that the reason for that is because some people might put a clause in the lease agreement and other people might have exactly the same clause in some related agreement. So, wherever it is, the objective is to get to it and not permit anything beyond 55 years, so the landowner gets the land back without any strings attached. That is the effort.

CHAIR FLEMING: Delegate Hocog, I am sorry. Your hand was coming up.

DELEGATE HOCO: I was about to answer that question.

CHAIR FLEMING: Any questions?

Yes, Delegate Gonzales.

DELEGATE GONZALES: Does this also cover the conspicuous change of law provisions that are included in some leases, change of law?

MS. SIEMER: The change of law provisions fairly

can be classified as a renewal right. Those are already unconstitutional. It is the Committee's intent to get at related obligations, but in so doing, the Committee's report is reinforcing the view that buy-back clauses, change of law clauses, and things of that sort are currently unconstitutional.

DELEGATE GONZALES: Madam Chair, may I continue?

CHAIR FLEMING: You may proceed.

DELEGATE GONZALES: The second question is with regard to the 55 years. I haven't actually, I am not satisfied. My question is unanswered.

The 55 years prohibition does that include, for example, from the original transaction of the lease, with this related obligation will it prevent the parties involved from going beyond 55 years from the original transaction?

MS. SIEMER: That is the objective, yes, to prevent a lease that has a 55 year term in it from actually being a lease for 60 years or 80 years or 120 years. That is the effort.

DELEGATE GONZALES: Thank you, Madam Chair.

CHAIR FLEMING: Yes, Delegate Camacho.

DELEGATE CAMACHO: Madam Chair, as I mentioned in my very brief remarks, the section, the wording of the

section is very important, but equally as important is the analysis which will guide people in the future on what section 1 actually meant.

The analysis that was put out by our esteemed legal firm, elite legal firm, is not really helping the section which it is noted, and if you look at the analysis that was put out as compared to the analysis that I have proposed for substitute, there is a difference and I think that the delegates should review this. And if I am in order to discuss the analysis now, or should we wait until tomorrow, as was mentioned during the Committee that tomorrow is being reserved to discuss the analysis, then I will wait until tomorrow to bring it up, you know, the difference.

It will allow the delegates the opportunity not only to look at the analysis that is being put out by also the substitute analysis which I introduced, which I am sad to say was defeated, but the analysis is equally as important as the sections in Article 12 and I would like the delegates to spend time in reading the analysis to make sure that the analysis actually supports the section that is being analyzed and not weaken it as it appears in the analysis, draft analysis, that was put out.

Thank you, Madam Chair.

CHAIR FLEMING: Any more discussion under section 3?

Yes, Delegate Aldan.

DELEGATE T. ALDAN: I urge Delegate Camacho to point out the difference because of the fact that if you are only looking at the analysis, the analysis prepared for section 3 as submitted by the Committee would be different from the of the analysis the Committee is recommending. As such, I don't know whether it would make any sense to adopt section 3 and change the analysis because it won't have any effect.

The first thing I understand is the plain reading of the Constitution and if it includes "and related obligations" and the analysis being submitted by Delegate Camacho does not include "related obligations," then we are talking apples and oranges maybe, and I think it is important that this view is noted for the record. The analysis, adoption of the analysis, does not necessarily change the language in the Constitution but makes it more clear if it is not already clear.

So, in the interest of being informed I would urge him to state his piece about other related

obligations since that is the only difference in the proposed language that he submitted and the proposed language of the Committee.

Thank you.

CHAIR FLEMING: Yes, Delegate Aldan.

DELEGATE V. ALDAN: Deanne, could you explain on the analysis on page 12 in the third paragraph, in the middle of the third paragraph from the start, "If the landowner."

MS. SIEMER: You are on page 12 of the analysis?

DELEGATE V. ALDAN: Yes, dated July 27th. Will you explain those two sentences?

MS. SIEMER: Which paragraph are you referring to?

DELEGATE V. ALDAN: This transaction and then the second, those two paragraphs.

MS. SIEMER: To do that, you back up to the first paragraph which starts, "For example." That example?

DELEGATE V. ALDAN: Yes.

MS. SIEMER: This is an example of a transaction that violates Article 12 under the Committee's recommended language. This transaction violates Article 12 because the lease has a buy-back provision in it that violates the renewal rights clause and is an attempt to get beyond 55 years. There is an

explanation as to why buy-back is a violation of renewal rights.

Then you have got a question about a related obligation. Here you have a mortgage and a mortgage allows foreclosure. When you get into a foreclosure a bank that held the mortgage would have an opportunity to foreclose, and that divests the landowner of title. If you are using a mortgage to get around Article 12 that is a related obligation.

Then there is a side agreement in this example, and that is another related obligation. The side agreement here is also an effort to get around the 55 years. So, what this example is attempting to do is to show people that the "related obligation" language doesn't make any of the existing practices that fall under the existing language "renewal rights," the buy-back and those kinds of clauses, the new language doesn't legitimize those at all. Those are already unconstitutional. The new language looks to the future, to other devices that lawyers might use to pressure landowners at the end of the 55 years to give up their land. What it says to the lawyers who write leases is, you must understand this principle. At the end of 55 years, the landowner must get this land back

without any strings. You cannot force the landowner to do anything with that land after 55 years. The landowner's children or grandchildren should be free to do what they want with that land.

CHAIR FLEMING: Yes, Mr. President.

PRESIDENT GUERRERO: Yes, Deanne, or Madam Chair.

This is a question to Deanne. Can you explain a little bit the Diamond Hotel vs. Matsunaga, what is that case? The reason I am asking because in the analysis provided by Delegate Camacho, is saying that this section would nullify the Supreme Court's decision or at least what they are trying to do is nullify the Supreme Court decision on this case. Can you just brief us what this case is all about?

MS. SIEMER: One of the questions that the courts have been faced with is if there is an unconstitutional clause in a lease but without that clause the lease would be okay, what should the court do. Some courts have elected to sever those unconstitutional clauses and say that without this clause the rest of the lease is okay.

What Delegate Camacho's legislative history would like to do is to overrule that use of the severance power by the courts and require that the

courts not do that.

There is a question as to what to do about all of the leases that are in existence that have unconstitutional clauses in them, and that is a very fair question. Delegate Camacho's view is that all of those leases should be struck down. That is a principled position. There is nothing wrong with that position if that is what you think the right result. The problem is that that creates a great deal of uncertainty in the Commonwealth and creates a great deal of uncertainty about a lot of existing leases. There have been arguments in court cases in which lawyers have tried to show how many illegal leases there are in the Commonwealth if you took every single clause that could be argued to be unconstitutional and you were going to void the entire lease in all these cases.

PRESIDENT GUERRERO: Basically what the court is doing is already moving towards voidable rather than void ab initio? Is that a fair assumption of where the court is heading by severing only a specific section of the lease agreement, that they are basically following the concept of voidable rather than void ab initio?

MS. SIEMER: In the Commonwealth there is a

statute, Public Law 8-32, which includes severability in it and gives the court opportunity to sever unconstitutional portions of leases if it does not go to the heart of the lease. One of the questions with respect to public policy on severance is what you should do, if anything, with respect to existing leases. The Committee's draft, as you will see, has a particular approach to existing leases which is: All right, this is the rule now; nobody goes beyond 55 years. Severance is fine for past leases, but severance is not fine for future leases, because in the future, if you try to get beyond 55 years, the court can assume that you knew that was unconstitutional and you were deliberately trying to do that and your lease may fall for that reason. But there is a very legitimate question that Delegate Camacho raises as to whether all of the existing leases should be allowed to be severed as Public Law 8-32 allows, and all those leases should be treated so that there are not lots and lots of court cases about them.

CHAIR FLEMING: Hold on for a choice of tape.

(Pause).

CHAIR FLEMING: Go ahead, Mr. President.

PRESIDENT GUERRERO: One question, Madam Chair,

and that is the recommendation regarding, let's say, the recommendation of the Committee, where does it stand on Public Law 8-32, Delegate Camacho's recommendation that be repealed, retroactively.

MS. SIEMER: That is not a matter that would be dealt with in Article 12. That would be dealt with in the schedule on transitional matters and one way to approach that question is to decide what you want to do about Article 12 first and then look at 8-32 and make a separate judgment about that. Your judgment about 8-32 pro or con should not affect what you want to do with Article 12. This is the Constitution; this is the governing law. It may be that when you finish with Article 12, you want to do one thing with 8-32 or another thing, but that is a debate for the schedule on transition and the Committee approached it that way.

PRESIDENT GUERRERO: But the Committee has not made any concrete recommendation?

MS. SIEMER: That's correct.

PRESIDENT GUERRERO: Thank you.

CHAIR FLEMING: Yes, Delegate Villagomez.

DELEGATE VILLAGOMEZ: Deanne. The amendment include a provision about condominium above first floor on private land. Why is that taken out of the new

section 3? Would it affect the intent by some of the developers to go into condo projects? What is the rationale?

MS. SIEMER: It was taken out because your counsel and nearly every other lawyer who was consulted, including plaintiffs lawyers and defense lawyers, felt it was not of any effect. You will notice that Dr. Camacho's approach would do the same thing, would take out the condo provision.

Apparently the condo provision was put in in 1985 because someone argued that you might be able to sell these more readily. But as soon as anyone took a look at it, any practical person would ask: How do I get to my condo on the second floor if the landowner on the first floor won't let me get there? There were many discussions about helicopters and flying in the sky. This did not seem practical. So the Committee decided to delete it.

CHAIR FLEMING: Delegate Gonzales.

DELEGATE GONZALES: I was just curious to know from Dr. Camacho why was the quote "related obligations" not included in the proposed draft.

CHAIR FLEMING: Delegate Camacho, would you like to respond to that.

DELEGATE CAMACHO: Repeat that.

DELEGATE GONZALES: What was your rationale for not including related obligations in your proposed substitute Article.

DELEGATE CAMACHO: Well, I think we discussed this in the Committee and the related obligation is a term that is so ill defined that it just opened another can of worms, actually.

Madam Chair, as I mentioned, I am not a professor on the issue of Article 12. I try my best to understand through reading and listening to other people.

The legal firms have given explanations which I reviewed and in some areas I question and there I ask other people to comment and based on that, this matter or this document was brought about. A lot of it is faith, just listening to Ms. Siemer, you know, I believe her. I cannot dispute what she is saying; I am ~~not a~~ lawyer. I don't think any one of us really knows enough about the issue to comment and this is the sad part about this. We are making decisions, most of it on faith that it will be good for our people. Time will tell, just like the decision that was made in 1976 and in 1985, it shows that there are problems and that

is about all that I can say right now on the matter.

I questioned those two words in the Committee because, you know, who is going to define what is related obligations and all that. That is why we didn't put it in.

CHAIR FLEMING: Any more comments or concerns?

Yes, Delegate Aldan.

DELEGATE V. ALDAN: Deanne, could you comment again between the will and related obligations. What if the will was before the land was sold? I am getting really confused on this.

MS. SIEMER: Is your concern if there is a contract to will property to somebody?

DELEGATE V. ALDAN: No. This is family, you know, family will.

MS. SIEMER: Oh, section 2?

DELEGATE V. ALDAN: No, no. When it comes to related obligation.

~~MS. SIEMER:~~ In your example you said that if somebody does a will then it is sold, that is also a related obligation. That was an example. We were talking about wills and inheritance in relation to section 2 and that is what you can give to your children. If there were a side deal, a side contract,

and the side contract said that you, Delegate Aldan, promise that in your will you will dispose of the land in a particular way and there was another side deal with the person to whom you were going to give this land and that side deal was a 55-year lease that went for a second 55-year term, that would be a related obligation. It would violate Article 12 and the deal would fall.

Do you want to do that again?

DELEGATE V. ALDAN: Yes.

MS. SIEMER: Let's suppose that Delegate Seman is going to buy the land from Delegate Seman. I am the one who wants to control the land and we are concerned about what will happen in the future. What I want is 110 year lease from you. So what I ask Delegate Seman to do is to make a deal with you for one 55-year lease to have a side contract with you that you will leave the land to her in your will and then I enter a second 55 year lease with her that, begins at the end of the first 55 year lease. The side contract and the second lease -- those are related obligations. They are not lease terms. If you look at the lease, you would never see that.

DELEGATE V. ALDAN: How about if I will my land to

my kids, is that a related obligation also?

MS. SIEMER: No, you can will your land to anybody you want.

DELEGATE V. ALDAN: Let's say you come in and you make a contract with my kids. See what I am saying? I am willing my land down to my kids.

MS. SIEMER: At the end.

DELEGATE V. ALDAN: And then you make a contract with me for 55 years, then you see that I made a will to my kids and you come back and make another contract with my kids, would that be under related obligation.

MS. SIEMER: If there was an effort to get beyond the 55 years, yes. If there is no effort to get beyond the 55 years, no. Your kids at the end of and 55-year lease you make should have the right to do what they want with your land. There are a lot of different variations of deals that can be made and the purpose of this language, other related obligations is to enunciate a clear rule. You can't go beyond ~~55~~ years.

\\

\\

\\

DELEGATE VICENTE ALDAN: Thank you very much.

CHAIR FLEMING: Delegate Seman, I saw your hand up.

DELEGATE SEMAN: No.

CHAIR FLEMING: Any more?

Let's move down to section 4, of persons of Northern Marianas descent.

Comments? Concerns? Clarifications?

Delegate Aldan.

DELEGATE TOMAS B. ALDAN: I would like to put my 2 cents in on the subject. That's for the last time.

I am saddened a little bit because my good Delegates did not want to give an opportunity for those Chamorros and Carolinians who came after 1950 and before 1960 to own property here in the Commonwealth.

For all we know, maybe that child of that Chamorro or Carolinian was never at fault because he was born or she was born outside the Commonwealth before 1950 and came over to Saipan after 1950. In fact, we're penalizing the children as well.

I'm really saddened by the Committee's rejection to consider those poor, poor individuals as Northern Marianas descent.

Thank you.

CHAIR FLEMING: Would you like to make a subsidiary motion so that we can have the Convention vote on that,

Delegate Aldan?

DELEGATE TOMAS B. ALDAN: It was defeated during the last call, so --

CHAIR FLEMING: We can stick to it, to the 1950.

DELEGATE TOMAS B. ALDAN: Unless more people talk about supporting it.

CHAIR FLEMING: I didn't see any seconds.

Any more comments on section 4?

Yes, Mr. President. Section 4.

PRESIDENT GUERRERO: Only a question on that last sentence, "termination of the trusteeship."

Shouldn't it be "agreement" to come after it or what? Termination of the Trusteeship Agreement with respect to the Commonwealth. That's the original language.

MS. SIEMER: Yes. That's the original language. It's the trusteeship that gets terminated.

PRESIDENT GUERRERO: The trusteeship, not the agreement? It's both, okay.

CHAIR FLEMING: Let's move on to section 5, Corporations.

Any concerns? Recommendations? Clarifications?

Yes, Delegate Aldan.

DELEGATE VICENTE ALDAN: Deanne, I know I made a comment of this during the Committee meeting, but could you enlighten the Delegates that were not there what would happen if we changed this 51 percent to 60 percent?

MS. SIEMER: You are free to change the percentage in any way.

What would happen is that corporations would have to adjust their number of directors and the number of shares so they could come out with a 60 percent number, and you wouldn't wind up with half a person.

That's not a difficult adjustment to make for a corporation. And if you feel more comfortable with 60 percent, that certainly could be done.

DELEGATE VICENTE ALDAN: Then I would like to make a motion to increase it to 60 percent.

DELEGATE HOCOG: No second.

CHAIR FLEMING: Nobody seconded, Delegate Aldan. That's been defeated.

Any more?

Yes, Delegate Hocog.

DELEGATE HOCOG: I want to ask the Committee why the 21 years of age is specified regarding corporations and not 18?

DELEGATE VICENTE ALDAN: Or 5 years old.

DELEGATE HOCOG: I can understand younger than that to make a decision, but Madam Chair, 18 years of age are soldiers already. They go to war and defend their country.

I cannot see in the good name of these people that they should not be part of a corporation that can actually and completely and directly govern the corporation.

Can I get an answer from anyone?

CHAIR FLEMING: Anyone from the Committee?

Yes, Delegate Mendiola.

DELEGATE DONALD MENDIOLA: Thank you.

After teaching at the high school with students after 18 and below 21, we find that these graduates from Marianas High School were not quite capable of being on their own.

We still have counsel to help them through. That's why I suppose at 21 it would assure anyone that they are mentally more mature themselves to change their minds or lives of the others that they may affect as a result of this.

Thank you.

CHAIR FLEMING: Do you want to continue?

DELEGATE HOCOG: Madam Chair, I am not satisfied with the response of Delegate Mendiola.

For that reason, I would like to move to downsize the age to 18.

(The motion was seconded.)

CHAIR FLEMING: Discussion on the motion?

Yes, Delegate Aldan.

DELEGATE TOMAS B. ALDAN: Deanne, what is the age in which a child's action for an adult will withstand the Court's scrutiny?

In other words, at which would you be able to sign

before it being declared null and void because you are a minor?

MS. SIEMER: We may have to ask Justice Dela Cruz about that, but my understanding is that it's 18.

MR. DELA CRUZ: Majority in the Commonwealth is at age 18.

CHAIR FLEMING: Is there anyone who would like to defend the age of 18?

Delegate Hocog.

DELEGATE HOCOG: To defend or to defeat?

CHAIR FLEMING: To defend.

Anymore?

DELEGATE HOCOG: Yes, Madam Chair.

I still feel that a person attaining the age of 18 is an adult.

CHAIR FLEMING: Thank you, Delegate Hocog.

Let me hear from Delegate Villagomez.

DELEGATE VILLAGOMEZ: Madam Chair, I agree with Delegate Hocog. 18 should be the age. If you are ready to go to war to defend your country, you should be ready to be a director in a corporation.

I have a question, though. Maybe you might rule me out of order.

The '85 amendment identified minors to be defined by the Legislature.

Did they ever do that?

CHAIR FLEMING: Counsel Siemer.

MS. SIEMER: Has the legislature defined "minor"?

DELEGATE VILLAGOMEZ: Yes, under Article 12.

MS. SIEMER: For general purposes, it's age 18.

CHAIR FLEMING: Yes, Delegate Mendiola.

DELEGATE DONALD MENDIOLA: Thank you very much,
Madam Chair.

So if we are go with the 18, would it be unconstitutional for an 18-year old to challenge in the courts should they go to an establishment and purchase alcohol or drink in the bars and ride around and not be subjected to the curfews that we currently are observing, or that we force the store owners and the alcohol or beverage establishments that refuse to self alcoholic drinks -- to adults who are 18 or below 21 years old?

Would it be unconstitutional or would it be constitutional?

MS. SIEMER: No. This would not have anything to do with how the Legislature defines minors, or who can drink. All it says is that you can sit at the table and be a member of the board of directors.

DELEGATE DONALD MENDIOLA: But you still can't take a drink or whatever.

MS. SIEMER: No. If they are serving drinks at the board meeting, you can't drink.

DELEGATE DONALD MENDIOLA: I'm saying that for purposes of drinking alcohol, you are restricted from drinking alcohol if you are under 21. That includes 18, 19, and 20.

But being 18, you are supposedly a major, not a minor, or a majority member of the population age. You can't drink alcohol at 18, but you are allowed to be a member of a certain board to decide the future of a corporation or whatever.

Can I get the analysis?

CHAIR FLEMING: Let me get Delegate Hocog to respond. I'm sure he has something.

Yes, Delegate Hocog.

DELEGATE HOCOG: I agree with my colleague about drinking habits, but sitting on the board of directors is a different case.

I ask the Delegates to seriously consider this. There are Delegates in this room that have kids that are of the age 18 that can, perhaps, be part of the decisional body of a family corporation or a corporation by another individual or another company. I am only asking, regarding the age, why we should have to be very specific if these people can go out there and defend your country?

Madam Chair, I believe having them in the corporation is not a sin. I urge my Delegates to consider the motion before the floor to reduce the age from 21 to 18, and I move to end debate.

(The motion was seconded.)

CHAIR FLEMING: You had your hand up, Delegate Camacho.

DELEGATE CAMACHO: Madam Chair, if you look at the substitute that I introduced, I totally eliminate the age because the age aspect is really a question that anybody could interpret or misinterpret.

An 18-year old could be as intelligent and as dependable as a 50-year old; and, therefore, I really feel that we should remove this section, and I would like to ask the mover of reducing it down to 18 to just totally remove the age bracket.

I don't know that an individual that reaches 21 will be an adult versus somebody who is 15, that is, you know, that can act and behave like an adult or an individual who is 35 that still acts like a child. I don't know whether that will matter.

This age bracket should actually be removed. I don't know, though, whether the mover will consider it.

CHAIR FLEMING: Delegate Hocog, would you like to move, withdraw, or leave it open?

DELEGATE HOCOG: To answer your question, Madam Chair, unless Delegate Camacho is making another subsidiary motion, I do have a motion on the floor.

If you want, we can dispose of my motion first.

CHAIR FLEMING: Yes.

DELEGATE CAMACHO: Madam Chair, I move that we eliminate the age in these --

CHAIR FLEMING: I'll take one more, and then we'll dispose of Delegate Hocog's motion.

Dave has been raising his hand, Delegate Igitol, and we'll vote on whether to reduce the age from 21 to 18 and we'll take it from there.

DELEGATE IGITOL: Thank you, Madam Chair.

In regard to the age, personally, I have no problem with that; but to have an 18-year old to be part of the board of directors is okay, too; but can that 18-year old handle the concept of a directorship, meaning that can he absorb the discussions as far as the ownership or meetings?

Comparing them to the soldiers, when you are 18, you are directed to do something, there are sergeants that direct you vigorously to do what you are going to do. I understand that, too.

But in the directorship, an 18-year old to be asked questions or make a solid contribution in the improvement of the corporation, I'm very hesitant on that. I know at that age limit he would have a lawyer beside him to guide him.

CHAIR FLEMING: I think we're ready to vote.

We all know of somebody in our lives who is already 18 to judge if he or she is mature enough to handle the corporation.

I would like to dispose of the subsidiary motion by Delegate Hocog.

All in favor of the motion say "Aye."

Those opposed say "Nay."

DELEGATE HOCOG: Roll call, please.

CHAIR FLEMING: Raised hands will do.

Again, all those in favor of the motion, raise your right hand.

Those opposed, raise up your hand now.

Con-Con clerk.

CONVENTION CLERK: Madam Chair, we have nine members raising there hands in favor and 13 members raised their hands not in favor.

CHAIR FLEMING: Motion defeated.

Yes, Delegate Camacho.

DELEGATE CAMACHO: Madam Chair, I want to make a subsidiary motion to totally remove the age.

DELEGATE HOCOG: Second.

CHAIR FLEMING: Discussion?

Yes, Mr. President.

PRESIDENT GUERRERO: What is the significance if you a take away the 21 years of age. Does that mean a child could be a director?

We're getting to be ridiculous by trying to lower it. By removing it, it will get down to further ridiculousness

of allowing just a child, who is going to be manipulated, perhaps, by somebody else.

CHAIR FLEMING: Delegate Aldan.

DELEGATE TOMAS B. ALDAN: This requirement, the age requirement, this is only with respect to Article 12.

CHAIR FLEMING: Yes.

DELEGATE TOMAS B. ALDAN: In other words, corporations can have children under the age of 21, so why should we change?

Thank you.

CHAIR FLEMING: Delegate Villagomez.

DELEGATE VILLAGOMEZ: Madam Chair, I don't know how or on what day a 18-year old child can make a decision. Perhaps that person may have 20 lawyers and a mother and father.

CHAIR FLEMING: Delegate Sirok.

DELEGATE SIROK: Thank you, Madam Chair.

I think we should just forget about the age and put a provision that no minor shall serve on the board of directors of a corporation with respect to this article.

CHAIR FLEMING: Delegate Hocog.

DELEGATE HOCOG: I regret to say that we have 16-year olds that have the intellect of an individual to make a good decision.

Just a couple of weeks ago we were trying to downsize the age of a legislator, and we tried to increase the age to become a governor and a mayor.

I'm very glad that the Committee voted it down because you people can really measure intellectual ability.

I am really saddened, Madam Chair. A child can be a director of a more complicated corporation, but not for Article 12.

I don't know what is hard about being a part of a board of directors when it deals with land, but when it deals with money, never mind. You can forget it, because it's free out from your hand.

Thank you.

CHAIR FLEMING: Delegate Camacho you want to take your last stand on this one?

DELEGATE CAMACHO: I was going to say that if a 10-year old is mature to and adult enough and has been chosen by the people that are involved, then we should allow the 10-year old.

Likewise, if he is 50 years old and, again, he's placed in that position. We should allow it. We should eliminate the age because it's really know -- I cannot explain this, but I cannot tell the difference between an 18- and 30-year old based on their height or a their appearance or complexion.

I have to look at how they behave, how they react to things. Then, I will say this 15-year old is an adult, mature; whereas, the 30-year old is probably just acting like a child. Medically, we may say he is retarded.

This is the situation here. Downsizing it to 18 is probably better than 21 because it will open up a larger age bracket.

But you can't say that a 16- or 15-year old is not as intelligent or as mature as one that is 21 or 18. Therefore, the best solution to this would be just to eliminate the age.

I would like to move to end debate on the matter.

(The motion was seconded.)

CHAIR FLEMING: Ready to vote.

All those in favor of deleting the age entirely under section 5 say "Aye."

Those opposed say "Nay."

CHAIR FLEMING: The "nays" have it.

We're back to the main motion.

Any other discussion?

Yes, Delegate Villagomez.

DELEGATE VILLAGOMEZ: Thank you, Madam Chair.

Section 5, Deanne, the present language does not mention voting by proxy; however, the '85 Convention does.

Does it mean since it is silent you can?

MS. SIEMER: No. That is covered by one phrase: Actually, directly, and completely.

If you vote directly, you cannot vote by proxy. The purpose of actually, directly, and completely was to consolidate all of those requirements in one place and to cover

such things as proxies.

DELEGATE VILLAGOMEZ: Thank you.

CHAIR FLEMING: Yes, Delegate Mendiola.

DELEGATE JAMES M. MENDIOLA: Thank you, Madam Chair.

My question to Deanne on this 51/49. What happens if the corporation dissolves and they only have an asset of a five acre property. How do you you divide that into 59/41?

MS. SIEMER: Usually, Delegate Mendiola, what would happen is that the corporation would arrange either to divide it among the landowners, if they are all of Northern Marianas descent, or would arrange to sell it to someone who is qualified to buy and divide the proceeds.

Usually, there isn't any legal problem with corporate assets. There is usually a direct way to deal with that.

DELEGATE JAMES M. MENDIOLA: If they go to court or something like that and it stays there for 20, 30 years, the land has not been purchased by anyone, it stays?

MS. SIEMER: You are concerned about the situation where the corporation actually cannot do anything with the land?

It would go to the government or there is a Delegate amendment to send it back to the last qualified landowner.

CHAIR FLEMING: Anymore?

Yes, Delegate Aldan.

DELEGATE VICENTE ALDAN: Madam Chair, when are we going to act on my motion to increase the percentage to 60 percent?

DELEGATE TENORIO: It was not seconded.

DELEGATE HOCOG: It was seconded after the Chair ruled no second.

CHAIR FLEMING: We're back to the 60 percent motion presented by Delegate Aldan.

Discussion?

All in favor of changing the 51 percent to 60 percent as presented by Delegate Aldan say "Aye."

Those opposed say "Nay."

I want to see a raise of hands again.

All those in favor of the motion by Delegate Aldan to change 51 percent to 60, raise up your hands high.

Those opposed raise up your hands.

The "nays" have it.

(The motion was not carried.)

Anymore under the main motion?

Let's move down to section 6, Enforcement.

Any discussion? Any concerns? Clarifications?

Yes, Delegate Hocog.

DELEGATE HOCOG: Madam, I think there is a proposed amendment on the floor on Article 12, section 6.

CHAIR FLEMING: There is a whole bunch. Would you like to present yours first?

DELEGATE HOCOG: I'm not really particular about what one comes first, but I want to remind the Chair there are some.

CHAIR FLEMING: Since you are on the floor, would you like to present your proposed amendment?

DELEGATE HOCOG: The proposed amendment on Article 6 is "Any transaction made in violation of section 1 shall be voidable. If a corporation is divested of land for violation of section 1, the land shall be forfeited to the last qualified landowner instead of the Commonwealth government. The Attorney General establish an office to oversee the landowners, to monitor land transfers, and to assist in enforcing this article. Any action challenging a transaction shall be filed within six years of the transaction."

CHAIR FLEMING: Do I hear any second?

(The motion was seconded.)

CHAIR FLEMING: Yes, Delegate Aldan.

DELEGATE ALDAN: We're only voting on the last qualified -- that's the only difference between this and -- we're not voting on the whole -- he's proposing an amendment that we approve the first sentence?

CHAIR FLEMING: It's a subsidiary motion, yes.

DELEGATE VICENTE ALDAN: There are two changes that he is proposing?

CHAIR FLEMING: No. We only heard one. That is the proposal that is being submitted by Delegate Hocog.

CHAIR FLEMING: Yes, Delegate Tenorio.

DELEGATE TENORIO: Is it in order to ask a question to legal counsel related to the motion?

CHAIR FLEMING: Yes.

DELEGATE TENORIO: In the analysis of the original Constitution regarding land forfeiture it says:

"It does not provide that land owned by noncomplying corporations reverts to the original owner because that could result in unjust enrichment of the original owner and also might open the door to fraudulent transactions."

Can I ask for an explanation of that?

MS. SIEMER: Yes.

The thought was that there are many ways of manipulating a corporation. If you provided that the corporation became totally unqualified -- remember, this is a very, very last resort.

A court has now found there is no one to give this to. There is no one who has a claim on it. There is no one that has an ownership right to it.

The court has decided that the land is being taken away from the corporation and there is no rightful owner, so the court has now a decision to make, and this provision says, the original provision of the 1976 Constitution and the Committee's

draft says, it goes to the government.

What the amendment proposes is that it goes back to someone in the chain of title who is qualified to hold it, and the principal difference is that Delegate Hocog's amendment would put it back in the hands of a person of Northern Marianas descent, and this, the Committee's draft, would leave it in the hands of the government.

CHAIR FLEMING: Yes, Delegate Camacho.

DELEGATE CAMACHO: First of all, may we hear from the legal counsel where the transaction involving a corporation is actually legal to the extent that if it ceases to exist, it will revert to the original landowner, or should it revert to the government or the Commonwealth?

MS. SIEMER: The Convention could do it either way, Dr. Camacho. It's up to the Convention to decide what you think is the best policy for this land.

The problem with sending it back to the original landowner, the last qualified person in the chain of title, is that that person has already sold it. That person already got their million dollars for this piece of land.

If something happens to the corporation and they get their land back, that could be said to be a windfall to this that person. But it is a policy decision.

What Delegate Hocog is recommending is that the land stays in the hands of a person. What the Committee's

recommendation is is that the land get sent to the government, in which case, the Marianas Land Bureau would take it over, and it would become available for homesteads or whatever other uses are permitted for the public land.

DELEGATE CAMACHO: What you are basically saying is that the deal is legal and, therefore, if it ceases to exist, it becomes illegal, so it was back for the original owner?

MS. SIEMER: No.

We're assuming that the corporation has been divested of its land for some reason. That could be as Delegate Mendiola says that the whole thing has ceased to exist. There are no directors or shareholders. Everybody went down in a plane crash, or there are no heirs. There is no one that could act for this corporation.

Alternatively, the court may have found that this corporation violated Article 12 and deserves to lose its land.

Now the question is -- we made that decision, either all the shareholders are gone and nobody can act for this corporation, or the corporation has done something wrong and it deserves to lose its land -- the question is: Who to give it to?

That is a question you are free for decide Delegate Hocog's way or the Committee's draft way or some other way.

DELEGATE CAMACHO: Can you cite an example of cases here on the island that have gone through this? For example, those

people who have bought from the Anselmo Iglacias property, who I heard the original buyer has declared bankruptcy and therefore the corporation is no longer in existence.

Would this land go back to the Iglacias, for example, or would it remain with the middle people who have bought property in the meantime from the original corporation?

MS. SIEMER: The 1976 Constitution had a provision in it that sent land back to the government.

When a corporation ceased to qualify, it went back to the government. But I'm not aware of a case in which corporate land has, in fact, gone back to the government.

DELEGATE CAMACHO: Are you aware of land that goes back to the landowner, also, after the corporation ceases to exist?

CHAIR FLEMING: We need a change of tape.

(Tape Change.)

CHAIR FLEMING: You may proceed.

MS. SIEMER: Typically what happens when a corporation ceases to exist is that the owners, that is, the shareholders, either divide up the assets among themselves or sell the land that the corporation owns and divide up the proceeds among themselves, so there is an orderly liquidation of the corporation's assets.

DELEGATE CAMACHO: May I continue, Madam Chair?

CHAIR FLEMING: Yes, you may.

DELEGATE CAMACHO: I have a very deep and strong

reservation about the word "voidable" as compared to "void ab initio."

In section 1 it says that the land should be in the hands of CNMI descent. I like that. I think the land should remain in the hands of the CNMI residents or descents.

DELEGATE TOMAS B. ALDAN: Point of order.

CHAIR FLEMING: Delegate --

DELEGATE CAMACHO: Here we are talking about voidable.

CHAIR FLEMING: Delegate Camacho, are you addressing the subsidiary motion by Delegate Hocog in regard to his proposed amendment?

DELEGATE CAMACHO: The word "voidable" was mentioned in his motion.

DELEGATE HOCO: Yes.

I'm only making a change per the section on the last qualified landowner.

DELEGATE CAMACHO: But the words --

DELEGATE HOCO: That's what I'm making reference to.

I don't want to see my land or any other property revert to the government, but to a person of Northern Marianas descent.

DELEGATE CAMACHO: I have no objection to the land going back to the landowner.

I'm asking for two things: First, since the corporation is legal in the first place, is it legal for the

landowner to get their property back or should it go to the government as originally intended?

That was answered.

But in that sentence, the word "voidable" was used, also. I wanted to follow it up with the question of voidable -- if we're going to go back to the word "voidable" versus "void ab initio," then I will waive my privilege to speak right now and allow it to go through and vote on the question of whether it should go back to the Commonwealth or to the original landowner.

CHAIR FLEMING: We'll come back to the word "voidable" so we can continue to dispose of Delegate Hocog's proposal, the last sentence. I'll give you a chance to come back.

DELEGATE CAMACHO: Thank you, Madam Chair.

CHAIR FLEMING: I'll now call on Delegate Tenorio.

DELEGATE TENORIO: I wanted a clarification from legal counsel whether the amendment offered will be an open door to fraudulent transactions?

MS. SIEMER: There are very few of these transactions. No sensible shareholder or director gets themselves put in a position where their land is going to go to the government. So whatever opportunity there is for fraud is not a large one.

There is always the opportunity for fraud when you are dealing with a corporation and you know that if you dissolve the corporation the land is going to go back to a known person.

That person has an interest in manipulating the affairs of the corporation if it's possible, but Delegate Hocog's approach is equally doable.

DELEGATE TENORIO: Doable?

MS. SIEMER: Because there are a not on a large number cases, it is hard to predict whether there could be large scale fraud here or not. Probably the first transaction done under Delegate Hocog's proposal will prove me wrong, but --

CHAIR FLEMING: Mr. President, you had your hand up.

PRESIDENT GUERRERO: Madam Chair, I'm having difficulty in terms of, perhaps, allowing this land to go back to the landowner.

Because if he already receive funds from either an investor or buyer or from the corporation, then I prefer that that land go back to the government. In that way, it also will go to a person of Northern Marianas descent because they can make that land available to future homesteaders, which will benefit more people. I believe it would allow the government, if it's something that is good, that it can be used for public purposes.

So there are ways to do that. I just have a reservation in terms of going back to the last qualified landowner, primarily because I feel that they have already taken the money and they have given up the land; and, therefore, it should go to the government for further distribution to people

of Northern Marianas descent.

Thank you, Madam Chair.

CHAIR FLEMING: I'll take two more comments. That will be Delegate Aldan and Delegate Sirok, and we'll vote on the subsidiary motion.

Delegate Vicente Aldan.

DELEGATE VICENTE ALDAN: Thank you, Madam Chair.

A question for Deanne. In terms of economic investment, which will work more in our favor? Delegate Hocog's proposal or the current statute that you proposed?

MS. SIEMER: The provision that sends it back to the government makes it available again in the economic sense.

The provision that sends it back to the landowner allows the landowner to sell it again.

So in either case, it may become available for economic development.

DELEGATE VICENTE ALDAN: But in terms of prospective investors here, which in your legal opinion is more effective?

MS. SIEMER: It's actually neutral. The investors under this scenario, the corporation is totally gone. The investors are gone. It's totally neutral.

DELEGATE VICENTE ALDAN: Thank you.

CHAIR FLEMING: Delegate Sirok.

DELEGATE SIROK: Thank you, Madam Chair.

I really like the idea that the land should be

forfeited and should go back to the government.

As our good President pointed out, that land could be available for homesteads. Also, reading this on its plain face gives me or gives any corporation a red flag or deterrence not to circumvent any of Article 12's provisions.

Thank you.

CHAIR FLEMING: We've heard enough discussion on the proposed amendment by Delegate Hocog.

I would like to take a vote on the subsidiary motion.

Delegate Hocog, repeat your motion.

DELEGATE HOCOG: My motion, Madam Chair, is to delete the word "Commonwealth" and insert the words as underlined "last qualified landowner."

CHAIR FLEMING: All in favor of the motion to put back the land back to that last qualified owner rather than giving it to the government.

Yes, Delegate Aldan.

DELEGATE VICENTE ALDAN: Before we go to the motion, I want to ask Deanne: If we vote for this, would there be any litigation that would work in your favor or not?

MS. SIEMER: I can't think of any effect that this would have on any existing litigation. I don't think that it would cause litigation more one way or the other.

DELEGATE VICENTE ALDAN: Okay.

CHAIR FLEMING: All in favor of the subsidiary motion made by Delegate Hocog say "Aye."

All opposed say "Nay."

Raise your hands.

All in favor of the motion raise up your right hand high.

Those opposed.

Con-Con clerk.

CONVENTION CLERK: Madam Chair, we have nine members voting yes, 11 voting no.

CHAIR FLEMING: Motion is defeated.

DELEGATE HOCOG: Sorry, my Chairman.

CHAIR FLEMING: Are there any other proposed amendments for section 6?

Delegate Villagomez.

DELEGATE VILLAGOMEZ: Thank you, Madam Chair.

My amendment deals with the last sentence. I'll read it.

"Any action challenging a transaction shall be filed with in 15 years instead of six of the transaction."

I so move.

(The motion was seconded.)

CHAIR FLEMING: Discussion?

DELEGATE HOCOG: Ready for disposition.

CHAIR FLEMING: There is a motion on the floor made by Delegate Villagomez to change the last sentence:

"Any action challenging an action shall be filed with 15 years of the transaction."

All in favor of the motion say "Aye."

Those opposed say "Nay."

The "ayes" have it.

DELEGATE HOCOG: There is a division, Madam Chair. I want the Chair to vote again.

CHAIR FLEMING: We're going to vote again.

Those in favor to raise the six years to 15 years raise your hands high.

Delegate Gonzales raise up your hand if you are raising it up.

All those opposed raise up your hands now.

CHAIR FLEMING: The motion is defeated.

Any other proposed amendments?

Delegate Villagomez.

DELEGATE VILLAGOMEZ: Is it proper to introduce the schedule on transition or should we wait until after ~~this one,~~ after section 6?

CHAIR FLEMING: I recommend that you wait for the schedule.

DELEGATE VILLAGOMEZ: Thank you.

CHAIR FLEMING: Any more concerns on section 6?

Yes, Delegate Gonzales.

DELEGATE GONZALES: Just on the question of fraud and the statute of limitations, when it starts and when expires.

Suppose a nonsophisticated, nonlawyer layman looks at it or gets involved with land transactions. How would he or she know what constitutes grounds for bringing up a cause of action?

What I'm trying to get at is this: What would constitute fraud, No. 1; and, No. 2, how would a layman or a laywoman know what cause of action to bring up?

These are technical legal jargon.

MS. SIEMER: "Her/him" or "laywomen"? "Laywomen" is technical legal jargon?

DELEGATE GONZALES: What would constitute a fraud to the ordinary person?

MS. SIEMER: Let me take your second question first.

The purpose of the Attorney General provision in the Committee's draft is to give people a place to go to find out if there is something wrong with the transaction either before the transaction or after the transaction.

Now, the second question, what constitutes fraud?

There are many hundred years of common law with respect to what constitutes fraud. But, basically, it's lying, cheating, and stealing.

DELEGATE GONZALES: Do we have to make it explicit or

would it be covered by jurisprudence?

MS. SIEMER: Maybe we could ask Justice Dela Cruz for a more mellifluous definition of fraud, but that is my definition, lying, cheating, and stealing.

CHAIR FLEMING: That should do.

Yes, Delegate Camacho.

DELEGATE CAMACHO: Madam Chair, first of all, I started earlier but was ruled out of order. This has to do with the word "voidable."

CHAIR FLEMING: You may proceed.

DELEGATE CAMACHO: In section 1, we indicated that we like to maintain all public lands in the hands of Northern Marianas descent.

Here, we are trying to put in the word "voidable."

First, I would like to ask a question if you will allow me. This question was asked earlier during the Committee meeting, and I would like to ask the legal counsel: Would the word "voidable" actually enhance Article 12 or would it weaken it?

The answer that I would like to hear is either "yes" or "no," unless, of course, nobody wants to commit themselves to that kind of an answer.

Can somebody in the legal team tell us whether the use of the word "voidable" would strengthen Article 12 or would it weaken it?

MS. SIEMER: From a legal point of view, the use of the term "voidable" strengthens Article 12 because it allows the court in every case to do its very best to come to a fair result. Anything that promotes fairness in dealings in land, in these very important transactions, strengthens Article 12.

DELEGATE CAMACHO: Can we hear from Mr. Willens and Mr. Zimmerman.

CHAIR FLEMING: You may proceed, Mr. Willens.

MR. WILLENS: I would like to defer to the former chief justice. I think Deanne's statement is perfectly clear. I would support that.

I think that Chief Justice Dela Cruz can speak with better knowledge and competence in the local jurisprudence can elaborate on that in a way that might be useful.

CHAIR FLEMING: You may go ahead, Justice Dela Cruz.

MR. DELA CRUZ: I don't know that what I have to say will make a big difference to the Delegates.

The way I see it, the proposal by the Committee is for a change from the present terminology, using section 6 of Article 12, and that is, to change the provision for purposes of enforceability from that of "void ab initio," which means to declare a transaction void from the beginning, to that of "voidable," which gives the court the discretion, the flexibility, to look at the facts of that particular case and make a determination whether the fact that Article 12 has been

violated and under the circumstances for that court to fashion a remedy to include voiding that transaction, among others, or allow specific transactions, for example, with respect to bona fide purchasers for value without notice of what has happened previously, to allow that transaction, as to that particular bona fide purchaser to stand.

The policy decision that the Convention is being called to address this evening is to make a determination as a matter of policy judgment to decide whether the void ab initio standard of enforcement should continue or should not continue. That is really a judgment for this Convention to make.

I've stated earlier, I think in the first Committee of the Whole meeting a few weeks ago, that this is something that the Convention has to address: Does it want to loosen up and allow the court, give the court the flexibility to fashion remedies on a case-by-case basis whenever Article 12 is violated, or does the Convention wish not to allow the court to have any flexibility and simply make a declaration whenever Article 12 has been violated and say, "Well, that is null and void from the beginning," and ~~anything in between~~ is pushed aside and also becomes in the process void, as well.

The question posed by the Delegate Camacho is whether the word "voidable," by having a voidable mechanism, whether that would strengthen Article 12 or whether it would weaken it is a question that I personally think that the

Convention itself, Convention Delegates, should be making.

I would venture to say that -- I could tell the Convention that this is my preference, but what my preference is does not make much difference because you are the policy makers. You should be making this decision.

My preference is not to make that decision for the Convention Delegates by offering you, the Convention Delegates, one way or the other how you should vote on this critical issue.

I think that throughout the Committee meetings and hearings on this issue you have heard what all the various ramifications of what Article 12 has meant to the Commonwealth, whether it promotes economic development or does it not promote economic development and whether the restrictions of void ab initio are something that has divided the Commonwealth.

Those are all the policy questions and considerations that this Convention is evaluating and looking at and making a decision on.

If the Convention, and I think the Convention, if I'm correct, already has a feel for where to go on this thing, should we loosen the issue, not loosen it?

It's a very difficult decision because you are taking a direction because you are being urged if the voidable standard is used, it may not promote the cultural interest, the customs of the people and all of that.

On the other hand, there are other issues that come

in to play as well as other considerations.

Those are the things that the Convention Delegates are just as much aware as any of the legal counsel here this evening.

With respect to that question, then, my preference is really not to specify one way or the other a preference as to whether -- I realize it does not directly answer the question Delegate Camacho is proposing. It's a question that I personally do not know whether it will weaken or will not weaken Article 12.

It is something that the Convention in making its judgment on the issue has to think long and hard in deciding whether to choose or not choose the standard of voidableness; that hopefully whatever decision it makes, if it does choose that standard, that it would in the end be for the benefit of the entire Commonwealth and it would also pursue the aims and objectives of Article 12.

I don't know if that answers the question.

CHAIR FLEMING: Thank you, Justice Dela Cruz.

Counsel Zimmerman, would you like to put in your 2 cents' worth?

MR. ZIMMERMAN: I'll give you an answer that has little to do with Article 12.

I'll tell you as an observer of the legal scene, any time you have a statute which is set up so that it can

produce a harsh result, or rigid result, then you are just inviting the court in a compelling case to start to take the statute apart. That's whether it's Article 12 or any other law. I think that is part of what you need to consider if you want the statute to continue into the future for as long as you can imagine.

From my perspective, as with any statute, you want to give the courts enough flexibility to react to compelling situations before it.

CHAIR FLEMING: You may --

DELEGATE CAMACHO: Madam Chair, I would like to continue.

I would like to direct this to Ms. Siemer and Howard Willens.

The case of Maria Agulto v Ignacia Agulto, the decision was that it was void ab initio. Applying this case to the word voidable, if another case of identical situation appears and the word "voidable" is the word in the Constitution, would that change that decision?

MS. SIEMER: That one I definitely can defer to Justice Dela Cruz. He certainly knows more about that particular case than I do.

CHAIR FLEMING: Justice Dela Cruz, would you like to respond to that?

DELEGATE CAMACHO: I'm sorry, Judge.

MR. DELA CRUZ: I got a copy of it, but I have not looked

at it again. I wrote that decision in 1986, I think, or 1987. In that case, I just don't recall the facts of that case.

But whether it would have made a difference as a judge in that case using the word "voidable" as opposed to "void ab initio," I probably would have been able to come up to a different decision if the word "voidable" had been there.

I have to reread the facts of that case to be able to make a decision, but that is -- there is a big difference between the word "voidable" and the word "void ab initio."

The main difference is that whenever you declare an instrument, a transaction, void ab initio, the court is making declaration that it's void from the beginning completely, and does not give as Bernie Zimmerman just noted, it does not give the court much flexibility in terms of how to fashion remedies that may be or should be taken by the court under the circumstances to achieve a fair result between the parties.

In a void ab initio standard, what the court does is look at it and makes the determination whether Article 12 has been violated, and if it has been violated, it strikes it down completely.

In a voidable standard, the court is given that flexibility to look at facts and consider the equities and consider the fairness between the parties in terms of fashioning a particular remedy for the parties in that case.

One remedy that the court could impose is to

declare that transaction void period and declare the whole thing null and void.

But the word "voidable" also in context of the possibility that the court under the circumstances of that case may say, "Well, in this case, voiding this transaction as to this particular party, or third party, is not proper because it will literally divest this person of this thing, and when it comes to that, then the question is whether to allow the court to have this discretion to make that determination whether to void that particular transaction as to a third party, for example, and not necessarily between the original party to the particular transaction going back to that very first transaction between the original landowner and the original purchaser.

But it allows for the court to look at parties then existing at the time the matter has been brought to the court for resolution.

That, really, is the heart of this.

MS. SIEMER: There are two things that one could probably say in a fair answer to Dr. Camacho's question.

In a case between the buyer and the seller, when there has been fraud on the part of the buyer, the result will probably be the same, and that is void ab initio. It will go back to the seller. If the seller has been defrauded and the buyer is still holding the land, then the result will probably be the same. So you could say in that class of cases that will

be the same.

In the case in which the buyer is no longer holding the land, but bona fide purchasers, innocent purchasers, have come along, then I think it would be fair to say that the result under a voidable standard would probably be different. Under that standard it's more likely that the court would look at a bona fide purchaser and allow that person to keep their land. Maybe not always. But in those situations, you could say the results were likely to be different.

Now, with respect to the rest of the cases, the affect of using a voidable standard may, in fact, be a harsher penalty on a wrongdoers because the court can fashion all kinds of harshness to deal with really serious wrongdoers above and beyond losing their land.

In some cases, voidable will produce a stronger, tougher, and harsher result. And in some cases, it will not.

I don't think it is possible to generalized any more than that.

DELEGATE CAMACHO: Thank you, Madam Chair.

I ask the indulgence of the Delegates. I know that we are all tired and we know that we have been discussing this Article 12 since this morning.

I would like to ask this question again. In a hypothetical question: Here is a situation where there is a circumvention of Article 12 and the word "voidable" is in the

Constitution.

Following the remarks that were made that voidable would give the judge the flexibility, even though the issue was actually a violation of Article 12, the judge should say "We waive Article 12 violations because it's fair and it is good and we will be flexible and we will consider the individual that violated Article 12 and use the word 'voidable' to try and compensate."

In other words, we are trying to say that something that is illegal is going to be made legal because of the word "voidable" that allows the judge the flexibility.

Is that a correct hypothesis -- what is the word?

MS. SIEMER: Hypothetical question.

DELEGATE CAMACHO: -- hypothetical question?

Is that a good example or not?

MS. SIEMER: That's an entirely fair question and good question and one the Delegates should pay attention to.

First, under Article 12, no judge anywhere in the Commonwealth can award land to a person who is not of Northern Marianas descent. That will not happen. That is the first thing.

Second, one of the things that judges are able to do under the voidable standard is to look at whether the seller is the wrongdoer. In transactions, the seller can be the wrongdoer.

The original landowner can be a person who intentionally sold his or her land to a person who is not qualified or in a transaction that is not qualified because they stood to make many, many millions of dollars.

So under the voidable standard, a judge would be able to look at whether the seller was the person who instituted, instigated, and pushed the violation of Article 12; or, whether it was the buyer who instigated, and pushed the violation of Article 12.

It is not always the case in my reading of the cases that the buyer is the person who is trying to violate Article 12. Many times, considerations of money drive sellers to a transaction. If they can make \$5 million or \$10 million in a transaction, a fair reading of the case is they don't care to whom they are selling it.

DELEGATE CAMACHO: Thank you.

Finally, Madam Chair, I would like to move that we remove the word "voidable" and replace it with the word "void ab initio."

I make this motion with deep concern about the implication of the word "voidable" based on what I've heard and what has been explained to me.

I hope the Delegates, somebody, will second it so that we can discuss the issue.

Do I hear a second?

DELEGATE VICENTE ALDAN: Yes.

CHAIR FLEMING: Delegate Aldan, you are putting in a second?

DELEGATE VICENTE ALDAN: Yes.

CHAIR FLEMING: For a discussion on the subsidiary motion made by Delegate Camacho. May I call on Delegate San Nicolas before we vote on it?

Yes, Delegate San Nicolas.

DELEGATE SAN NICOLAS: Thank you, Madam Chair.

The question before us this evening is how much do we really want to strengthen land alienation in the Marianas? How much do we want to strengthen Article 12? Does fairness and flexibility through section 6 guarantee strengthening of Article 12?

I cannot answer that. One thing I can answer is that as a Delegate to this Con-Con, is that our Constitution must guarantee fairness.

Madam Chair, the decisions we're obligated to make with regard to Article 12 I'm sure will not and should not be based on personality or on possible personal gain or loss. What we as Delegates, as Americans, as persons of NMI descent feel is right and fair. Nothing more and nothing less.

Based on my readings, and I must say extensive readings and meetings with my constituents and people on all three sides of Article 12 -- I say all three because these are

people on one side, who are on the other side, and people like myself who are basically in the middle -- I personally feel that section 6 is right, that voidable is right, and allowing the courts the flexibility to decide on a remedy for the given situation is right.

I see that statement that when the Commonwealth was first created our framers in accordance with the Covenant allowed an Article 12 that strictly prohibited nonNMI descent people from owning land.

Madam Chair, I'm for that. Both the US and CNMI government deem such prohibition fair. I am for that.

In researching Article 12, I found that the primary reason such an article contained "void ab initio" was due to the non representation of locals or locally-oriented judges in our trust territory high courts.

These judges were usually from the mainland. These judges usually had no idea what or why Article 12 existed. To be frank, I doubt that they even cared.

Now we have a Commonwealth Supreme Court and a Superior Court charged with interpreting and enforcing the statutes and Constitution of the Commonwealth.

Today, our court is composed of Chamorros, Chamolinians, of people of Northern Marianas descent. These people know the laws. They are aware of what goes on. They should know because they feel it.

Therefore, I feel that Article 12 as amended, section 6, in particular, which, in fact, allows for our justices to fashion an equitable remedy based on the facts, based on precedents, Madam Chair, based on what they feel is fair is the right thing to do.

I would like to point out that such a provision does not preclude the presiding judge from declaring a transaction void ab initio. He could rule it to be void ab initio if he believes so.

I believe in section 6, and with all due respect to all Delegates in here, I believe Article 12 as amended is fair.

CHAIR FLEMING: Yes, Delegate Tomas Aldan.

DELEGATE TOMAS B. ALDAN: I would like to call my support to what Delegate San Nicolas has just stated. I'm sure that he meant well. I'm sure that in the years ahead, I'm going to look at Joey as one of our leaders.

Thank you.

CHAIR FLEMING: I'll take one more and we'll go for the subsidiary voting.

Delegate Vicente Aldan.

DELEGATE VICENTE ALDAN: This is a question for our legal counsel.

If we vote for the "voidable" stance, would it weaken the intent of section of 805 of the Covenant?

MS. SIEMER: No, Delegate Aldan.

The intent of the Covenant was to allow the people of the Northern Marianas Islands to frame this restriction on alienation of land in a way that they felt pursued those goals.

The first constitutional convention did that as best they could.

The Second Constitutional Convention added their views on this.

You have the ability to define this in a way that this particular issue that we're talking about, voidable or void ab initio, either way.

DELEGATE VICENTE ALDAN: It has been 20 years since we are defending this void ab initio. Now it's changed to voidable stance.

Would the US see that and say that we don't need Article 12 anymore?

MS. SIEMER: No.

CHAIR FLEMING: We have discussed this quite extensively since this morning. I would like to put the subsidiary motion for a vote now.

I would like to request that we raise our hands on this one just to insure that we have the correct count.

All those in favor of Delegate Camacho's motion to change "voidable" to "void ab initio" raise up your right hand high.

All those opposed.

The motion is defeated.

DELEGATE LIFOIFOI: Madam Chair, five-minute recess.

CHAIR FLEMING: We're almost done. We'll probably just end after that.

DELEGATE VILLAGOMEZ: Can we move on to the transition?

CHAIR FLEMING: Can we discuss that tomorrow? Let's finish with the constitutional language now.

Yes, Delegate Camacho.

Hold on for a change of tape.

(Tape change.)

CHAIR FLEMING: You may proceed Delegate Camacho.

DELEGATE CAMACHO: Madam Chair, I would like to move that we amend section 6, Enforcement, and include the provision that all cases in litigation on Article 12 be -- the trial should be by jury.

(The motion was seconded.)

CHAIR FLEMING: Discussion?

DELEGATE CAMACHO: Madam Chair.

Would you like to elaborate more on that?

DELEGATE CAMACHO: Thank you, ma'am.

The motion to have a jury trial on all these cases would actually be to allow our people, our peers, to make this decision, whether it is right or wrong, rather than giving the judge that option, knowing the closeness of the family here and also knowing also knowing the pressure that could be put on

judges on such decisions like this one.

There is nothing better than having your own peers decide that you are correct or you are wrong. We all agree on that. Admittedly, it would be a little bit time-consuming and maybe a little bit costly on the court that having that decision made by my own people from the islands would be of greater satisfaction and acceptance by those who are involved.

I urge the Delegates to consider the importance of trial by jury.

Thank you, Madam Chair.

CHAIR FLEMING: I know recognize the President.

PRESIDENT GUERRERO: Madam Chair, the amendment is noble. But there is no assurance that those people that are going to sit up there are of Northern Marianas descent because we know that sometimes there are a lot of people that are being turned down, and it will have a lot of people of United States citizens that covers Northern Marianas descent, also.

There is no assurance that people of Northern Marianas descent will be selected. What if we have a case where all of the jurors are from outside of the Commonwealth, people that are not of Northern Marianas descent that are U.S. citizens, and then what?

We're allowing, again, people from the outside to make that judgment. I don't know whether that is good or bad. But we need to seriously look at the consequences of having a

jury trial because there are a lot of people -- because of family affiliation or the exposure of the land transaction by the media and so forth -- there are a lot of people that tend to be disqualified even in a pool of 200 or more.

I caution the members because you are not guaranteeing that we are going to have all Northern Marianas descent sitting up there make that judgment.

I also feel and have confidence with our own judges in making a fair and good decision. Sometimes we don't like their decisions, but they are doing their best, at least the best they know how.

But I do caution that when you have a jury trial, you might have a nightmare. The people that you thought were up there, are not up there. You are being judged by American citizens not by Northern Marianas descents trying to make the decision.

Thank you.

CHAIR FLEMING: One last comment before we vote on it.

Delegate Quitugua, you had your hand up.

DELEGATE QUITUGUA: I was going to ask Dr. Camacho, and the question said it, how can we guarantee the people that will be on the jury are the people that are going to represent the interest of CNMI descent?

It might have some negative effect if most of the jurors are not from here. The impact will probably be worse

than what we thought the outcome will be.

CHAIR FLEMING: One last one.

Delegate Villagomez.

DELEGATE VILLAGOMEZ: Madam Chair, we talk about our own judges. We look at the recent appointments, Mr. Bellas, Mr. Weissman, Mr. Taylor.

If the reason to give it to the judge is because they're of CNMI descent, they're not CNMI descent. A trial by jury, there is no guarantee, but it's another system. Let's give a try.

CHAIR FLEMING: Counsel Willens -- Siemer.

MS. SIEMER: I like to answer to that name, too.

Let's focus on what Dr. Camacho has proposed here. We're focusing on (b) and (c) of his proposal.

He's not proposing the right of a jury trial as simply as a right. That's already provided by statute.

Article 1, section 8, of the Constitution provides that the legislature can decide when the jury trials are appropriate, and the Legislature has done that.

The amendment that is being proposed is a little bit different. What this amendment says is that when a demand has been made for a trial by jury pursuant to this article, the court shall not adjudicate the case or any claim or issue arising herein by means of summary judgment. That is a little different.

What that means is if there is a question of law, and let us assume that one party is entitled to win and the other party should lose as a matter of law, there isn't any fact here to try, the jury does not have anything to do here, the question is whether you should nonetheless take this case away from the judge and require it to go to a jury.

Judges are empowered to decide questions of law. Juries are not.

The request here is to send this to a jury anyway, even if the question of law would be decided by a judge so this case would be either be thrown out of court or this plaintiff would automatically win.

You would be depriving the judge of the power to dispose of cases that clearly should be disposed of. That is the standard that judges use on summary judgment, that there are no material facts that are at issue and that the law commands a particular result.

This is not a trial by jury issue. This is a question of legal procedure and whether the convention should supersede court rules, whether it should supersede existing law, whether it should take apart the system that the court uses and, perhaps, Justice Dela Cruz may want to talk a little bit about what summary judgment means. This is not a trial by jury issue. This isn't a question of yes or no on trial by jury. There is a particular objective that is being sought by this amendment.

That objective is quite different from the way cases are normally tried. It would make a case under Article 12 be tried quite differently than a normal case. Maybe Justice Dela Cruz can explain a little bit about summary judgment.

CHAIR FLEMING: Justice Dela Cruz, may I ask Delegate Camacho before you respond to that.

DELEGATE CAMACHO: I was asked by Delegate Quitugua what kind of assurance I would have that all the jury will be indigenous Northern Marianas descent.

I have no idea. I don't know whether or not it would be all CNMI residents. But I can assure you that I would rather have my fate decided by a jury of 12 than an individual judge.

Madam Chair, since we are talking about (b) and (c), it says:

"The right of trial by jury shall be guaranteed in all cases arising under this article whether in the form of a claim, affirmative defense, counterclaim, or in any other form."

So this is not just on summary judgment. It is on every portion of a court case. Trial by jury is my preference.

I would like to say that even if they're not all of CNMI descent, at least they are my peers, and I will be satisfied with their decision one way or the other.

CHAIR FLEMING: I think we're ready to vote on the subsidiary motion by Delegate -- I'm sorry.

Do you want to go ahead and respond?

MR. DELA CRUZ: I just wanted to respond.

With regard to summary judgment, Rule 56 of the Commonwealth Rules of Civil Procedure provides for a resolution of cases where there are no disputed genuine factual issues involved.

A party has to move for summary judgment based on affidavits and whatever is presented to the court. The court reviews it.

If the court feels there are really no genuine issues of material fact with respect to a particular claim or counterclaim or issue as to that particular case, then under that rule, the court may, without going to trial, bench or jury, render a decision based on the law because of the fact that there are no disputed -- both sides agree that there are no disputed issues.

If they don't agree, the court may determine that there are no disputed issues of fact, and rule accordingly in accordance with the laws that are applicable and makes its decision accordingly.

That is basically the rule on summary judgment.

What the proposed amendment would do is take all cases involving Article 12 and present it to the jury. That, of

course, would be a departure from what the present practice is and it's for the Convention Delegates to make its decision on.

I hope that clarifies the concern.

CHAIR FLEMING: We're ready to vote on the subsidiary motion.

All in favor of Delegate Camacho's subsidiary motion to have all land alienation trial by jury say "Aye."

All opposed say "Nay."

The motion is defeated.

Yes, Delegate Villagomez.

DELEGATE VILLAGOMEZ: Madam Chair, I want to move that any lawyer who is involved in any fraudulent transaction involving Article 12 should be disbarred and be prohibited from handling Article 12 cases.

Better yet, we should give him a first-class ticket to Marianas Trench.

(The motion was seconded.)

CHAIR FLEMING: Discussion on the motion.

All those in favor of Delegate Villagomez' motion say "Aye."

All opposed say "Nay."

You got it.

DELEGATE VILLAGOMEZ: Thank you.

CHAIR FLEMING: Anymore?

Delegate Gonzales.

DELEGATE GONZALES: Are we back to the main motion?

CHAIR FLEMING: Section 6.

PRESIDENT GUERRERO: Are we making amendment adding any specific section in here? Can we get an a clarification or are we playing games?

MS. SIEMER: Under Article 4 you have given the judges the power to decide when lawyers should be disbarred and under what circumstances.

Certainly, it would be appropriate for you to note in the legislative history that is what you expect. A Constitutional provision might not be the quite right way to do that.

DELEGATE TOMAS B. ALDAN: Recall.

MS. SIEMER: I was inquiring if it would be satisfactory to the mover to take into account the new Article 4, which you have passed, which gives the court power to deal with the disbarment of lawyers, sanctioning lawyers, and disciplining lawyers, and note in the legislative history that in the discussion of Article 12 it was the sentiment of the Delegates expressed with emotion and specifically passed on the floor that the court should, when it finds deliberate violations of Article 12, consider that as grounds for disbarment under the court's rules.

Is that satisfactory to the mover?

DELEGATE VILLAGOMEZ: Yes. And add the language "and a

one-way ticket to the Marianas Trench"?

MS. SIEMER: I don't think pollution of the Marianas Trench will do it.

DELEGATE NOGIS: Can we do a recall?

CHAIR FLEMING: Hold it. The reporter can't take everyone's voices at one time.

Delegate Nogis.

DELEGATE NOGIS: I was asking a reconsideration and recount on the votes of that motion.

CHAIR FLEMING: Delegate Villagomez, You want a recall on that motion?

DELEGATE VILLAGOMEZ: I'm recalling it and put it under the legislative history with the language that Deanne put, not the legislative history, but Article 4 and with the the good words you put.

CHAIR FLEMING: Delegate Aldan.

DELEGATE TOMAS B. ALDAN: I don't know whether the rules allow for a recall after a vote has been taken.

I think the most appropriate route is to call for a reconsideration of that vote.

I so move to reconsider that vote.

(The motion was seconded.)

CHAIR FLEMING: Any discussion on that?

Delegate Villagomez.

DELEGATE VILLAGOMEZ: I'm confused. We're going to vote

again?

CHAIR FLEMING: Delegate Aldan, would you explain that to Delegate Villagomez?

DELEGATE TOMAS B. ALDAN: If the legal counsel agrees that it's okay of what happened, we'll take it at that, that it has been withdrawn and it will be in the legislative history.

I think that is the consensus of the Delegates as well.

DELEGATE GONZALES: Point of clarification.

CHAIR FLEMING: Yes, Delegate Gonzales.

DELEGATE GONZALES: Do I take it the disbarment of attorneys that violate Article 12 would be included in the legislative history?

MS. SIEMER: Yes, that's correct.

DELEGATE VILLAGOMEZ: Not the free ticket.

DELEGATE GONZALES: Thank you.

CHAIR FLEMING: I guess we have concluded the discussions if all the sections under Article 12.

We're ready for the question.

I would like to move now for adoption of Article 12, Restrictions on Alienation of Land.

All in favor to adopt the report say "Aye."

All opposed.

The report is being adopted.

Floor leader.

Madam Chair, I know you are tired I would like to
resolve back to the plenary recession with five-minute recess.

(A recess was from 8:47 P.M. to 9:00 P.M.)

///

///

///

PRESIDENT GUERRERO: This session is called back to order. I call on Delegate Esther Fleming to report on the Committee of the Whole.

DELEGATE FLEMING: Thank you, Mr. President. The Committee of the Whole has adopted a proposed amendment to Article 6, section 7(b), and also the Committee of the Whole has adopted, without amendment, Article 12, restrictions on alienation of land.

That's all. Thank you.

Mr. Floor Leader.

DELEGATE HOCOG: Mr. President, I move to pass on second and final reading, on Article 6 as amended.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded to pass Article 6: Local government, on second and final reading.

Discussion?

If not, Con-Con clerk, roll call.

{The roll was called and the Delegates voted as follows:}

YES: Delegates Tomas B. Aldan, Vicente S. Aldan, Marian Aldan-Pierce, Frances LG Borja, Carlos S. Camacho, Esther S. Fleming, John Oliver DLR. Gonzales, Herman T. Guerrero,

Henry U. Hofschneider, David L. Igitol,
Jose R. Lifoifoi, David Q. Maratita,
Donald B. Mendiola, James M. Mendiola,
Felix R. Nogis, Joey P. San Nicolas,
Bernadita T. Seman, Marylou Ada Sirok,
Helen Taro-Atalig, Lillian A. Tenorio,
Joaquin P. Villagomez.

NO: Victor B. Hocog, Benjamin T. Manglona
Justo S. Quitugua

PRESENT: Juan S. Tenorio.

CONVENTION CLERK: Mr. President, 21 members voted
yes; three members voted no; one voted "present"; two
members absent.

PRESIDENT GUERRERO: Article 6 passes on second
and final reading by 22 votes.

Mr. Floor Leader.

DELEGATE HOCOG: One moment, Mr. President.

Mr. President, I move to pass on second and
final reading Article 12.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and
seconded to pass Article 12 on second and final
reading.

Discussion?

Delegate Villagomez?

DELEGATE VILLAGOMEZ: Mr. President, I was advised by counsel that at this time I can bring up my conflict of interest.

Would you allow me?

PRESIDENT GUERRERO: Delegate Villagomez, there is a motion on the floor and that takes precedence over another motion that is not germane to the current one.

So I cannot allow another motion that is not germane to this one.

Excuse me. Let me just check with the legal counsel.

(Discussion held off the record.)

PRESIDENT GUERRERO: Apparently you were advised by the legal counsel, correct. Even though it is out of order, I will allow your motion to proceed.

DELEGATE VILLAGOMEZ: The language is basically this, conflict of interest. These are the new additions to the rule:

"No delegate shall vote on Article 12 matters in which he or she has a financial interest in real property affected by Article 12. Disclosure shall be made in writing to the president prior to the discussion on the floor. A delegate who fails to vote

or answer "present" due to a conflict of interest shall not be counted as part of the abstentions that will determine the success or failure of the motion.

I so move, Mr. President.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded to amend section 5 -- excuse me. Repeat that again.

DELEGATE VILLAGOMEZ: Section 5 and section 6 of the Convention rules.

PRESIDENT GUERRERO: To amend section 5 and section 6 of the Convention rules to provide for conflict of interest.

Let me recognize first Marian Pierce.

DELEGATE ALDAN-PIERCE: I yield to Delegate Tenorio.

PRESIDENT GUERRERO: Let me go to Delegate Gonzales.

DELEGATE HOCOG: We are out of order. The person who has the floor is yielding to Delegate Tenorio.

DELEGATE HOFSCHEIDER: Delegate Pierce, Mr. President.

DELEGATE HOCOG: Delegate Pierce, yielded to Delegate Tenorio.

PRESIDENT GUERRERO: And I ruled that I was going to recognize first those individuals that raised their hand unless that person also yields.

Will Delegate Gonzales yield to Delegate Tenorio first.

DELEGATE GONZALES: As long as you recognize me, Mr. President. Thank you.

PRESIDENT GUERRERO: Delegate Lillian Tenorio, proceed.

DELEGATE LILLIAN TENORIO: I want to find out from Delegate Villagomez what is affected, who has lands affected by Article 12.

What does that mean?

DELEGATE VILLAGOMEZ: If you are a middle man and if you have financial interest in the property that is affected by the Article 12, if you have a case, if there is a sale pending now, this will disqualify you.

Delegate Tenorio, are you finished?

DELEGATE LILLIAN TENORIO: I just want to follow up on one question. I have property that has been given to me by my parents, that property, what I do with it, has to conform with Article 12 which is applicable. Would it prohibit me from voting?

DELEGATE VILLAGOMEZ: Can you repeat, please.

DELEGATE LILLIAN TENORIO: I have been given property by my parents. It is in my name. What I do with it has to comport with Article 12. Would I be precluded from voting on Article 12 because of your amendment or is it intended to restrict me from voting?

DELEGATE VILLAGOMEZ: If you have a sale pending now, you are affected.

PRESIDENT GUERRERO: Are you satisfied with the answer, Delegate Tenorio?

DELEGATE LILLIAN TENORIO: Yes, sort of.

PRESIDENT GUERRERO: Are you finished?

DELEGATE LILLIAN TENORIO: Yes.

PRESIDENT GUERRERO: Let me move on to Delegate Gonzales.

DELEGATE GONZALES: Mr. President, can I make a one- or two-minute statement regarding the voting, regarding Article 12 and then the proposed amendment?

PRESIDENT GUERRERO: Can we address first the current amendment.

DELEGATE GONZALES: It is regarding voting on the current article which we are going to be voting on this respective amendment.

PRESIDENT GUERRERO: Please proceed.

DELEGATE GONZALES: Thank you.

(Statements made in Chamorro)

Allow me to translate that. Fellow esteemed delegates, the issue we are discussing and confronting right this moment in front of us is one of paramount importance just as we consider our lives important and it is one of profound and deep concern, just as strong as my belief in God and just as deep as the Marianas Trench which surrounds our pristine and sacred islands these great Northern Mariana Islands, the pearl of the Pacific. Indeed this very issue is Article 12 regarding the alienation of lands to nonCNMI descent and keep it in the hands of indigenous people NMI descent of the Northern Marianas. This issue is very dear to my heart, so much so that I brought it up in my public education campaign leading up to the eventual election of the Constitution Convention delegates last March. To my fellow 26 colleagues or delegates, with all due respect -- I emphasize with all due respect -- I ask for your humble respect and understanding in how I have voted and will continue to vote and in the opinions which I hold high because of my strong belief in them. Just as I sincerely respect you all I ask of you nothing less.

It is my belief that where my presence and seat as a delegate was made possible with the vote of confidence of my constituents, my family, friends and relatives, it was my unequivocal public and civic duty that they deserve nothing less than my sincere, honest and dignified service to respect them with honor and respect, nothing more and nothing less. After all, where my power to serve as a delegate originates from the public, I shall reward them back with integrity and justice, one which deserves their protection and presentation of their rights thus our future generation and thus, Mr. President, our future prosperity.

Thank you, Delegate Gonzales.

PRESIDENT GUERRERO: I recognize Delegate Tom Aldan. Thank you, Mr. President.

DELEGATE T. ALDAN: Mr. President, and fellow delegates. It is hard for me to accept the proposed change to the rule and conflict of interest since it is limiting its application to only one area. Why? Is it suggesting that the present conflict of interest provision is not sufficient? However, we have Rule 61 that states that if we don't have a conflict of interest rule, the rules and procedures delineated in Mason's shall govern. Mason's conflict of interest

rule states that no members can vote on a question in which they have a direct personal or pecuniary interest. The right of members to represent their constituency however is of such major importance that members should be barred from voting on matters of direct personal interest only in clear cases and when the matter is particularly personal. This rule covers all issues that we have tackled so far. So why have a conflict of interest rule for just this specific Article?

There is no justifiable reason to point out one area to impose a conflict of interest rule. We are amending, or we amended all we have amended, and we will continue until we declare this Convention sine die, to amend articles of the Constitution and one conflict of interest rule should govern all issues. It would be unfair to adopt a rule to advance one's cause and desire. This can be construed as being purely selfish-and* should be outright condemned.

The proposed rule suggests that any one of us having financial interest in real property affected by Article 12 should be disqualified from voting. Let me pose this question. What does it mean when we say real property affected by Article 12? Don't you agree that

the property each one of us has is an Article 12 matter? And as such only those who do not have any property should vote on the issue of Article 12, for which we don't have any that are members of this delegation? Furthermore, since only CNMI descent is eligible, how can we vote to pass something that would benefit all CNMI descent which is our constituents. One of these days, whether or not we have the land now, we will benefit because of our status as Northern Marianas descent. How about our children, our children's children? And as such we should not touch Article 12 because of that. I do not agree.

Since our constituencies are CNMI descent and we are proposing changes that would enhance the protection of our land, we can all vote on the issue unless, of course, it is clear that it is particularly personal. I, therefore, do not support the passage of the proposed amendment to the rules because we already have a rule that governs us in terms of this issue.

Thank you.

PRESIDENT GUERRERO: Thank you, Delegate Aldan.

I call on Delegate Donald Mendiola.

DELEGATE D. MENDIOLA: (Statement made in Chamorro)

PRESIDENT GUERRERO: Thank you, Delegate Donald

Mendiola. I recognize Delegate Hocog and Delegate Juan Tenorio, Delegate Bennet Seman and Delegate Camacho in that order.

Proceed Delegate Hocog.

DELEGATE HOCOG: I think, Mr. Chairman, the amendment itself is very minor to multiple discussion and I would like the consensus of the group that I move to end debate and vote on the measure.

(The motion was seconded).

DELEGATE CAMACHO: Mr. President, you have allowed so many to speak I don't know that it will matter if you allow a few more to speak.

Can I ask Delegate Hocog, since he did so well in convincing the delegation from Tinian, allow me a few minutes to speak today?

PRESIDENT GUERRERO: Let me then recognize before I recognize you, Delegate Camacho, I would like to recognize Bennet Seman because she was the chair of the Committee. I have to give her that courtesy first.

DELEGATE HOCOG: Mr. Chair, there is a motion on the floor and it has been seconded. Unless you want me to withdraw my motion.

PRESIDENT GUERRERO: Would you please kindly.

DELEGATE HOCOG: I ask the majority of the members

whether they want me to withdraw. Mr. Chairman, we probably already know what these people are going to say.

DELEGATE CAMACHO: We do? May I ask how he knows that.

DELEGATE HOCOG: I can tell.

DELEGATE CAMACHO: Would you tell me then, please.

DELEGATE HOCOG: That you are going to support Delegate Villagomez's motion.

DELEGATE CAMACHO: That is where you are wrong.

DELEGATE HOCOG: Should I move, Mr. Chairman, to vote now on the motion?

(The motion was seconded).

DELEGATE HOCOG: Can I have motion on the floor and let the Committee and let the delegates decide whether it is permissible or not permissible?

PRESIDENT GUERRERO: Hold on a minute. Let me have a change of tape.

(Pause).

PRESIDENT GUERRERO: Let me entertain the motion to end debate and if it is rejected then we go back to discussion.

For those in favor of the motion to end

debate please say "Aye." Those opposed say "Nay."

Motion carried.

We are now back to the main motion.

Those in favor of the motion to amend the Convention rules, section 5 and 6 of the Convention rules, to provide for a conflict of interest provision, please say "Aye."

Those who oppose say "Nay."

Motion defeated.

We are now back to the other motion.

Delegate Vicente Aldan.

DELEGATE V. ALDAN: Mr. President, if we vote this Article 12 I would like to make a motion if we can vote it by section.

PRESIDENT GUERRERO: Are you make a motion for division of questions?

DELEGATE V. ALDAN: Right.

PRESIDENT GUERRERO: Is there a second to that?

(The motion was seconded).

DELEGATE D. MENDIOLA: Privilege.

PRESIDENT GUERRERO: State your privilege.

DELEGATE D. MENDIOLA: (Statements made in Chamorro).

PRESIDENT GUERRERO: Okay, Delegate Mendiola, I

need to put this directly to a vote.

Those in favor of the motion to have a division of questions in regards to Article 12 please say "Aye."

Those oppose say "Nay."

The motion is defeated.

I recognize now Delegate Marian Aldan-Pierce.

DELEGATE ALDAN-PIERCE: I guess if you had recognized me 15 minutes ago I probably could have saved the Convention 15 minutes of arguments.

I would like a ruling from counsel. I have made my conflicts known from the time we started Article 12 because of my involvement in a corporation currently under litigation. I was voted as a delegate by the people in spite of or maybe because of my stand on Article 12. Based on these facts I would like a ruling whether I can vote or should not vote, and I will abide by counsel's ruling.

MR. WILLENS: It is our judgment that you are entitled to vote on the issues before the Convention.

DELEGATE ALDAN-PIERCE: Thank you.

DELEGATE HOCOG: Ready, Mr. President.

PRESIDENT GUERRERO: Con-Con clerk, roll call.

{The roll was called and the Delegates
voted as follows:}

YES: Delegates Tomas B. Aldan, Marian
Aldan-Pierce, Frances LG Borja,
Esther S. Fleming, John Oliver
DLR. Gonzales, Herman T. Guerrero,
Victor B. Hocog, Henry U. Hofschneider,
David L. Igitol, Jose R. Lifoifoi,
Donald B. Mendiola, James M. Mendiola,
Felix R. Nogis, Justo S. Quitugua,
Joey P. San Nicolas, Bernadita T. Seman,
Helen Taro-Atalig, Juan S. Tenorio,
Lillian A. Tenorio.

NO: Vicente S. Aldan, Carlos S. Camacho,
Joaquin P. Villagomez

PRESENT: Benjamin T. Manglona,
David Q. Maratita, Marylou A. Sirok

CONVENTION CLERK: Mr. President, 19 members voted
yes; three members voted no; two members voted present;
and two members absent.

PRESIDENT GUERRERO: Article 12 passed second
reading, second and final reading by 21 votes.

Mr. Floor Leader.

DELEGATE HOCOG: Yes, Mr. President. It has been

a long day today and I would like to suspend Item 11 and move to Item 12.

(The motion was seconded).

PRESIDENT GUERRERO: It has been moved and seconded to suspend Item 11 and move to 12.

Those in favor of the motion say "Aye."

Those who oppose say "Nay."

Motion carried.

Mr. Floor Leader.

DELEGATE HOCOG: Mr. President, I move to adjourn subject to the call of the chair.

PRESIDENT GUERRERO: It has been moved and seconded to adjourn.

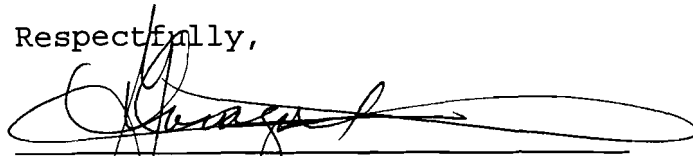
Those in favor of the motion say "Aye."

Those who oppose say "Nay."

Motion carried. Meeting is adjourned.

(The Convention adjourned at 9:30 p.m.)

Respectfully,



Convention Secretary