

REPORT REQUIRED

BY RESOLUTION NO. 2013-01

Approved on February 17, 2016



REPORT REQUIRED

BY RESOLUTION NO. 2013-01

Approved on February 17, 2016





Georgina Candal Seguro, Esq.	<i>Chair</i>
Esther Vicente, Ph.D.	<i>Vice Chair</i>
Rosemary Borges Capó, Esq.	<i>Secretary</i>
Ruth M. Pérez Maldonado, Esq.	<i>Commissioner</i>
Hiram Meléndez Juarbe, Ph.D.	<i>Commissioner</i>
Ever Padilla Cruz, Esq.	<i>Executive Director</i>
Joel Ayala Martínez, Esq.	<i>Legal Advisor</i>
Hilda C. Sciera Márquez, Esq.	<i>Legal Advisor</i>
María del C. Figueroa Correa, Esq.	<i>Legal Advisor</i>
María Angélica Rodríguez, Esq.	<i>Legal Advisor</i>
Jaime Rosa Malavé, Esq.	<i>Legal Advisor</i>
Alexa Torres Vicente	<i>Special Assistant</i>
Marve Liz Osorio Figueroa	<i>Procurement Officer</i>
Julio Rafael Alejandro Andino	<i>Accountant</i>
Noelani Avilés Deliz	<i>Office Systems Administrator</i>
Elizabeth Méndez Mantilla	<i>Administrative Assistant</i>
Janet Pérez Rosado	<i>Administrative Assistant</i>
Ana M. Torres Reyes	<i>Administrative Assistant</i>
Wendolín Urbina Agosto	<i>Administrative Assistant</i>

Table of Contents

Preface.....	7
Report Required by Resolution No. 2013-01	12
I. Jurisdiction of the Civil Rights Commission	12
II. Background of the Complaint.....	13
III. Task	15
IV. Enabling Act of the Consultation.....	16
V. Public Hearings before the Special Status Commission....	20
VI. Discussion.....	23
A. <i>Sufficiency, Significance, and Effectiveness</i> <i>of the Consultation</i>	23
B. <i>Democratic Process to Determine Status</i>	30
C. <i>The International Covenant on Civil and Political Rights</i> <i>and the U.S.</i>	32
D. <i>Obligations under the ICCPR</i>	39
E. <i>Circumstances Post-Consultation</i>	45
VII. Conclusions	56
VIII. Recommendations.....	58
IX. Dissemination of Report	60
X. Appendices.....	61

Preface

The Civil Rights Commission was created in 1965 by virtue of Public Law No. 102 of June 28, 1965, as amended (hereinafter, Public Law No. 102). Its responsibilities include educating our people about their human rights, including the people's right to self-determination, as established by: 1) Article I, paragraphs 1 and 3 of the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on December 16, 1966, in Resolution 2200 A (XX) (hereinafter, the ICCPR); and 2) Article 1 of the International Covenant on Economic, Social, and Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966, in Resolution 2200 A (XXI) (hereinafter, the ICESCR).

On June 17, 2013, the Civil Rights Commission adopted Resolution No. 2013-1 ordering the investigation and legal study, including public hearings, of the consultation on the political status of Puerto Rico held on November 6, 2012 (hereinafter, the consultation) to de-

termine, among other things, the sufficiency of the consultation, the transparency and effectiveness of the consultation, and the identification of circumstances, if any, that violate or promote the violation of human rights resulting from said consultation.

The Civil Rights Commission, as an independent entity, tasked three distinguished legal counsels with this investigative study: Eduardo Báez Galib, Esq., chair of the Special Status Commission; Andrés Salas Soler, Esq.; and Víctor García San Inocencio, Esq. The work of this Special Commission started with the comments that were submitted and the constitutional analysis of the political situation of Puerto Rico from the perspective of its relations with the United States of America (hereinafter, U.S.) and from the international scenario and concluded with recommendations focused on human rights, particularly on the people's civil and political right to self-determination.

An analysis of Article 11 of Public Law No. 283 of December 28, 2011 (hereinafter, Public Law No. 283), which is the enabling act for the consultation held on November 6, 2012, shows that it states that “having held the consultation on status, the Chair of the Puerto Rico Election Commission shall certify the results to the Governor of Puerto

Rico, the Legislature, and the Secretary of State not later than 48 hours after the canvass is completed. The Governor shall then certify the results to the President and Congress of the U.S.” [translation ours]. *Id.* In accordance with Article 11 cited above, said certification to the President and Congress of the U.S. had to “urge the U.S. Congress and the President to answer the claim of the People of Puerto Rico effectively to enforce their will” [translation ours]. *Id.*

This claim of the People of Puerto Rico has been left without a definite and effective answer from the U.S. The \$2.5 million allocation by the U.S. Congress to hold a consultation on the status of Puerto Rico, without recognizing the voters’ clear rejection of the current colonial status and without meeting the requirements of the ICCPR does not “enforce the will of the People of Puerto Rico” [translation ours]. Nor does it fulfill its responsibility to promote and respect the exercise of the right to self-determination pursuant to the provisions of the ICCPR.

These wrongs cannot be dissociated from recent events that also attempt against the right of the People of Puerto Rico to determine their collective destiny. While the governments of Puerto Rico and the United States ignore the country’s critical voice in the polls, the U.S.

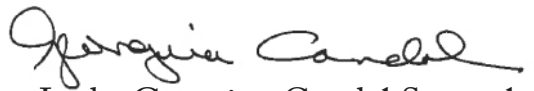
government underlines its posture on the territorial and colonial nature of Puerto Rico in multiple ways, as the Executive Branch did in its recent appearance before the U.S. Supreme Court in the case of *Commonwealth of Puerto Rico v. Sánchez, infra*. This is also articulated in legislative proposals to impose a Fiscal Control Board that would fundamentally undermine the minimum guarantees of democratic participation existing in the current constitutional system.¹

This Report of the Civil Rights Commission makes an urgent appeal to both the U.S. and the Puerto Rican governments. The actions required from both governments must comply with internationally-recognized human right principles. There is also a pressing need for a joint effort to educate the people on its options and on the means available to exercise one of those options. This Commission likewise encourages the

¹ *Puerto Rico Financial Stability and Debt Restructuring Choice Act*, H.R. 4199 – 114th Congress (2015-2016); *Puerto Rico Assistance Act of 2015*, S. 2381 – 114th Congress (2015-2016); See Efrén Rivera Ramos, *Fragilidad de la condición política*, El Nuevo Día, December 15, 2015 (“The measures introduced in both chambers of the Legislature would have serious repercussions. They would suspend key provisions of the Constitution of Puerto Rico indefinitely. They would appropriate functions of the executive and legislative branches of the Puerto Rican government. They would leave important decisions on the internal restructuring of the government, the creation of new revenue, the establishment of priorities, the provision of services, and the distribution of the available resources to the whim of unelected officials who would not be accountable to anyone in the Country. In short, the reduced space for self-government we now have would become substantially smaller.” [Translation ours.]).

People of Puerto Rico to claim and exercise its inalienable and undeniable right to self-determination positively and actively.

In San Juan, Puerto Rico, on February 17, 2016.

A handwritten signature in black ink, reading "Georgina Candal Seguro". The signature is fluid and cursive, with the first name "Georgina" being more prominent than the last name "Candal Seguro".

Lcda. Georgina Candal Seguro

President

Civil Rights Commission

Report Required by Resolution No. 2013-01

I. Jurisdiction of the Civil Rights Commission

The Civil Rights Commission was created by means of Public Law No. 102 of June 28, 1965, which establishes that it “shall be composed of five (5) members appointed by the Governor with the advice and consent of the Senate” [translation ours]. Article 1 of Public Law No. 102. Its duties and powers include “conducting studies and investigations on the effectiveness of human rights and the strict compliance with the legislation protecting such rights” [translation ours]. Article 2(c) of Public Law No. 102. Pursuant to this power, the Civil Rights Commission determines the reports and studies it approves.

The Civil Rights Commission, similar to courts, safeguards the people’s rights, *Adolfo de Castro, Ombudsman v. Cordero*, 130 DPR 376, 399 (1992), and is accorded deference. See, for example, *Leyra v. Aristud*, 132 DPR 489 (1993) (regarding police intervention); *Noriega v. Gobernador*, 130 DPR 919 (1992) (regarding the creation of police files on citizens); *El Vocero v. ELA*, 131 DPR 356 (1992) (regarding freedom of press).

By means of Resolution No. 2013-01, approved on June 17, 2013, the Civil Rights Commission created the Special Status Commission (hereinafter, the Special Commission) with the mandate of conducting an investigation and legal study in relation to the complaint filed by Boricua ¡Ahora Es! See Appendix A. The Resolution enabling this study is framed within the powers of the Civil Rights Commission and establishes the parameters it must follow.

Resolution 2013-01 also established that, after finishing the study, the Civil Rights Commission would issue a report with its findings, conclusions, and recommendations, and said report would be sent to the three Constitutional Branches, the country's media, local and international human rights advocacy organizations, the Library of Congress, and others, in accordance with the organic act of the Civil Rights Commission. *Id.*

II. Background of the Complaint

On June 10, 2013, the movement called Boricua ¡Ahora Es! (hereinafter, BAE), a civic, multisector, and multi-partisan movement, asked the Civil Rights Commission to hold public hearings and investigate allegations on whether the civil rights of the People of Puerto Rico are being violated by the Executive Branch's failure to respect its will and

the processes available to the People of Puerto Rico to enforce its will expressed in the polls. See BAE letter to the Civil Rights Commission dated June 10, 2013, at pg. 1, Appendix B.

BAE claims that the Government of the Commonwealth of Puerto Rico (hereinafter, Commonwealth) has failed to comply with its constitutional and legal duties to disclose and promote the enforcement of the results of the consultation on the political status of Puerto Rico held on November 6, 2012. It states that appropriate and necessary steps have not been taken with the U.S. Government to ensure that the People of Puerto Rico collectively and each Puerto Rican individually may enjoy the right to self-determination. It furthermore states that the U.S. Government has not sufficiently addressed the claim of the Puerto Rican electorate regarding its political status either.

Later on, in a letter addressed to the Special Commission dated December 4, 2013, BAE alleges that the Governor of Puerto Rico is obstructing “any congressional action aimed at obeying the will of the People of Puerto Rico with regards to the status of the island expressed through the results of the Plebiscite held on November 6, 2012” [translation ours], and encloses a letter signed by the Governor addressed to a congressman. See Appendix C.

In Resolution No. 2013-01, the Civil Rights Commission takes cognizance of Public Law No. 283, which provides for holding a con-

sultation “on the political status of Puerto Rico to be held on November 6, 2012, together with the general elections,” and recognizes the holding of the consultation “according to the Official Certification of the Puerto Rico Election Commission, [in which] a total of 970,910 Puerto Rican voters, that is 53.97% of the total 1,798,987 people who participated in the consultation, voted that they did not agree with maintaining the current political status as a territory” [translation ours]. Resolution No. 2013-01.

III. Task

Resolution No. 2013-01 established that the Special Commission would “consist of three (3) members in addition to the five (5) Commissioners of the Civil Rights Commission” with the mandate of conducting “an investigation and legal study, including public hearings, of the consultation on the political status of Puerto Rico held on November 6, 2012” [translation ours].

In relation to the first question included in said consultation, the Special Commission was tasked with identifying the sufficiency, significance, and effectiveness thereof. It was also tasked with identifying the democratic process to determine the status in accordance with human rights, International Law, the Constitution of Puerto Rico, the

U.S. Constitution, the terms of the existing relations between the U.S. and Puerto Rico, and the applicable law and case law. Finally, it was ordered to identify the “circumstances, if any, that violate or promote the violation of human rights resulting from the consultation” [translation ours]. Resolution No. 2013-01.

Resolution No. 2013-01 of the Civil Rights Commission also provides parameters for the investigation and study. It underlines the constitutional principles regarding the right to vote and refers the Special Commission to the 1945 Charter of the United Nations and the International Covenant on Civil and Political Rights. In accordance with this task, the Civil Rights Commission received the feedback of the Special Commission through its report and, after multiple meetings and an extensive analysis, it is issuing the report herein.

IV. Enabling Act for the Consultation

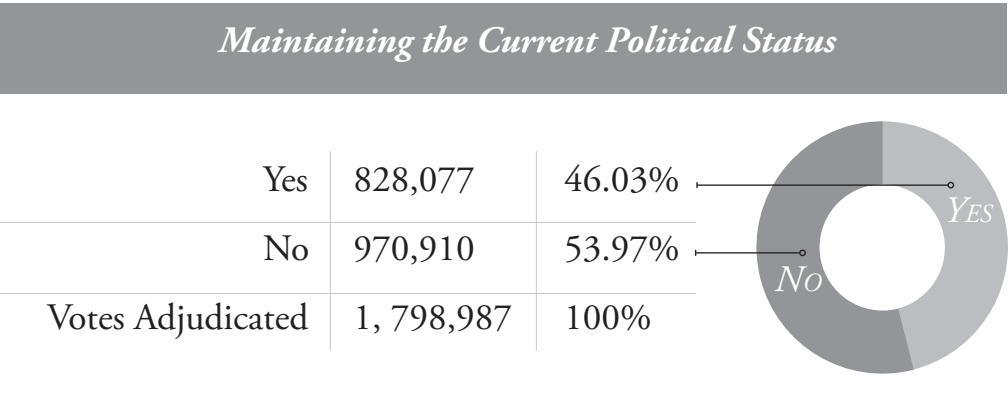
Public Law No. 283-2011 comes from House Bill 3648 (in the Senate, Senate Bill 2303 of 2011), which was introduced on October 5, 2011, approved in the House of Representatives on November 10, 2011, approved in the Senate on December 20, 2011, and signed by the Speakers of the Chambers on December 20, 2011. The final vote in the House was 37 votes in favor, 17 against, with no abstentions. See Ap-

pendix D. The final vote in the Senate was 18 votes in favor, 9 against, and 2 absences. See Appendix E. Public Law No. 283-2011 provides for “a consultation regarding the political status of Puerto Rico to be held on November 6, 2012, together with the general elections,” and “to determine the structure and operation thereof; to allocate funds...” [translation ours]. Its Purposes Article analyzes the history of the status issue and concludes by summarizing the legislative intent: “This process will give Puerto Ricans a unique opportunity to send a clear message to the President and Congress of the U.S. about how we want to solve the status problem and how we want to define our relations with the United States” [translation ours]. See Purposes Article of Public Law No. 283-2011.

Public Law No. 283-2011 provided for posing two questions to the electorate: 1) “whether or not it agrees with maintaining the current political status as a territory” and 2) “to choose among the following non-territorial options: Statehood, Independence, or Sovereign Commonwealth” [translation ours]. Article 1 of Public Law No. 283, Appendix F.

78.19% of the electorate participated in the consultation. Of 2,402,941 registered voters on the lists, 1,878,969 appeared at the polling places. In relation to the first question, which is the subject-

matter of this report, the results were the following, as certified by the Puerto Rico Election Commission:



The mandate for post-electoral action is established in Article 11 of Public Law No. 283-2011, which reads as follows:

The Chair of the Puerto Rico Election Commission shall send a certification of the results of the consultation to the Governor of Puerto Rico, the Legislature, and the Secretary of State not later than forty-eight (48) hours after the canvass is completed. The Governor, in turn, shall certify the result of each of the two questions separately to the President and Congress of the United States. The certification of the Governor shall read: “The People of Puerto Rico have expressed their will freely and democratically with regard to the political status of Puerto Rico as follows (the results of each one of the options offered

for each of the two questions of the consultation shall be provided) and Congress and the President of the United States are hereby urged to answer the claim of the People of Puerto Rico effectively to enforce their will.” [Translation ours]

This mandate is a requirement that is also imposed by the Puerto Rico Election Code for the 21st Century, Public Law No. 78 of 2011 (hereinafter, Public Law No. 78) in Article 11.010:

The Commission shall certify to the Governor the result of the voting on the referendum, consultation, or plebiscite, as well as the proposal that, according to the terms of the special act, has prevailed after the proper canvass of the votes. In any case in which the result of a referendum, consultation, or plebiscite is to have the mandatory effect of law, there shall be an express provision regarding the terms, conditions, and procedural mechanisms to implement the results. [Translation ours]

Both the Chair of the Puerto Rico Election Commission at the time, Hon. Héctor J. Conty Pérez, and the then Governor, Hon. Luis G. Fortuño Buset, fulfilled their ministerial and technical obligation

mandated by Article 11 of Public Law No. 283 and Article 11.010 of Public Law No. 78, cited above. See Appendices G and H.

V. Public Hearings before the Special Status Commission

The following comments (the summary of which is included in Appendix I) were made and received during the public hearings and private sessions that were held:

- Speaker: Dr. Ricardo Rosselló Nevares, Boricua ¡Ahora Es!
Date: November 14, 2013
Place: Puerto Rico Election Commission

- Speaker: Ana Irma Rivera Lassén, Esq.,
Puerto Rico Bar Association
Date: November 22, 2013
Place: Civil Rights Commission

- Speaker: Dr. Pedro Rosselló González,
former Governor of Puerto Rico
Date: January 30, 2014
Place: Civil Rights Commission

- Speaker: Professor José Garriga Picó
Date: January 22, 2014
Place: Civil Rights Commission
- Speaker: Lawrence “Larry” Seilhamer Rodríguez,
Minority Leader, Puerto Rico Senate
Date: January 28, 2014
Place: Civil Rights Commission
- Speaker: Juan Dalmau Ramírez, Esq.
(on behalf of Rubén Berríos, Esq.),
Puerto Rico Pro-Independence Party
Date: February 18, 2014
Place: Civil Rights Commission
- Speaker: José Hernández Mayoral, Esq.,
Puerto Rico Popular Democratic Party
Date: March 27, 2014
Place: Civil Rights Commission

Executive Sessions

- Speaker: Hon. Jennifer González, Minority Leader,
Puerto Rico House of Representatives
Date: October 29, 2013
- Speaker: Hon. Luis Vega Ramos, Representative,
Puerto Rico House of Representatives
Date: October 3, 2013
- Speaker: Hon. Juan R. Torruella, Judge,
U.S. Court of Appeals for the First Circuit
Date: March 13, 2014
- Speaker: Gregorio Igartúa de la Rosa, Esq.
Date: October 8, 2013
- Speaker: Luis Dávila Colón, Esq.
Date: November 25, 2013

Written comments received

- Speaker: José Muñoz Gómez,
High School Republicans of Puerto Rico
Date: November 26, 2013

- Speaker: Luis Enrique Romero Nieves, Esq.
(supplementary paper to comments of
Juan Dalmau Ramírez, Esq.), Puerto Rico
Pro-Independence Party
Date: May 6, 2014

VI. Discussion

A. *Sufficiency, Significance, and Effectiveness of the Consultation*

Resolution No. 2013-01 provides for an investigation on whether or not the consultation that was held was sufficient, significant, and effective. We can dispose of that order without much difficulty if we consider that, first, the event was held without major problems. The electoral event was not subject to court orders preventing it from being held and, after it was held, its lawfulness has not been challenged. No legal arguments arose from the comments that were received or the private meetings about the electoral intent being violated or fulfilled defectively. That is, the electorate was offered the question about the current political status, the question was answered by the electorate, and the result was notified as required by Public Law No. 283.²

² The case of *Pierluisi v. González Román*, Case No. K PE2014-1642 (806), regarding a review of a decision of the Puerto Rico Election Commission was filed on June 12, 2015. Said case does not challenge the lawfulness of the consultation. It requests that the Puerto Rico Election Commission be ordered to prepare and send to the U.S. Attorney General a ballot to hold a plebiscite under the 2014 Consolidated Appropriations Act in which Congress establishes a sum of money to hold a status plebiscite in Puerto Rico. After checking the file on January 25, 2016, at the Office of the Clerk of the Court of First Instance, the case appears as active and in the Judge's chambers with several motions filed and pending resolution.

In relation to the “significance” of the consultation, we believe it would be appropriate to refer to the definition of the term [in Spanish, *trascendencia*] provided by the Diccionario de la Lengua Española, Real Academia, 21st Ed., at pg. 2014: “*trascendencia – de mucha importancia o gravedad, por sus probables consecuencias*” [significance – of great importance or seriousness because of its likely consequences]. As we will discuss in more detail below, we believe that the importance and seriousness of the results of the first question of the consultation are centered on the expression of the People of Puerto Rico of their discontent with the current political relations between the U.S. and Puerto Rico. This discontent has resulted in an electoral expression that undermines the argument about the consent of the People of Puerto Rico to the political relations between Puerto Rico and the United States. We believe that this electoral expression is significant due to the consequences for the human rights of the People of Puerto Rico implied by said lack of consent, as it underlines the lack of democratic legitimacy of the political relations between Puerto Rico and the United States.

Finally, in relation to the “effectiveness” of the consultation, we would like to note that it will depend on whether Congress, the Government of Puerto Rico, and the people themselves commit to answering the claim expressed in the results of the consultation.

In this sense, it has been argued that the allocation of \$2.5 million by the U.S. Congress to hold a status plebiscite in Puerto Rico at the request of the President is an answer to the consultation and the result thereof. That allocation was made after the consultation of November 6, 2012, was held and after the result was notified. See Consolidated Appropriation Act, 2014, amendments of January 13, 2014 to H.R. 3547. In fact, the Office of President Obama took formal cognizance of the consultation.

However, the mere fact of allocating money for a consultation does not release the U.S. Congress from its responsibility to the international community in relation to human rights. Particularly, the U.S. is responsible for honoring the right of the People of Puerto Rico to self-determination, in accordance with the ICCPR and the ICESCR and its obligations under the Peace Treaty of Paris in which Spain relinquished its sovereignty over Puerto Rico and transferred it to the United States and in which it is thus made responsible for the “civil rights and political status” of Puerto Ricans. Article IX of the Peace Treaty of Paris. The allocation of funds does not guarantee a process of self-determination nor respects its results. We must therefore make a distinction between the ministerial duty to inform, as established by the law, and the obligation to respond, which transcends the law.

The controversy raised in the Complaint about whether or not a mandate given in an electoral consultation is carried out is not novel in our jurisdiction. The 1969 plebiscite was addressed in *PPD v. Ferré*, 98 DPR 338 (1970). The pertinent act required giving President Lyndon B. Johnson notice of the result and appointing several members to a dialogue committee. The notice was given and the Popular Democratic Party (PPD, Spanish acronym) demanded that the Governor appoint the people nominated by said party. Governor Luis A. Ferré refused alleging executive authority and the Supreme Court supported the Governor's position. The Supreme Court, in a Judgment denying the mandamus requested against Governor Ferré to appoint the PPD's nominees, explained the controversy as follows:

The matter in issue in the case herein... boils down to determining whether, under the facts and circumstances presented in this case, it is appropriate according to the applicable Law for this Court to use its coercive power to compel the defendant to act in the way the plaintiff claims or whether it must deny the request for the defendant to perform, at his discretion and according to his powers under the Constitution and the Plebiscite Act as chief executive, his duty to make the result of the plebi-

scite feasible for the improvement and development of the Commonwealth. *PPD v. Ferré*, 98 DPR at pg. 347.
[Translation ours.]

Later, in *Báez Galib v. Rosselló*, 147 DPR 371 (1999), there was a notice by publication by the Secretary of State regarding the result of the plebiscite ordered by Public Law No. 249 of August 17, 1998, contrary to the mandate in said legislation. A majority of voters chose the so-called Fifth Column (“None of the Above”). The Supreme Court ordered the compliance with said publication mandate as provided in the enabling act. The Supreme Court issued a writ of mandamus ordering the Secretary of State to publish the notice again reporting the results of the plebiscite in the appropriate order. She had incorrectly identified statehood as the winning formula. The column that obtained the most votes was “None of the Above.”

The Certification of the Chair of the Puerto Rico Election Commission dated December 22, 1998, constitutes the only official document that must be certified and published in its entirety without any changes. As such, it cannot be modified, whether by changing the order or the contents thereof. The legislative mandate does not grant

the Secretary of State, Honorable Burgos, or the Governor, Honorable Pedro Rosselló González, freedom to stray from the aforementioned original certification.

Such action undermines the value of the vote, which is inextricably linked to an alternative incorporated by the Legislature in the ballot, and, unlike void and blank ballots, granted voters a specific option. *Báez Galib*, 147 DPR at pgs. 374-75. [Translation ours.]

More recently, in *Córdova v. Cámara de Representates*, 171 DPR 789 (2007), the Supreme Court refused to order the House to enact a bill for a constitutional amendment to make the Legislature into a single chamber, as mandated by the voters in the referendum held on July 10, 2005, under Public Law No. 477 of September 23, 2004. The Court stated the following:

In closing, we are aware of the fact that a majority of the Puerto Rican voters were in favor of having the Legislature propose amendments to adopt a single-chamber model. However, our constitutional system prevents us from ordering the members of either Chamber to legislate to initiate the process of amending the Constitution

established in Article VII. The mandate established in the legislation under analysis is contrary to our Highest Law... Pursuant to the foregoing, it is in the political arena and through the polls that petitioners must hold [the Legislature] accountable, as appropriate. Making any other decision would be contrary to the republican system of government and the Constitution we have sworn to defend. *Córdova*, 171 DPR at pg. 813. [Translation ours.]

Said opinions show a consistent doctrine. The letter of the law must be fulfilled as legislated and voted by the majority, particularly in relation to ministerial duties that do not require the discretionary exercise of the constitutional prerogatives of the various government actors. Notices must be given as provided by law. Ballots, for example, must include what is established in the enabling act. However, in the compliance of the mandate of said electoral acts, space must remain to allow the Governor and the Legislature to act in accordance with their constitutional prerogative in relation to their response to the results of the elections. Therefore, these rulings are in keeping with the traditional distinction between ministerial duties and the discretionary prerogatives of government institutions. Judicial relief is in order in view of a failure to comply with a ministerial duty. However, in view of the discretionary exercise of powers delegated to a governmental actor in the Constitution, only

political remedies at the polls are available. This distinction exists in the pertinent legal system since, at least, the rulings of Chief Justice John Marshall in *Marbury v. Madison*, 5 U.S. 137 (1803).

In the situation we are analyzing today, we believe that when the Chair of the Puerto Rico Election Commission informed the Governor of the results of the consultation and the Governor, in turn, informed the President and Congress of the U.S., said Puerto Rican governmental actors complied with the mandate established in Public Law No. 283. As a matter of law, then, there is no violation of Public Law No. 283 justifying judicial relief.

Nonetheless, the holding of the consultation and the subsequent result in relation to the first question, shows a majority rejection of the current status. In view of this and, in spite of having complied with the letter of Public Law No. 283, the right to self-determination of the People of Puerto Rico, as the human right that it is, has been cut short. Therefore, there is much to do in the political arena to look after Puerto Ricans' human rights properly.

B. Democratic Process to Determine Status

Resolution No. 2013-01 orders us to identify a process to determine the political status of Puerto Rico. However, at this point, we must define the appropriate role of the Civil Rights Commission

and the limits of its powers and authority. It is not incumbent upon the Civil Rights Commission to “solve the status issue.” *Only the people of Puerto Rico can determine the course of their political destiny by exercising their inalienable individual and collective right to self-determination.* What the Civil Rights Commission can and must do is set some boundaries along that road as a reminder and guideline of the human rights that any decolonizing process must respect.

The Puerto Rican electoral experience in deciding matters related to the political status of the relations between Puerto Rico and the U.S. has included plebiscites, study commissions, congressional initiatives, and task forces.³ None of these processes has been able to make its results feasible beyond determining the inclination of the electorate at a given time and fanning the political-partisan debate.

Convening a Constitutional Status Convention has been proposed, for example, as a mechanism that will allow for the discussion of the issue within a framework other than the usual electoral framework. It would consist of a process similar to the 1951-52 Constitu-

³ “Plebiscite” is an election to choose preferences “among several opinions regarding a single matter of political organization, including but not limited to the political relations between Puerto Rico and the United States” [translation ours]. Article 2.003 (76) of Public Law No. 78. “Referendum” is an electoral consultation “to approve or reject one or several specific proposals regarding public policies to be adopted or legislation to be enacted regarding matters of general interest” [translation ours]. Article 2.003 (82) of Public Law No. 78. *See also, Sánchez Vilella v. ELA*, 134 DPR 503, 504 fn. 1 (1993); *Ortiz Angleró v. Barreto Pérez*, 110 DPR 84, 110-11 (1980).

tional Convention that drafted and approved the Commonwealth Constitution. Just like the 1951-52 Constitutional Convention, its members would be elected directly by the people and, later, its decisions would also be brought to a popular vote to accept or reject them.⁴

Choosing an electoral plan to address the status issue has been part of the ideological-partisan debate. If the Civil Rights Commission were to recommend a specific process, it could be improperly intervening in an inherently political process that corresponds to other governmental actors. However, the foregoing does not prevent the Civil Rights Commission from expressing what it believes are essential requirements for a consultation, regardless of what process is chosen, to comply with rights to due process and the applicable human rights, including the right to self-determination.

*C. The International Covenant on Civil and Political Rights
and the U.S.*

We will not discuss the applicable constitutional rights here, as both Puerto Rico and U.S. courts and the literature on

⁴ See Final Report on Senate Resolution No. 201 of March 11, 2002, by the Commission on Legal Affairs of the Puerto Rico Senate, Appendix J; Senate Concurrent Resolution No. 107 of 2004 (taken to a vote and approved, declaring that holding a Constitutional Status Convention would be public policy; since it was a Concurrent Resolution it expired on the last day of the Legislature that approved it), Appendix K.

Constitutional Law have addressed said matters thoroughly.⁵

Consequently, we will analyze aspects related to the human rights recognized by the international community, as mandated by Resolution No. 2013-1. We are specifically referring to the United Nations International Covenant on Civil and Political Rights, considering its applicability to the situation of Puerto Rico from the point of view of *self-determination* as one of the rights established therein. It is evident that, because of our political reality, we will address this from the perspective of the U.S. as a State Party to said Covenant.

Although the ICCPR was initially adopted by the international community on December 16, 1966, it was not until March 2, 1992, 26 years later, that the U.S. ratified it. The ICCPR, thus, came into effect in relation to the U.S. on September 8, 1992. However, Congress included certain conditions that limit the authority of the treaty in relation to U.S. citizens.⁶ Two of these limitations are essential to our analysis: 1) that the treaty is not self-executing⁷; and 2) that a U.S. citizen cannot appear directly before the international entity to file complaints for violations of the ICCPR. 138 Cong.

⁵ See, for example, Rivera Ramos, *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico* (2001); *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution* (Duffy Burnett & Burke Marshall, Eds.) (2001); Álvarez González, *Derecho Constitucional de Puerto Rico y Relaciones Constitucionales con los Estados Unidos: Casos y Materiales* (2009).

⁶ In matters of treaties, a state may conditionally adhere to the same by means of “reservations,” “understandings,” or “declarations,” so that claims cannot be made against it regarding those conditions.

⁷ “The United States declares that the provisions of Article 1 through 27 of the Covenant are not self-executing.” 138 Cong. Rec. S4781-01, April 2, 1992. In other words, the provisions in the ICCPR will apply to U.S. citizens only if Congress legislates to such effects and not by the mere fact that the United States joined the ICCPR.

Rec. S4781-01, April 2, 1992. This, however, does not dispose of the issue.

The Complaint filed with the Civil Rights Commission by BAE involves the recognition of obligations of the U.S. government regarding the right to self-determination assumed in the framework of International Law, pursuant to the ICCPR and the American Convention on Human Rights, before the international community and to the people of Puerto Rico. Thus, these are human rights anchored in the formidable and dynamic development of the claim and validation of the right to the self-determination of the peoples around the world in the past seven decades.⁸

The Civil Rights Commission believes that the U.S. assumed a serious obligation to Puerto Rico, not only before the international community, but before its own citizens.

In Executive Order No. 13107 of December 10, 1998, to implement human rights treaties, President Clinton ordered the following:

It shall be the policy and practice of the Government of the United States, being committed to the protection and

⁸ The Organization of American States (hereinafter, OAS) adopted the American Declaration of the Rights and Duties of Man, <http://www.oas.org/en/iachr/mandate/Basics/declaration.asp> (last accessed on April 24, 2016). There are two cases submitted before the OAS, one by Dr. Pedro Rosselló and another one by the National Lawyers Guild on behalf of ten Vieques residents. To learn about the position of the U.S. before the OAS regarding the filing of cases by its citizens, see *Jessica González*, O.E.A./Ser.L/V/II.130 Doc. 22, Rev. 1 (2007).

promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.⁹ (énfasis suplido).

The U.S. Government informed the United Nations Human Rights Committee about the aforementioned Order:

[T]he United States is committed to domestic implementation of U.S. human rights obligations, including mainstream human rights into domestic policy and engaging into robust dialogue with U.S. civil society partners on U.S. human rights implementation. On December 18, 1998, President Clinton issued Executive Order 13107 regarding the implementation of human rights treaties...

United States Response to Questions from the United Nations Human Rights Committee Concerning the Fourth Report of the United States on the International Covenant on Civil and Political Rights (ICCPR), <https://www.aclu.org>.

⁹ International Covenant on Civil and Political Rights (ICCPR); Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Even though the U.S. Congress imposed conditions on the application of the ICCPR to its citizens and even accepting the reluctance of the courts to enforce those rights through their judicial authority, the President has made a commitment to respect them. The presidential recognition makes the U.S. accountable to complying with the commitments assumed with the international community. In that sense, we must remember the pronouncements of the U.S. Supreme Court that “[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.” *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 319 (1936) (quoting Annals, 6th Cong., col. 613). Thus, in this case, we are facing the exercise of the “very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress.” *Id.*, at pg. 320.

On the other hand, the Office of the High Commissioner for Human Rights has toughened its stance on the “reservations”¹⁰ that signatories include in the treaty, such as those imposed by the U.S. Congress, insinuating that the citizens of those countries could file complaints with international entities regardless of the fact that a “reservation” prohibits it. In its session on November 4, 1994, the Human Rights Committee adopted Comment Number 24:

¹⁰ Through reservations, a country may ratify a treaty but with the limitations they establish.

Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant. Although treaties that are mere exchanges of obligations between States allow them to reserve inter se application of rules of general international law, it is otherwise in human right treaties, *which are for the benefit of persons within their jurisdiction...*

[...]

It necessarily falls to the Committee to determine whether a specific reservation is compatible with the object and purpose of the Covenant. This is in part because, as indicated, it is an appropriate task for the State parties in relation to human rights treaties, and in part because *it is a task that the Committee cannot avoid* in the performance of its function. In order to know the scope of its duty... the Committee has necessarily to take a view of the compatibility of a reservation with the object and purpose of the Covenant and general international law. Because of the special character of a human rights treaty, the compatibility of the reservation with the object and purpose of the Covenant must be established objectively by reference to

legal principles, *and the Committee is particularly well placed to perform this task . . .*¹¹ (énfasis suplido).

Our Supreme Court has already recognized the existence of the ICCPR, giving it presence in our jurisdiction and applying it by reference by accepting its guidance in other matters not related to the political status. *See, A.R.R. Ex Parte*, 187 DPR 835, 983 (2013); *Pueblo v. Negrón Rivera*, 183 DPR 271 fn. 20 (2011); *Pueblo v. Padín Rodríguez*, 169 DPR 521, 529 (2006). In his dissenting opinion in *Báez Galib*, 152 DPR 382 (2000), a case related to Puerto Ricans' vote for the U.S. President, Associate Justice Rivera Pérez offers a lengthy explanation summarizing the contents of the ICCPR and the reservations submitted by the U.S. to legally support his position that the ICCPR applies to Puerto Rico in relation to the redress of grievances. Even though, as a dissent, it does not have the support of the majority opinion and does not set a precedent, addressing the explanation is worthwhile because of its didactic value and the importance that had been previously ascribed to the ICCPR by the Supreme Court itself:

As we have seen, the aforementioned “Covenant” defines the nature of the grievance for which the [presidential vote legislation] provides a mechanism of public expres-

11 *Office of the High Commissioner for Human Rights*, CCPR/C/21Rev. 1/Add.6. General Comment No. 24, Fifty Second Session, 4 November 1994. Párrafos 8 y 18.

sion so that the people may ask Congress for redress...
[Translation ours.]

D. *Obligaciones que emanan del Pacto IDCP*

The ICCPR establishes specific obligations for State Parties. Article 1, paragraphs 1 and 3, establish the following:

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

.....

3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations. (Emphasis added.)*

We are then facing the legal problem about whether or not the ICCPR, having been ratified by the U.S., applies to our political situation. To such effect, we must take cognizance of Article 9 of

the Federal Relations Act, which designs a legal bridge between the U.S. and Puerto Rico as follows: “The statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Puerto Rico as in the United States...” 64 Stat. 319, 1 P.R. Laws Ann. Sec. 9, Federal Relations.

We have already seen the explicit recognition and implementation by the U.S. Government through President Clinton’s Executive Order and the communication of that Government to the Human Rights Committee guaranteeing its compliance with the rights and protections arising from the ICCPR. As recently as on January 20, 2010, the U.S. Department of State Legal Adviser at the time, Harold Hongju Koh, sent a memorandum to the Governors of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands indicating that “the United Nations Committees have expressed interest in confirming that the existence and substance of these treaties is made known throughout the territory of the United States.”¹²

In Article 40, the ICCPR requires that State Parties submit reports on how they implement their responsibilities under the same.

12 “Because implementation of these treaties may be carried out by officials at all levels of government (federal, state, insular, and local) under existing laws applicable in their jurisdictions, we want to make sure that the substance of these treaties and their relevance to the United States is known to appropriate government officials and to members of the public.” *Unclassified Memorandum for Governors*, January 20, 2010, <http://www.state.gov/documents/organization/137291.pdf>.

The U.S. has respected that obligation. Its *Fourth Periodic Report* of December 30, 2011, <http://www.ushrnetwork.org/resources-media/us-governments-fourth-periodic-report-iccpr> (last accessed on April 25, 2016, 12:30 pm), states the following:

It is with great pleasure that the Government of the United States of America presents its Fourth Periodic Report to the United Nations Human Rights Committee concerning the *implementation of its obligations under the International Covenant on Civil and Political Rights* (“the Covenant” or “ICCPR”), *in accordance with Covenant Article 40. The United States is committed to promoting and protecting human rights...*” (énfasis suplido).

In relation to the implementation of specific provisions of the ICCPR, it states the following regarding Article 1 on free determination or self-determination:

The United States remains firmly committed to the principle of self-determination, and that principle, set forth in Article 1 of the Covenant, remains at the core of American political life. See generally, U.S. Constitution, Articles I and II.

Id. Regarding insular areas, it states the following:

The United States continues to exercise sovereignty over a number of Insular Areas, each of which is unique and continues an integral part of the U.S. political family

The Insular Areas of the United States remain the same as indicated in the combined Second and Third Periodic Report. They include Puerto Rico, a Commonwealth that is self-governing under its own constitution

Id. Finally, referring exclusively to Puerto Rico, it reported the following:

(8) The Commonwealth of Puerto Rico.

As reported in paragraph 8 of the Combined Second and Third Periodic Report, the people of Puerto Rico have expressed their views on their relationship with the United States in a number of public referenda, most recently in December 1998. In 1992 President George H. W. Bush declared the policy that the will of the people of Puerto Rico regarding their political status should be ascertained

periodically through referenda sponsored either by the United States Government or by the legislature of Puerto Rico, 57 F.R. 57093. In 2009, President Obama expanded the mandate of the Task Force to include recommendations on policies that promote job creation, education, health care, clean energy, and economic development in Puerto Rico. The 2011 Task Force Report included extensive recommendations on these issues, as well as recommendations, inter alia, that *“the President, Congress and the leadership and people of Puerto Rico work to ensure that Puerto Ricans are able to express their will about status options and have that acted upon.”*

Id. (Emphasis added.).

Despite the clear expression of the voters in the consultation held on November 6, 2012, in which it was established by majority vote that the people did not agree with maintaining the current political status as a territory, the U.S. has not acted to guarantee the human rights established in the ICCPR as it has committed to doing.

We must note that, even though the U.S. was released from informing the U.N. about Puerto Rico under the responsibilities

prior to the creation of the Commonwealth, the U.S. has now voluntarily recognized an obligation to report on the political status of Puerto Rico by submitting these reports required by the ICCPR. This evidences that, even with the conditions imposed by Congress in the ratification of the ICCPR, the Executive Branch, through the Department of State, has recognized both its effectiveness and its application to citizens, as well as the fact that the ICCPR applies to Puerto Rico and, consequently, to the political relations between Puerto Rico and the U.S.

All of the foregoing is exacerbated when we consider that, on December 23, 2015, the U.S. Government stated its position about the territorial and non-sovereign nature of Puerto Rico for the record before the U.S. Supreme Court. The U.S. Solicitor General was not frugal in his explanation:

The ultimate source of sovereign power in Puerto Rico thus remains the United States... Congress did not enter into an irrevocable “compact” with Puerto Rico, and as a constitutional matter, Congress cannot irrevocably cede sovereignty to Puerto Rico while it remains a U.S. territory... although Puerto Rico is locally self-governing, it remains a U.S. territory under the Constitution... The

Executive Branch has recognized that Puerto Rico remains a U.S. territory subject to Congress's authority.

Brief for the United States as Amicus Curiae Supporting Respondents, Commonwealth of Puerto Rico v. Sánchez Valle, No. 15-108, at pgs. 8-9 (U.S. 2015).

Thus, it has been made abundantly clear that the *U.S. Government itself has admitted that the people of Puerto Rico have not been able to exercise their right to self-determination.*

E. Circumstances Post-Consultation

In view of the foregoing, we believe that the budget appropriation by Congress, at the request of the President, to hold a consultation about political status in Puerto Rico is significant. This event could offer an opportunity to design an effective process, taking advantage of two circumstances that arose after the enactment of Public Law 600 and the founding of the Commonwealth. The first circumstance is that the U.S. Congress has become involved in the issue, albeit timidly and limitedly. Nonetheless, we must point out that the financial commitment of the U.S. Congress requires accountability and legislative follow-up. The second notable circumstance is that, as a condition for the outlay of these funds, the

U.S. Attorney General is under the obligation to pass judgment on the constitutionality of the plan suggested by Puerto Rico. We must note that, in its appearance as *amicus curiae* cited above, the U.S. Government set forth its opinion on the constitutional validity of the status options to which Puerto Rico could have access.¹³ Considering that the U.S. Department of Justice is under the authority of the aforementioned Executive Order that requires that all officials enforce the ICCPR, the principles of self-determination must be included in any bill for a plebiscite.

Puerto Rico's requirements in that process with the U.S. Attorney General must then be framed in the principles of the ICCPR, as the U.S. Government has already recognized before the international community that those principles are accessible to Puerto Rico with the commitment—established in the Fourth Report—to respect the result. *Puerto Rico representatives are then required to guarantee to Puerto Ricans that they will insist on the responsibility assumed by the U.S. under the ICCPR and that they will reject any decision of the U.S. Attorney General that does not include the rights established in the ICCPR.*

¹³ Brief for the United States as Amicus Curiae Supporting Respondents, *Commonwealth of Puerto Rico v. Sánchez Valle*, No. 15-108, at pg. 33 (U.S. 2015). (“‘Puerto Rico is, for purposes under the U.S. Constitution, a territory,’ and therefore is ‘subject to congressional authority, under the Constitution’s Territory Clause.’... Congress could ‘continue the current system indefinitely, but it also may revise or revoke it at any time,’ and Congress cannot enter into an arrangement with Puerto Rico that ‘could not be altered without the ‘mutual consent’ of Puerto Rico and the [F]ederal Government.’... ‘The Federal Government may relinquish United States sovereignty by granting independence or ceding the territory to another nation; or it may admit a territory as a State, but ‘the U.S. Constitution does not allow other options.’”) (Quoting the *Report by the President’s Task Force on Puerto Rico’s Status* (Dec. 2005).)

Any process must necessarily be in keeping with the options of change defined by public international law. A jurisdiction without national sovereignty¹⁴, such as Puerto Rico, may access this sovereignty in three ways:¹⁵

1. *Emergence as a sovereign independent State;*
2. *Free association with an independent State;*

Free Association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and

¹⁴ The Commission recognizes the debate on sovereignty that is going on in the country. In this report, the concept is being used in accordance with the principles on which the U.N. bases its decisions.

¹⁵ Resolution 1541 (XV) of 1960. See also, Resolution 1514 (XV) of 1960.

the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

3. Integration with an independent State.

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative, and judicial organs of government.

Integration should have come about in the following circumstances: The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes.

The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

At this point, we should stop for a moment to consider the importance of this matter in relation to the application of the legislation enacted by the U.S. Congress in Puerto Rico. The undeniable legal-political reality is that the people of Puerto Rico lack the power to have a decisive participation in matters affecting their public life. Congress imposes legislation applicable to Puerto Ricans without them having representation in said forum. The President manages and enforces said legislation in Puerto Rico without having been elected by the people of Puerto Rico. And the U.S. judiciary pronounces judgments that are binding on Puerto Ricans even though they have not participated in the process of nominating, confirming, and appointing its members. Our current political system denies the people of Puerto Rico access to the election processes and political relief that other U.S. citizens have.

In view of the foregoing reality, for many decades, some people have argued that the process of founding the Commonwealth, which originated in Congress with a commitment of enforcement,¹⁶ substantially complied with the right to self-determination and solved the problems of political accountability mentioned above. We are referring to the theory of “generic consent.”¹⁷

Due to its importance in the history of the people of Puerto Rico and its relevance to the consultation and its results, we must briefly elaborate on this theory.

At the time of the enactment of Public Law 600 and the founding of the Commonwealth, the international obligations of the U.S. arose from other provisions, since the ICCPR had not been approved or ratified by the U.S. To circumvent the responsibilities imposed by the United Nations to report on the territories under its authority,¹⁸ in the process of founding the Commonwealth and approving its Constitution, there was a “waiver” of the right of Puerto Ricans, as U.S. citizens, to participate in the enactment of any legislation affecting them. The following has been explained regarding this “waiver” or “generic consent”:

¹⁶ 64 Stat. 314, July 3, 1950.

¹⁷ “It implies..., among other things, the ongoing validity of federal legislation in Puerto Rico without establishing the participation of Puerto Ricans in its elaboration and adoption, except in relation to the Resident Commissioner in Washington, who has a voice but no vote in Congress. Such limitations consequently constitute a very marked violation of the principles of ‘government by consent,’ unless the idea of ‘generic consent’ extends to cover any past and future legislation from Congress. This type of ‘generic consent,’ just like Hitler’s Enabling Act in March 1933, is usually considered by scholars of constitutionalism as precisely opposed to ‘government by consent.’ Therefore, some kind of consultative procedure must be elaborated...” [Translation ours.] Carl J. Friedrich, *Introducción, La Nueva Constitución de Puerto Rico*, Edición Facsimilar 2008, Universidad de PR, at pgs. 16-17.

¹⁸ Charter of the United Nations, Chapter XI, Article 73 (e), regarding periodic reports.

Public Law 600 did not come fully into force until its acceptance by the Puerto Rican people in an island-wide referendum. This acceptance also signified that Puerto Ricans, for the first time, consented, through Section 9 of the Puerto Rico Federal Relations Act... to be governed by federal laws not locally inapplicable, even though the citizens of Puerto Rico did not have any participation in the enactment of such laws. This provision in Section 9 is sometimes referred to as the generic consent given by Puerto Rico to the unencumbered applicability of federal laws.

Casellas, Commonwealth Status and the Federal Courts, Revista Jurídica UPR, Vol. 80. No. 4, 2011, pg. 949 (emphasis in the original).

“Generic consent” has been a topic of discussion for a long time in the political-legal debates in our country. It is well known that certain ideological sectors, particularly pro-independence sectors (although this point of view is also shared by sectors from other political ideologies), believe that “generic consent” was never given. Juan Dalmau Ramírez, Esq. (former candidate for governor for the Pro-Independence Party) explained the following in his comments before the Special Commission:

The victory of the “no,” means the breaking of old anti-democratic theories... The... absurdity was that our condi-

tion of subordination is legitimate, as it is the product of a legal-political relationship between Puerto Rico and the United States to which we had freely and voluntarily consented in 1952. As a result of the victory of the “no,” that argument has become unsustainable insofar as there is today a majority in Puerto Rico who has decisively expressed that they simply do not agree with the current relationship with the United States of America and demand a change in the nature of said relationship. [Translation ours.]

Dr. Ricardo Rosselló Nevares (one of the BAE complainants) presented a similar argument in his comments:

The consent to a colonial/territorial system—if there ever was one—was unequivocally revoked on November 6, 2012. The significance of the consultation is that it revoked any consent of the people of Puerto Rico to the current status and constitutes the first direct electoral mandate of the people to implement a non-colonial, non-territorial status. [Translation ours.]

On the other hand, the comments made by José Hernández Mayoral, Esq., on behalf of the Popular Democratic Party Chair,

Alejandro García Padilla, address the topic from the point of view that the consent is part of a bilateral covenant between the U.S. and Puerto Rico:

The process followed by Puerto Rico in 1952 was similar to the admission processes of the States, with the adoption of a constitution and the assumption by Puerto Rico of all the responsibilities of the local government. Unlike regular or organic acts, in this case, an act by Congress came into effect only after the people of Puerto Rico gave their consent, that is where its nature as a covenant stems from.

The controversy about the validity of that generic consent has been latent in our political and legal debate.

The consent of the people of Puerto Rico expressed through the referendum approving Public Law 600 is clearly the current grounds to apply certain provisions of the U.S. Constitution. The theory of consent to the application of the constitutional provisions with the new status also allows a different and more precise view of the process of extending a certain clause of the U.S. Constitution to Puerto Rico. Thus far, we have only envisaged that the various provisions of that Constitution constitute solid, indivisible blocks. Why? [Translation ours.]

José Trías Monge, *El Estado Libre Asociado ante los Tribunales*, Revista Jurídica UPR, 1995, 64 Rev. Jur. U.P.R. 1. See also, Ángel Israel Rivera, *Una reflexión necesaria*, February 12, 2016, 80grados, <http://www.80grados.net/una-reflexion-necesaria/>. Some participants in both processes, legal and political, including Trías Monge, also indicate that the consent given by Puerto Rico for the U.S. to exercise certain powers over the island “was excessively general in nature” [translation ours]. *Id.*, at pg. 47. In *Ramírez de Ferrer v. Mari Bras*, 144 DPR 141, 193 (1997), however, the “consent” was judicially recognized by our Supreme Court as an element of a covenant between Puerto Rico and the U.S.

Now, we must not forget that the process of founding the Commonwealth and its Constitution, as well as the electoral event that validated the application of Public Law 600 and by means of which the generic consent was allegedly given, occurred between 1950 and 1952. However, it was not until:

December 16, 1966, [that] the International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations. Said “Covenant” was approved by the United States on March 2, 1992. Its ratification was deposited with the Secretary-General of the

United Nations on June 8, 1992. It came into effect for the United States on September 8, 1992. [Translation ours.]

Báez Galib, 147 DPR at pg. 148. This legal reality produced by the ICCPR,¹⁹ together with the result of the vote on the first question of the consultation subject-matter of analysis in which the electorate stated that it did not agree with the political status of Puerto Rico, points toward a new legal status in which the U.S. would be, much more than ever before, under the obligation to revise its stance in relation to the consent that was given by Puerto Ricans in the process of founding the Commonwealth and approving its Constitution since: 1) the U.S. adhered to the ICCPR, with all the implications discussed above and, in its duty to answer for its obligations, it made an express commitment in its Reports to the Human Rights Committee to respect the will of the people of Puerto Rico; 2) regardless of how it may have been in the past, the legal and political theories that supported the concept of generic consent would not work under the new international obligations of the U.S.; and 3) the Puerto Rican electorate expressed its disagreement with the political status of Puerto Rico as it was understood at the time of the consultation.²⁰

19 Citizens shall have, “without unreasonable restrictions,” the right to “take part in the conduct of public affairs, directly or through freely chosen representatives.” Article 25 of the ICCPR. Even though we are allowed congressional representation through a Commissioner, said representative does not have the right to vote and his or her interventions are not equal to those of the rest of the members of Congress. This has generated the historical controversy that the quality of the U.S. citizenship of Puerto Ricans is not the same as that of people who are residents of one of the fifty states since the latter have the right to representation and to vote for the electors who will choose the President of the U.S.

20 For purposes of the electoral process, the current status was defined as “territory.” It is unnecessary to enter into a debate about this aspect, which has mostly developed at a partisan level.

All the people who appeared to comment asserted the right to self-determination and to have the U.S. and Puerto Rico governments make feasible the decision that Puerto Ricans freely make regarding this matter, and they all recognized the right of the residents of Puerto Rico to the free and democratic determination of the political status that should be established.²¹

VII. Conclusions

We conclude that the consultation has not been effective, as there has been no congressional commitment to the claim nor a recognition of the rejection of the current status of Puerto Rico by its electorate. Subjecting the electorate to the decisional process of the consultation on whether or not they agree with the current political status and not producing concrete results constitutes a violation of the right to self-determination.

The lack of action by the U.S. government to solve the issue of the political status constitutes a violation of the human rights of the people of Puerto Rico. Even though the Puerto Rico Election Commission and the Governor of Puerto Rico complied with the mandate of informing the President and Congress of the U.S. about the results, this

²¹ The electoral participation of Puerto Ricans who are not residents of Puerto Rico was not taken into consideration.

step is insufficient. It is imperative that, in keeping with international law standards applicable to territories that have not accessed the full exercise of their sovereignty, both governments begin an effective process of self-determination for Puerto Rico in view of a mandate by the people such as that expressed through the votes on the first question of the consultation.

A new status in the political-legal relations between Puerto Rico and the U.S. has been created as a result of: 1) the adhesion of the U.S. to the ICCPR and the orders of the President of the U.S. regarding the compliance with the provisions thereof; 2) the result of the vote on the question regarding the current political status; and 3) the impact that said result has on the “generic consent” ascribed to the approval of the Constitution of Puerto Rico.

In its obligation to comply with human rights, the Civil Rights Commission recommends that any process of protecting human rights to address the issue of the status must be governed by the principles of the right to self-determination. Furthermore, it is an essential requirement that any consultation process be preceded by an electorate education process so that voters will exercise their right knowingly. The voting procedure must be designed in a way that leaves no room for doubt as to its fairness and, consequently, as to the validity of its results. Said

educational process must start from the basic premise of the “inviolability of the dignity of human beings.”

VIII. Recommendations

After analyzing the matter with which we were tasked and considering the public hearings, the review of the current law, the formal conversations, the programmatic offer of the political parties, and the internal dialogues between the Special Commissioners and, later, with the Civil Rights Commission as a whole, we unanimously believe that, in view of the announcements of possible government and political activities regarding the issue of the status, the Civil Rights Commission must watch over all the activities to be developed in order to guarantee to the country that they comply with the human right parameters guaranteed by the Constitutions of Puerto Rico and the U.S. and by International Law.

Therefore, the Civil Rights Commission assumes the responsibility of remaining vigilant to the political status of Puerto Rico insofar as it affects human rights, particularly the right to self-determination. It also assumes the responsibility of reporting the ongoing violation of human rights that this status implies to all pertinent fora, including the United Nations Special Committee on Decolonization, the Organization of American States, the Human Rights Committee, and other international fora.

The Civil Rights Commission is an entity created by law with sufficient autonomy to maintain a watchful eye over the acts of the government and its officials in relation to their compliance with human rights. No other entity of the Government of Puerto Rico has such autonomy and authority to declare the recognition of human rights while remaining vigilant of public entities in order to promote and oversee their effectiveness and the compliance with the same. In view of the reality that many of these controversies cannot be adjudicated by the courts because of their political nature, this Commission is called upon to assume part of that responsibility.

We must take advantage of this opportunity as a starting point for a legally-valid process that upholds human rights, particularly respecting Puerto Ricans' right to self-determination, and advise, as we have done, the Government of Puerto Rico and the political parties in charge of constituting the same not to pawn public resources against the unequivocal will of the majority in relation to the current condition of inequality between Puerto Rico and the U.S.; an inequality that, regardless of the legal or political title that several sectors of the country ascribe to it, is singular evidence of the violation of the ICCPR and our human rights. We are not talking about an esoteric right. This has to do with the most important and fundamental right: the development and protection of the rights of a community, of a country, of a

nationality to self-determination. To conclude, it would be appropriate to remember the words of Don Eugenio María de Hostos:

A right not exercised is not a right; a right not experienced is not a right; a passive right is not a right. So that it will be in life what it is in the essence of our being, it must be exercised. Exercising it is to fulfill the duty of making it active, positive, and alive. [Translation ours.]

Eugenio María de Hostos

IX. Dissemination of the Report

This Report, as established by Resolution No. 2013-1, must be sent, in accordance with the Organic Act of the Puerto Rico Civil Rights Commission, to the three constitutional branches, the Puerto Rico media, local and international human rights advocacy organizations, the Library of Congress, and any others determined by the Civil Rights Commission.

Appendix A • Resolution No. 2013-1

COMMONWEALTH OF PUERTO RICO CIVIL RIGHTS COMMISSION



YEAR: 2013

NO. 2013-1

RESOLUTION

TO HOLD PUBLIC HEARINGS AND INVESTIGATE THE RESULTS AND EFFECTS OF THE NOVEMBER 6, 2012, CONSULTATION

WHEREAS: Public Law No. 283-2011, Act to provide for a consultation regarding the political status of Puerto Rico to be held on November 6, 2012, together with the general elections,” (“Public Law No. 283”) was enacted on December 28, 2011.

WHEREAS: According to the Official Certification of the Puerto Rico Election Commission, a total of 970,910 Puerto Rican voters, or 53.97% of the total 1,798,987 people who participated in the consultation, voted that they did NOT agree with maintaining the current political status as a territory.

WHEREAS: The movement called Boricua ¡Ahora Es!, as it describes itself, is a citizen, multi-sector, and multi-party movement the purpose of which is the decolonization of Puerto Rico. “The movement is intended to include all ideological sectors and seeks to produce a public discussion on decolonization to empower the people with regards to said issue.”

WHEREAS: The movement called Boricua ¡Ahora Es! has submitted a document entitled “Complaint” dated June 10, 2013, which states that it has been “signed by the three (3) spokespersons of the movement in representation of their respective ideologies and by one hundred fourteen (114) qualified voters who voted ‘NO’ and are part of the movement in symbolic representation of the one hundred fourteen (114) years of the territorial-colonial relationship between Puerto Rico and the United States and who also represent the 970,910 people who voted that they do NOT want to continue living under the current political status.” We are enclosing the document entitled “Complaint” dated June 10, 2013, which is made a part of this Resolution.

WHEREAS: The Civil Rights Commission is a public entity created by virtue of Public Law No. 102 of June 28, 1965. Our main duty is to educate the people about the significance of their fundamental rights and the means to respect, protect, and honor them. We are also under the obligation to manage the protection of human rights and the strict compliance with the legislation protecting said rights before individuals and government authorities.

WHEREAS: Pursuant to the power bestowed by Public Law No. 102 of June 28, 1965, as amended, the Civil Rights Commission may investigate, hold public hearings, and issue reports and recommendations for the ongoing, efficient protection of said rights.

WHEREAS: The right to vote is a fundamental right in the democratic system of the Puerto Rican community, where the will of the people is the source of public power, political order is subordinated to the rights of the people, and the free participation of citizens in collective decisions is affirmed.

WHEREAS: The right to vote is protected by the Constitution of Puerto Rico, the Constitution of the United States of America, and the Universal Declaration of Human Rights.

WHEREAS: In 1945, the Charter of the United Nations proclaimed the “respect for the principle of equal rights and self-determination of peoples” as one of its main purposes.

WHEREAS: The International Covenant on Civil and Political Rights (hereinafter, the “Covenant”) was adopted by the General Assembly of the United Nations by means of Resolution 2200 A (XXI) on December 16, 1966.

WHEREAS: Article I of the “Covenant” provides the following in its pertinent part:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. ...
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

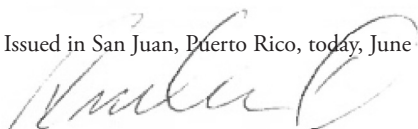
THEREFORE: We hereby resolve and order an investigation and legal study, including public hearings, of the consultation on the political status of Puerto Rico held on November 6, 2012, in relation to the following matters:

- (1) sufficiency of the consultation regarding the political status of Puerto Rico held on November 6, 2012;
- (2) significance and effectiveness of the consultation regarding the political status of Puerto Rico held on November 6, 2012;
- (3) identification of the democratic process for determining the political status of Puerto Rico in accordance with human rights, international law, the Constitution of Puerto Rico and of the United States, the terms of the existing relationship between the United States of America and Puerto Rico, and applicable legislation and case law;
- (4) identification of circumstances, if any, that violate or promote violations of civil rights or human rights resulting from the consultation on the political status of Puerto Rico held on November 6, 2012.

THEREFORE: We hereby resolve and order the creation of a “*Special Commission for the Investigation, Public Hearings, and Legal Study on the Consultation regarding the Political Status of Puerto Rico Held on November 6, 2012.*” The special commission shall be constituted by three (3) members in addition to the five (5) commissioners of the Civil Rights Commission. The Special Commission shall carry out its work in accordance with special regulations that shall be approved by the Civil Rights Commission for said purpose.

THEREFORE: We hereby resolve and order that, after the investigation and legal study on the consultation regarding the political status of Puerto Rico held on November 6, 2012, are completed, a final report shall be issued with the corresponding findings, conclusions, and recommendations. Assuming that circumstances allow it, we hope to be able to submit the aforementioned report as soon as possible within the next six months and, in accordance with the organic act of the Puerto Rico Civil Rights Commission, it shall be sent to the three Constitutional Branches, the country’s media, local and international human and civil rights advocacy organizations, the Library of Congress, and others.

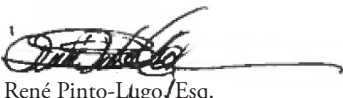
Issued in San Juan, Puerto Rico, today, June 17, 2013.



Rosemary Borges-Capó, Esq.
Commissioner

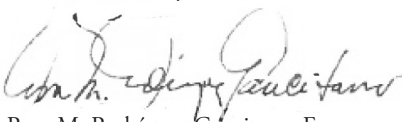


Ruth Myriam Pérez-Maldonado, Esq.
Commissioner



René Pinto-Lugo, Esq.
Commissioner

Certified correct by:



Rosa M. Rodríguez Gancitano, Esq.
Executive Director

Appendix B • Request from *Boricua ¡Ahora Es!*

APPENDIX B

June 10, 2013

PERSONAL DELIVERY

Rosa Rodríguez-Gacitano [sic], Esq.
Executive Director
Puerto Rico Civil Rights Commission
PO Box 192338
San Juan, PR 00919-2338



Dear Ms. Rodríguez-Gacitano [sic]:

Warm regards. We are hereby submitting a request for intervention to this Honorable Commission to address what we believe is a crass violation of the civil rights protecting the Puerto Rican voters who expressed their will by exercising their right to vote on November 6, 2012. The request is made by the spokespersons for the movement *Boricua ¡Ahora Es!* (hereinafter, “BAE”) in representation of all its members and the postulates for which it was constituted.

It is common knowledge that BAE was the principal promoter of the “NO” option in the plebiscite held on November 6, 2012, in accordance with the provisions of Public Law No. 283-2011, *Act to provide for a consultation regarding the political status of Puerto Rico to be held on November 6, 2012, together with the general elections*. According to the Official Certification of the Puerto Rico Election Commission, a total of 970,910 Puerto Rican voters, that is, 53.97% of the total 1,798,987 people who participated in the consultation, voted that they did NOT agree with maintaining the current political status as a territory. In other words, the “NO” option received more votes than any candidate to any elected position or plebiscitary option on November 6th. Furthermore, when we analyze the results of the elections in detail, we find that the “NO” option won in the eight (8) senatorial districts, in thirty-nine (39) out of the forty (40) representative districts, and in sixty-four (64) of the seventy-eight (78) municipalities. This is the first time in our history that an absolute majority of Puerto Rican voters clearly and unequivocally express that they disagree with the current political status.

The request we are making to this Honorable Commission today is to hold public hearings and investigate the allegations about whether or not the civil rights of the Puerto Rican people are being violated by failing to respect their will, which they expressed through their vote, when they withdrew their consent to continue living under the current status as a territory. We also request that our people be educated about the options, tools, and processes available to them to enforce their will expressed at the

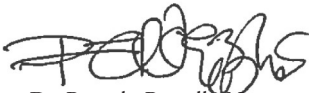
polls. Enclosed with this letter, you will find the formal request, which has been signed by the three (3) spokespersons of the movement in representation of their respective ideologies and by one hundred fourteen (114) qualified voters who voted “NO” and are part of BAE in symbolic representation of the one hundred fourteen (114) years we have been in a territorial-colonial relationship with the United States, but who also represent the 970,910 people who voted that they do NOT want to continue living under the current political status.

If you have any questions about this matter, please contact the undersigned at the following address: PO Box 79351, Carolina, PR 00984-0351. We trust that, as it has done in the past, this Honorable Commission will express itself in favor of the importance of protecting Puerto Ricans’ right to vote and against any action attempting to undermine said right.

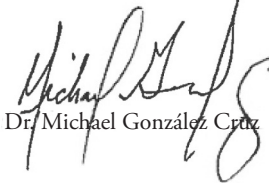
Cordially,

Boricua ¡Ahora Es!

Represented by its spokespersons:



Dr. Ricardo Rossello Nevares



Dr. Michael González Cruz



Mr. Joel Isaac Díaz Rivera

Appendix C • Letter Supplementing Request

APPENDIX C

Dr. Ricardo Rosselló Nevares

December 4, 2013

Eudaldo Báez Galib, Esq.
Chair
Special Status Commission
Civil Rights Commission
PO Box 192338
San Juan, PR 00918-2338



RE: Efforts of the Governor of Puerto Rico to obstruct the will of the People in relation to the status of the island expressed through the results of the Plebiscite of November 6, 2012

Dear Mr. Báez Galib:

Warm regards. The purpose of this letter is to bring to your attention a series of actions taken by the current Governor of Puerto Rico, Hon. Alejandro García Padilla, using public funds to obstruct any congressional action aimed at obeying the will of the People of Puerto Rico with regards to the status of the island expressed through the results of the Plebiscite held on November 6, 2012.

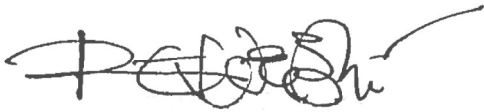
As I stated in my comments on November 14, 2013, on November 6, 2012, with a participation of 78.19% of the validly registered voters, 53.97% or 970,910 voters rejected the current political status as a territory, voting NO in the first question. Furthermore, among the non-territorial, non-colonial alternatives, they favored Statehood, with 61.1% of the validly cast votes. Thus, the People of Puerto Rico decidedly rejected the current political status as a territory and favored Statehood.

However, the Governor of Puerto Rico has taken actions to prevent Congress from addressing the claim of the People. On August 1, 2013, in a visit from the U.S. Senate Committee on Energy and Natural Resources, the Governor tried, before the members of the aforementioned Committee, to obstruct the consideration of the results of the Plebiscite, thus violating the right of Puerto Ricans to the self-determination of their political future through a direct, free, and voluntary vote. On the other hand, in a letter dated November 18, 2013, Alejandro García Padilla, using his position as Governor of Puerto Rico, urged members of the U.S. Congress to withdraw their support of a bill aimed at addressing the status of Puerto Rico following the result of the Plebiscite. We are enclosing the letter addressed to the members of the U.S. Congress as **Exhibit I**.

Dr. Ricardo Rosselló Nevares

In my opinion, the actions of the current Governor, using both his current position as chief executive and public funds, violate the rights of Puerto Ricans recognized both internationally and in the Constitution of Puerto Rico. It is important to remember that section 2 of Resolution 1514(XV), Principles VI-VII of Resolution 1541(XV), and article 1 of the International Covenant on Civil and Political Rights not only guarantee the right to the free determination of all peoples, but also establish that such right shall be exercised freely and through citizen participation. On the other hand, the Constitution of Puerto Rico establishes the following in its preamble: “We understand that the democratic system of government is one in which the will of the People is the source of public power, the political order is subordinate to the rights of man, and the free participation of citizens in collective decisions is guaranteed” [translation ours]. Thus, Puerto Ricans’ right to self-determination is clearly recognized through the free and direct participation of the citizens.

I therefore very respectfully request that, as part of its investigation, this Special Commission examine and investigate any direct or indirect government action aimed at obstructing the claims of the People of Puerto Rico regarding their political status expressed through the results of the Plebiscite of November 6, 2012, to determine whether or not the civil rights of Puerto Ricans are being violated using public funds. Thank you for your prompt action on this matter.

A handwritten signature in black ink, appearing to read 'Ricardo Rosselló', with a long, sweeping flourish extending to the right.

Dr. Ricardo Rosselló Nevares

Cc: Andrés Salas Soler, Esq.
 Víctor García San Inocencio, Esq.

COMMONWEALTH OF
PUERTO RICO
GOVERNOR

November 18, 2013

The Honorable [REDACTED]
Member of Congress
[REDACTED] House Office Building
Washington, DC 20515-[REDACTED]

Dear Representative [REDACTED]:

I write to you regarding your co-sponsorship of H.R. 2000, the Puerto Rico Status Resolution Act. As you know, the issue of status is deeply divisive amongst Puerto Ricans. Many Puerto Ricans, like me, prefer to maintain and develop our Commonwealth status. Another sizeable group would like Puerto Rico to petition for admission as a State. Another important group supports outright independence.

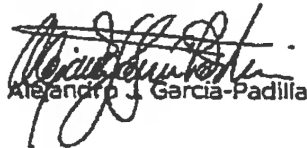
I am committed towards approaching any referendum process with the fairness and transparency that all Puerto Ricans deserve. H.R. 2000 does not live up to our shared democratic values. Recently, the delegate who introduced H.R. 2000 openly stated that co-sponsorship of that bill equals to an endorsement for statehood. This is the latest and most overt admission that H.R. 2000 is drafted towards excluding all other options, including the Commonwealth that consistently has had majority support in Puerto Rico.

The statement by the delegate should be enough to dispel any notion of fairness with regards to H.R. 2000's real intention. H.R. 2000 is slated to disenfranchise millions of Puerto Ricans by imposing a political straightjacket to force an up or down vote on statehood. H.R. 2000 also stands opposite to President Obama's longstanding position that Puerto Rico's political status should be decided through a plebiscite that includes all options. As Congress moves to consider the question of Puerto Rico's political status, I urge you to show your support for a free, fair and transparent referendum process by withdrawing your co-sponsorship of H.R.2000.

Thank you for your consideration of this important issue for all Puerto Ricans.

Cordially,

The Governor of the Commonwealth of Puerto Rico,


Alejandro J. García-Padilla

La Fortaleza, San Juan, PR 00901 | PO Box 9020082, San Juan, PR 00902-0082 | gobernador@fortaleza.pr.gov | 787.721.7000

Appendices D and E • Legislative Procedure House Bill 3648

Page 1 of 1



Legislative Services Office Legislative Procedure Information System Measures Inquiry

Appendices D and E

3/9/2016

10:42:00 AM

Measure House Bill 3648

Governor's No.: F-181

Equivalent: [Senate Bill 2303](#)

Title To provide for a consultation regarding the political status of Puerto Rico to be held on November 6, 2012, together with the general elections; to determine the structure and operation thereof; to allocate funds; and for other related purposes.

Author(s): Representative Jenniffer A. González Colón, Representatives Members of the New Progressive Party

[See Speeches](#)

Procedure:

10/5/2011 [Introduced](#)
10/5/2011 Referred to Commission(s): Special [Commission] to Study the Issue of the Political Status of Puerto Rico
10/6/2011 Appears in First Reading of the House
10/26/2011 Public Hearing: 11:00 AM, Hearing Room #1, Commission(s): Special [Commission] to Study the Issue of the Political Status of Puerto Rico
10/27/2011 Public Hearing: 11:00 AM, Hearing Room #1, Commission(s): Special [Commission] to Study the Issue of the Political Status of Puerto Rico
11/1/2011 Public Hearing: 11:00 AM, Hearing Room #1, Commission(s): Special [Commission] to Study the Issue of the Political Status of Puerto Rico
11/8/2011 Public Hearing: 10:00 AM, Hearing Room #1, Commission(s): Special [Commission] to Study the Issue of the Political Status of Puerto Rico
11/10/2011 [1st Report from Special Commission to Study the Issue of the Political Status of Puerto Rico issued with amendments](#)
11/10/2011 [Mark-up of the Report](#)
11/10/2011 Referred to the Calendars Commission of the House
11/10/2011 On the Special Orders Calendar of the House
11/10/2011 Passed with amendments on report
11/10/2011 [Passed by House in Final Vote, 37-17--](#)
11/10/2011 [Text of Final Passage sent to Senate](#)
12/5/2011 Referred to Commission(s): Special [Commission] on the Right to Self-Determination of the People of Puerto Rico
12/5/2011 Appears in First Reading of the Senate
12/19/2011 Public Hearing: 9:00 AM, Luis Negrón López Hearing Room, Commission(s): Special [Commission] on the Right to Self-Determination of the People of Puerto Rico
12/20/2011 [1st Report from Special Commission on the Right to Self-Determination of the People of Puerto Rico issued with amendments](#)
12/20/2011 [Mark-up of the Report](#)
12/20/2011 On the Special Orders Calendar of the Senate
12/20/2011 Passed with amendments on report
12/20/2011 [Passed by Senate in Final Vote, 18-09-00-02](#)
12/21/2011 [Original Body concurs with amendments, 31-13--](#)
12/21/2011 [Enrollment is ordered](#)
12/26/2011 Signed by Speakers of House and Senate
12/26/2011 [Sent to the Governor](#)
12/28/2011 Public Law No. 283, 12/28/11, 2nd Extraordinary Session, Effective immediately
[See document in WORD format.](#) [Word logo]
[See document in PDF format.](#) [PDF logo]
[See analysis of the law.](#)

12/28/2011 Superseded Senate Bill 2303

http://www.oslpr.org/legislatura/tl2009/tl_medida_print2.asp?r=P C3648

3/9/2016

Appendix I • Summary of Comments

Appendix I

Abstract of comments before the Special Status Commission of the Puerto Rico Civil Rights Commission

List of comments:

- I. Dr. Ricardo Rosselló Nevares
- II. Puerto Rico Bar Association
- III. High School Republicans of Puerto Rico
- IV. Luis Dávila Colón, Esq.
- V. Professor José Garriga Picó
- VI. Lawrence “Larry” Seilhamer Rodríguez
- VII. Dr. Pedro Rosselló González, Former Governor of Puerto Rico
- VIII. Juan Dalmau Ramírez, Esq.
- IX. Luis Enrique Romero, Esq., Supplementary Comments to paper of Juan Dalmau Ramírez, Esq.
- X. Alejandro García Padilla, Governor of Puerto Rico

Speaker: Dr. Ricardo Rosselló Nevares, Boricua ¡Ahora Es!

Date: November 14, 2013; 1:00 pm

Place: Puerto Rico Election Commission

Summary:

Dr. Ricardo Rosselló Nevares states that the electoral mandate of the plebiscite of November 6, 2012, is clear in its rejection of the current colonial political status of Puerto Rico. The colonial status, in itself, constitutes a violation of the right to vote of the U.S. citizens who live in Puerto Rico and of their participation in the political processes that concern them.

The consultation of November 6, 2012 (“the consultation”) was more than sufficient for Puerto Ricans to express themselves on the current status of the island. The people of Puerto Rico (“the people”) were asked clearly and unequivocally if they wanted to remain under the current territorial political status. The people expressed themselves and unequivocally revoked the consent, if there ever was one, to a colonial/territorial system. The consultation was sufficient because, in addition to presenting clear questions, it had the direct vote of the people and a high electoral participation (78%); it granted a considerable period of time (10 months) to provide guidance to the people on the same; all the political parties and important ideological sectors of Puerto Rico assumed positions on their favored electoral option/the option they favored; and, finally, it produced conclusive results.

The significance of the consultation was conclusive in quantitative and qualitative aspects. In terms of the quantitative aspect, the rate of participation (78%) and votes rejecting the current territorial status (54%), which withdraw any claim of colonial consent, are clear and express the indisputable will of the people of

Puerto Rico. With regards to the qualitative aspect, the people clearly answered that they did not want to continue being a colony. The people joined together to reject the colonial status that affects Puerto Rico in multiple aspects. It was a great victory to show that Puerto Ricans can agree. There is an atmosphere in the U.S. to solve the status problem: Puerto Rico conclusively rejected the colonial status; the Hispanic vote and its impact is growing in the U.S.; and a position favoring the eradication of colonial systems has been assumed at the international level. The consultation constitutes the first direct electoral mandate of the people to implement a non-colonial, non-territorial status. In procedural terms, the consultation was effective in terms of expressing the majority will of the people. It met all the guarantees required by Puerto Rico and U.S. law. However, the consultation lacks effectiveness in terms of making progress toward a final and binding solution in view of the results. The lack of action of the Puerto Rico and U.S. governments constitutes an obstacle to the implementation of the results. The government of Puerto Rico discredits the consultation. The U.S. government ignores the results and does not discharge its democratic duty to respect and validate the results of the people. It is because of this lack of effectiveness in implementing and enforcing the will of the people that Boricua ¡Ahora Es! decided to file the complaint with the Civil Rights Commission on June 10, 2013. To be effective, the results must be implemented.

In terms of the procedural aspect of the consultation, the human and civil rights of the people were not violated under any circumstances. However, the civil rights of the people are being limited because the results of the consultation are not being enforced. Substantively, the people have already said that they do not wish to continue with their current status and that they want a status option other than a colony or territory. Having a clear mandate that was democratically manifested, the representatives of the people who are in the current government are ignoring it. Puerto Rico is currently suffering a double assault on its civil rights: the civil rights of American citizens living in Puerto Rico are limited by denying them the right to vote and, therefore, their political participation and their participation in the process of making decisions that affect them are limited. In spite of the fact that a colony with or without consent is unacceptable, the people withdrew their supposed consent to said status in the consultation.

The Special Commission must pass a conclusive judgment to: prevent the degradation of the democratic process; prevent telling the people that their vote does not matter; show that Puerto Rico institutions must be respected and carry weight and have enforcement power; and because this judgment will strengthen the effort towards a better Puerto Rico. Any democratic process to determine the political status of Puerto Rico must use as a starting point the expression of the will of Puerto Rican citizens issued through the consultation, which categorically rejected the current territorial status.

Speaker: Ana Irma Rivera Lassén, Esq., Puerto Rico Bar Association

Date: November 22, 2013

Place: Civil Rights Commission

Summary:

The Bar Association holds that the problem of Puerto Rico's political subjection to the U.S. is a political problem, not a civil rights problem. Puerto Rico's colonial relations with the U.S. are the product/result of an act of war, without prior consultation or consent from the people of Puerto Rico ("people"). Article IX of the Treaty of Paris of 1898 legitimizes the colonial status imposed by the U.S. by establishing that the "political status" of the territory and residents of Puerto Rico will be determined by the U.S. Congress.

The current colonial relations pose a problem of self-determination for Puerto Rico. According to United Nations (U.N.) Resolution 1514 (XV), colonialism “constitutes a denial of fundamental *human rights*” (emphasis ours). The U.S. is violating the human—not civil—rights of the people by preventing Puerto Rico from exercising its right to free determination. Puerto Rico has never exercised its right to free determination. The constitutional process of 1951-52, which culminated in the approval of the Constitution of the Commonwealth of Puerto Rico (“Commonwealth”), did not/does not constitute a process of free determination. The right of peoples to choose their system of government and their political destiny in relation to other countries is a natural inalienable right. Since 1944, the Bar Association (“Association”) has denounced the colonial nature of Puerto Rico and demanded that the U.S. end unfair political relations and claimed the full exercise of the right to free determination.

In 1963, the Association established the principle of sovereignty when considering any consultation on the political future of the country. The meaning ascribed to the concept of “sovereignty” is that in which the country is entitled to “the ultimate source of power.” In 1977, it introduced the proposal of a Constitutional Convention that would create a temporary rule of law in which it would be the depository of the sovereignty of the country. In 1985, another Resolution was approved to call the people to a referendum in favor or against establishing a Constitutional Convention within the framework of Article VII, section 3 of the Commonwealth Constitution to review the existing relations between Puerto Rico and the U.S.

In 2002, the Association replaced convening a Constitutional Convention under Article VII, Section 3 with a proposal of a Constitutional Status Convention as one that “represents the full mandate of the people to address their political status,” furthermore providing that said Convention would be the “depository of the sovereign will of the Puerto Rican people.” Said proposal establishes that convening the Constitutional Status Convention will be submitted to the will of the electorate in a referendum; it will be constituted under its own authority, with the capacity to deliberate and negotiate mutually acceptable terms for sovereign political relations that, after being negotiated, would once again be submitted to the will of the electorate for their ratification and to the corresponding entity of the U.S. government, if any. Said Resolution was elaborated into a Concurrent Draft Resolution, which took shape in House Bill 3317 and Senate Bill 2389, endorsed at the time by Representative Víctor García San Inocencio and Senator Eudaldo Báez Galib. According to the previous Resolution, delegates would be chosen for the Convention according to criteria of representativeness and proportionality, and any proposal had to be submitted to the consideration of the people and be based on the full sovereignty of the people, guaranteeing that the future political relations between Puerto Rico and the U.S. would not fall under of the Territorial Clause of the U.S. Constitution.

In 2011, Eudaldo Báez Galib, acting as a Senator, issued a Report regarding Senate Resolution 201 recommending a “Convention of the People” referring to the other alternatives that had already been tested (congressional initiative, plebiscites, status commission) as traditional alternatives in relation to which the U.S. Congress “has not considered the purposes or results thereof.”

In 2011, the Task Force designated by the U.S. President made recommendations in a Report regarding the future of the relations between Puerto Rico and the U.S. and procedural methods to address the same. The Association responded to said report by reiterating its position favoring convening a Constitutional Status

Convention as the ideal mechanism and rejecting its conclusions because, among other things, it was contrary to the principle of free determination. The Association asserts that the Report of the Task Force reiterates the positions of past White House reports on status, proposing a policy of disposing of territories, not a clear policy of decolonization.

As a result of the recommendations of the Task Force Report, the Puerto Rico Legislature passed legislation to enable the consultation of November 6, 2012. The Association pointed out several limitations to said plebiscitary proposal: it dismisses the right of the people to self-convene as sovereign in a Constitutional Status Convention; it constitutes a scheme to lead and guide the process toward results predetermined by the parliamentary majority; it excludes the right to vote of Puerto Rican nationals in the U.S.; it opens up the possibility for the people to consent to and perpetuate the current colonial and territorial status, which is contrary to the principle of sovereignty and free determination of peoples; and it excludes the application of the International Law in force to the process of free determination of the people.

The Association is currently continuing to assert that the Constitutional Status Convention method is the ideal method to exercise the free determination of the people. There is a need to transcend the processes (such as the consultation of November 6th) that have so far been shown to be unsuccessful in seeking to decolonize Puerto Rico. The mechanism of a Constitutional Status Convention is compatible with international law, compatible with U.S. constitutional law, is part of the natural right of peoples, and allows, in a process of deliberation and negotiation, first between the various components of the people and then between the people and the U.S. government, for the agreed-upon pursuit of future relations on a non-colonial, non-territorial basis in the exercise of the right to free determination.

Speaker: José Muñiz Gómez, High School Republicans of Puerto Rico

Date: November 26, 2013

Place: Written comments sent by mail

Summary:

In 1950, the U.S. Congress enacted Public Law 600, which allowed the territory of Puerto Rico, based on the spirit of the Northwest Ordinances, the right to draft its own constitution and become a U.S.A. Insular Commonwealth. A U.S.A. Insular Commonwealth is a U.S. territory that is politically organized but whose territorial sovereignty belongs to the U.S. Congress. It is not a status formula according to the U.S. Department of State.

There was never a sovereignty covenant between Puerto Rico and the U.S. in 1952; Puerto Rico was only given attributes of autonomy. The *ELA* [Spanish acronym for *Estado Libre Asociado*, the translation used in Puerto Rico for the Commonwealth] is the name of our constitution, it is not a political status. This political system has collapsed economically, politically, and socially. The 2007, 2009, and 2011 White House reports ratify that Puerto Rico continues to be subject to the plenary powers of Congress.

The matter of the U.S. democracy over the 3.6 million American citizens in the island has yet to reach its conclusion. The governor of Puerto Rico is still subject to Public Law 447 enacted by Congress in 1947 and, as a believer in the false covenant of 1952, is avoiding the issue of the status.

In the consultation of November 6th, 53.97% of the electorate voted against the colony in the first question. In the second question, the electorate was given the three fully sovereign options to solve the political status of the island recognized under United Nations Resolution 1541 (XV) of 1961. Statehood obtained 834,191 (61.1%) votes, more votes than the current territorial status. The Popular Democratic Party (“PPD” [Spanish acronym]) supports keeping Puerto Rico as a Moorish quarter that does not need to exist. It says that the 498,604 blank ballots supported the “territorial Commonwealth.” The U.S. Supreme Court has said that blank ballots do not represent anything in an election. Statehood obtained more votes than the blank ballots and the “Yes” in the first question.

We recommend that the complaint be addressed in order to comply with the electoral principles of the citizens and claim that the U.S. fulfill its duty to its citizens within its own country who yearn to live under a sovereign status that is endorsed by the international community.

Puerto Rico has lived through 116 years of terrible colonialism and a fictitious democracy. Puerto Rico’s consent to said colonialism died on November 6, 2012.

Speaker: Luis R. Dávila Colón

Date: January 22, 2014

Place: Civil Rights Commission

Summary:

1.8 million Puerto Ricans exercised their fundamental right to vote and to free determination in the consultation of November 6, 2012 (“consultation”). The result of this consultation issued an unquestionable mandate and withdrew the consent of the governed to the current status of the territorial Commonwealth. The individual exercise of the right to vote and said collective mandate grant standing to individual voters to file complaints and grievances against the current system of government and to demand that the democratic mandates issued through the results of the consultation be implemented.

Standing to request a judicial review to vindicate rights that have been violated has been recognized even for associations. Colegios de Ópticos de Puerto Rico v. Vani Visual, 124 DPR 559 (1989). The Civil Rights Commission has the capacity and standing to file a class action on behalf of all the voters who cast their ballots in favor of the winning formulas in the plebiscite to initiate a process that will lead Puerto Rico to a new political status in which power stems from the consent and will of the citizens. In fact, any voter who cast a ballot for the winning formulas has individual standing to file a suit against the state to vindicate his or her self-executing rights. Said individual and collective legal capacity is conferred by the text of the Constitution of the Commonwealth, the U.S. Constitution, and Article 6.001 of the Election Code. PPD v. Gobernador, 136 DPR 916 (1994).

The Purposes Article of the Election Code (“Code”) establishes that “government by the consent of the governed constitutes the guiding principle of our democracy” [translation ours]. The law and the electoral process are the instrument and legal means to express the sovereign will of the electorate and enforce that right. The electoral rights of citizens are superior to the rights and prerogatives of political parties and groups. The option that receives the most votes in an electoral process reflects the will of the people and guarantees a social contract based on the consent of the governed. Article 11.001 of the Code provides for the certification of the results of a plebiscite, such as that of November 6, 2012, which has the force of law. The people issued a compulsory mandate with the consultation of November 6th.

With the result of the consultation, the people withdrew the consent of the governed to the current government status. 54% of the votes against the territorial Commonwealth establishes an unequivocal mandate, the un-appealable verdict of the ballot. Ignoring and annulling a mandate of constitutional change and of a change in the system of government as significant as the one issued by the people in the consultation is intolerable. In the first question, the unequivocally-issued plebiscitary mandate withdraws the validity of the current political status and demands a change and, in the second question, it demands a non-territorial, non-colonial sovereign formula. Said options obtained more votes than the Popular Democratic Party (“PPD” [Spanish acronym]) or any of its candidates, including the governor.

Through the mandate issued, the people exercised their sovereignty and absolutely rejected the political status of the current territorial Commonwealth. The government of the PPD in power is violating rights established in the constitutions of Puerto Rico and the U.S. by ignoring, torpedoing, undermining, disobeying, and annulling the democratic order of the people using public resources. The PPD government is violating the following rights under the U.S. Constitution: essential freedoms under the First Amendment; the right to demand the reparation of complaints and grievances from the government; the prohibition against slavery and involuntary servitude (Article 13); rights to procedural and substantive due process and equal protection under the Fifth and Fourteenth Amendments; the guiding principle of one man, one vote; and the right to vote (Articles 15, 19, 23, 24, 26). These actions constitute a self-coup that also violates the principle of government by consent of the governed established in Article 1 of Public Law 600 of 1950 (“Public Law 600”). Public Law 600, which granted organizational autonomy to the territory of Puerto Rico, was absolutely repealed by the electorate in the 2012 plebiscite. The Commonwealth Constitution also establishes the inalienable right of citizens to be organized and governed by a system and structure based on the consent of the governed in its preamble and in the individual rights that are set forth (Article 1, Sections 1, 2; Article 2, Sections 2, 7). The Universal Declaration of Human Rights of 1948 also forces member States of the U.N. to respect, enforce, and vindicate said rights (Articles 4, 7, 8, 15, 20, 21, 101).

The letter and spirit of the U.S. Declaration of Independence are the root of the consent of the governed and the right of citizens to exercise their sovereignty and political self-determination. The right to live in a system under the consent of the governed is the pillar of any electoral process. Moreover, it is a fundamental, essential, and self-executing right. The principle of the sovereignty of the People and the consent of the governed was recognized by the U.S. Supreme Court in Texas v. White, 74 U.S. 700 (1868) and in the Northwestern Ordinances of 1783, 1784, and 1787.

The citizens of Puerto Rico have the right to exercise the free determination of their political destiny and the right to be continuously governed by a system anchored on the guiding democratic principle of the consent of the governed. These two fundamental rights are set forth in the Puerto Rico and U.S. constitutions, the Electoral Act, Public Law 600, the Universal Declaration of Human Rights, and International Law.

The Civil Rights Commission (“Commission”) has the power to enforce the abovementioned rights in federal and insular courts. This is part of its task to ensure that civil rights are respected. Governor Alejandro García Padilla and the PPD are disobeying the plebiscitary mandate every day by ignoring and undermining the will of the people of Puerto Rico. Any use of government resources of the Commonwealth for purposes of the status that are not compatible with this mandate are ultra vires, illegal, and undermine the rights of the voters and the concept of electoral equality of the “one man, one vote” action. By refusing to validate and promote the results of the consultation and wanting to lobby and use public funds to obstruct the electoral mandate, the current administration: has been uninterruptedly violating millions of human, constitutional, and civil rights of the citizens and voters of Puerto Rico since it took office on January 2, 2013; became a pariah regime without authority to govern or political legitimacy; and carried out a self-coup of colonial prepotency by acting in an ultra vires manner disobeying the supreme will of the people.

Faced with this self-coup, we must: act together to protect the will of the 54% and 74% majority; transcend ideologies and emphasize free determination, the consent of the governed, and the mission of the Commission to safeguard and vindicate human, constitutional, and electoral rights; enforce the mandate for non-territorial, non-colonial and “sovereign” formulas; declare that the annulled territorial status quo is a political status against humanity, unconstitutional, illegal, and lacking a democratic source; file a class action as a commission and on behalf of the million voters whose rights have been violated so that the Supreme Court will issue a declaratory judgment to such effects, declare the territorial Commonwealth unconstitutional and an offense against humanity, and issue an injunction to force the PPD administration to respect those rights and principles; and take any fair and necessary actions to inform the people about these matters.

Speaker: Dr. Pedro Rosselló

Date: January 30, 2014

Place: Civil Rights Commission

Summary:

Civil, political, and socioeconomic rights exist based on a global consensus that all humans have certain basic, inalienable rights that protect their existence and dignity. Citizens have the right to participate in the democratic processes in an effective manner through their free vote and to the fulfillment of the will expressed on the ballots. This right is set forth in documents at the global, national, and local levels. The Universal Declaration of Human Rights establishes that no distinction shall be made on the applicability of this right between independent countries and trust or non-self-governing territories or territories under any other limitation of sovereignty. The Inter-American Democratic Charter establishes that “the peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it” and that “democracy is indispensable for the effective exercise of fundamental freedoms and human rights...” In conclusion, at the international level, suffrage and democracy on equal terms are a human right. Likewise, at the national level, the U.S. Constitution and, at the local level, the Commonwealth Constitution protect the

right to vote and prevent the limitation of this right on the basis of race, [previous] status as a slave, sex, or age. However, in Puerto Rico, there are serious violations of the principles set forth in these constitutional charters. Moreover, history under the colonial territorial regime has demonstrated a paralysis and an attitude of lack of interest in correcting these obvious violations. In spite of more than ninety (90) measures having been filed with Congress from 1901 to 2012, there has not been a single final and binding action that could redress the violations of the right to vote and due representation.

Similarly and in spite of notable dissenting opinions, federal courts have not produced an effective action to eliminate these crass violations either. The *Insular Cases* continue validating the doctrine in force that denies the right to vote on equal terms to the citizens of Puerto Rico and keep the territory as a colony, without rights, except for those Congress decides to bestow upon it.

At the international level, petitions and complaints have been filed on numerous occasions with the United Nations Special Committee on Decolonization denouncing the violations, but the result has been the same, no final or binding action. Likewise, the violation of the following articles of the American Declaration of the Rights and Duties of Man has been denounced before the relevant regional forum, the Organization of American States: Article II, right to equality before the law; Article XX, right to vote and to participate in government; and Article XXXIV, right to hold public office at the national level. Said claim was filed in 2006 and is still awaiting resolution by the International Human Rights Commission.

Under the abovementioned conditions, it would be appropriate for the Civil Rights Commission to take cognizance and declare in effect the reality of the violations in the Puerto Rican context. In the case of the November 6th consultation, we see the most recent example of violation of civil rights with the evidence of the obvious inaction of the governments at the state and federal level in view of the clear democratic expression of Puerto Ricans at the ballots. 78% of valid voters participated in the consultation, and 54% of the voters democratically, clearly, and unequivocally expressed that they did not wish to continue with the current territorial status. Therefore, we can no longer argue that Puerto Rico wants to maintain its colonial territorial status. However, the current government has chosen to ignore the claim of Puerto Rican voters. The official discourse of the state Government has been of an arbitrary rejection of the consultation process on the pretext of an interpretation of supposed illegitimacy that is not supported on any legal or logical grounds. The current government is not obeying the mandate issued by the Puerto Rican electorate. This constitutes a crass violation of the democratic rights of individual citizens and of the people of Puerto Rico collectively.

Democratic processes require that the government of Puerto Rico inform Congress about the official claim—which was established democratically and legally—of the People. The claim must demand that a process to redress grievances be established as soon as possible to end the territorial and colonial status and implement a new structure without said conditions that complies with the provisions of international law. In conclusion, my comments establish that: the People have declared that the status *is* the issue; the Commonwealth is an outdated colonial status; human rights are continuously being violated in this jurisdiction; in the international context; within the U.S. context, Puerto Rico currently represents the most flagrant human and civil rights violations against its citizens; and within the Puerto Rican context, the colonial status violates our civil rights and prevents us from releasing our maximum aspirations and abilities and sentences us to a future of mediocrity and social delay.

The request of this presentation is that the Commission declare: that there are serious human and civil right violations in Puerto Rico; that there has been a long-standing, persistent, and clear pattern of violations of the right to vote; that, as a remedy, mechanisms must be established as soon as possible to respond effectively to the express will of the People in their right to self-determination and in their claim to full democracy; that, to eliminate prior violations, we must eliminate the territorial colonial status that has been rejected by the People in their most recent expression in November 2012; and that the immobility of both state and federal governments in view of the free and democratically-expressed will of the People of Puerto Rico rejecting the current territorial and colonial status and claiming a non-territorial, non-colonial option represents additional evidence of the continuous limitation of human rights in Puerto Rico.

Speaker: José Garriga Picó

Date: January 22, 2014; 1:30 pm

Place: Civil Rights Commission

Summary:

The consultation of November 6, 2012, was completely valid from a legal standpoint. The consultation was duly legislated and no person or political or civic association in Puerto Rico filed any action with the courts to question or stop the event. The main political parties educated the voters about the options on the ballot and how to vote, and the results were certified by the Puerto Rico Election Commission with the signature of representatives from all parties. These certified results were not challenged in court either. The results of the plebiscite must be considered completely valid.

In the political tradition of the United States of America, the expression of the People in a referendum conducted within the confines imposed by federal and state constitutions and legislation does not require any subsequent process to certify or verify its validity. Looking at the processes to admit the states that have been admitted to the Union in which the voters were consulted multiple times before the process was completed, it is clear that the Puerto Rican electorate will be consulted again several times before Puerto Rico becomes a state or an independent or associated nation.

International law does not establish one specific mechanism that must be used to justify a change in status. It is understood that any clear expression by the population of the colonial nation by whichever means is sufficient to activate the rights set forth in U.N. Resolutions 1514 and 1541 XV. Therefore, demanding that Puerto Ricans take any subsequent steps in order to consider the results of this plebiscite valid would be a violation of the provisions of said resolutions of the U.N. and discriminatory against our entire people.

The plebiscite of November 6, 2012, was held under a local act (Public Law No. 283-2012), which imposes on the Governor of Puerto Rico and the Legislature the obligation to present the need of a political change in Puerto Rico before federal and international forums in accordance with the results. In formal constitutional terms, the entity responsible for answering our claims is strictly Congress. According to the Treaty of Paris of 1898 and the Territorial Clause (United States Constitution, Article IV, Section 3, Clause 2), only the U.S. Congress has the right to decide “the civil rights and political status” of the residents of Puerto Rico. In addition, it is Congress that, by virtue of the Admission Clause (U.S. Constitution, Article IV, Section 3, Clause 1), has the power to admit us as a state.

Congress will not act on a matter like this one unless it is encouraged to do so by the leadership of the President, even though his signature is technically not needed to give us independence or make us a state. The President's consent is essential to pass the enabling act that would necessarily accompany the concurrent resolution of admission to the Union (or disposing of the territory) approved by Congress.

Finally, the judicial branch cannot be left out since, if the action or inaction of the political branches violates our constitutional rights, the federal courts have jurisdiction to address these matters. In short, the three branches of the federal government have the duty to address this matter.

Article II, Section 2 of the Constitution of Puerto Rico establishes the citizens' right to equal, direct, and secret universal suffrage free of any coercion. The right to vote without the power to have the electoral result executed would be a mere ritualistic formality. The right of each citizen to have the electoral result be recognized and implemented is therefore inherent in the right to vote under Article II, Section 2, and in the notion of democracy adopted in the Constitution.

Within the tradition of the social contract, the right to self-determination is the most fundamental right of each citizen. When a people abjure their political status, there is no legitimate political power to maintain them in that situation. If their wish is disregarded, the regime in power would be one that is imposed on the people and would be in violation of the "Principle of Government by the Consent of the Governed," a *de facto* regime, which is in itself a violation of civil, human, and political rights.

The so-called generic consent that some allege the People of Puerto Rico gave in 1951 is such a mockery of the principles of self-determination of peoples in international law and of substantive and procedural due process in constitutional law that it does not require serious consideration by this Commission. No resolution or international document legitimizes a community's open and indiscriminate surrender of its rights to self-determination. Likewise, in terms of constitutional law, it is clear that citizens cannot surrender their fundamental rights generically and without establishing provisions by means of which those affected can make legal claims and even rescind the agreement if they wish to do so. The denial of our rights cannot be grounded on the law or on referendums.

The foregoing is not only a challenge of political relations but also a denouncement of a violation of nationally- and internationally-recognized civil, human, and political rights, and any citizen has the right to claim this violation before the Civil Rights Commission and any local, national, or international entity that accepts his or her claim.

The foregoing shows that this Commission has a right, a duty, and an obligation to accept the complaint of Boricua, ¡Ahora Es! and demand that the authorities of the local and national governments address the wishes of Puerto Ricans and provide a reasonable solution to the situation of a government without the consent of the governed that currently prevails. The exercise of the moral authority of the Civil Rights Commission in this matter is essential to safeguard our rights.

Thank you for your kind attention.

Speaker: Lawrence “Larry” Seilhamer Rodríguez

Date: January 28, 2014

Place: Civil Rights Commission

Summary:

The people of Puerto Rico have the fundamental civil right to decide their political future, as they did in the consultation of November 6, 2012 (“consultation”). In its Resolution No. 2013-1 (“Resolution”), the Civil Rights Commission (“Commission”) recognizes said right. Moreover, the Resolution specifies that said right is closely linked to the right to vote. The consultation originated from the President’s Task Force on Puerto Rico’s Status created by President Bill Clinton through Executive Order 13183 (“Order 13183”) in 2000. President George Bush continued with said initiative and issued reports in 2005 and 2007. In 2010, under the government of current President Obama, the Task Force held public hearings in Puerto Rico and Washington D.C. and issued its Final Report (“Report”) in 2011. The Report includes several recommendations about the issue of the political status of Puerto Rico. The Report states that all stakeholders (President, Congress, and the leadership and people of Puerto Rico) should work to ensure that Puerto Ricans could effectively express their choice of status in 2012 and that the options included the following: Statehood, Independence, Free Association, and Commonwealth. Consistent with said recommendations, in 2011, the government of the New Progressive Party in power enacted and signed Public Law No. 283-2011 authorizing a plebiscite regarding the political status on November 6th together with the general elections. The plebiscite consisted of two questions: the first one was about whether or not to maintain the current territorial status (Yes or No); and the second one was about what non-territorial status option (Statehood, Independence, or Sovereign Commonwealth) the voter preferred.

The consultation had an impressive participation of 78.19% of the registered voters. The voters rejected the current territorial status by favoring the option of the “No” on the first question. 53.97% of the votes rejected the “Commonwealth.” On the second question, 61.16% of the voters favored Statehood; 33.34%, the Sovereign Commonwealth; and 5.49%, Independence. The Puerto Rican electorate clearly rejected the current territorial status and chose Statehood as its preferred non-territorial status.

The consultation was an open, free, and democratic event. It gave all political and ideological sectors an opportunity to participate and, in turn, granted 11 months, a reasonable period, for them to express their opinions and provide guidance to their constituents about how they should exercise their fundamental civil right to determine Puerto Rico’s final political status. The consultation fully complied with all human rights and rights recognized in the Puerto Rico and U.S. constitutions. Moreover, it complied with the International Covenant on Civil and Political Rights adopted by the U.N., which emphasizes the right to the free determination of peoples and was ratified by the U.S. in 1992.

In May 2013, Resident Commissioner Pedro Pierluisi, to facilitate that both Congress and the President act in keeping with the will expressed by the people of Puerto Rico in the consultation, filed Bill HR 2000. The measure has the purpose of providing a federally-endorsed mechanism to ratify or reject the admission of Puerto Rico as a State of the Union. On August 1, 2013, Senator Ron Wyden (a Democrat from Oregon), Chair of the U.S. Senate Committee on Energy and Natural Resources (“Committee”) held a Public Hearing (“Hearing”) to hear the testimony of the chairs of the three major parties (Alejandro García Padilla, Popular

Democratic Party; Pedro Pierluisi, New Progressive Party; Rubén Berrios, Pro-Independence Party) on the results of the vote cast in relation to Puerto Rico's political status in the consultation. At the start of the hearing, Senator Wyden affirmed that there is an indisputable opposition, represented by 54% of the votes, to the current territorial status. Moreover, he said that, due to this rejection of the current territorial status, Puerto Rico only has two options: Statehood or "some form of separate national sovereignty." Likewise, Senator Lisa Markowski (a Republican from Alaska), the highest-ranking Republican official in the Committee, also made it clear that most Puerto Ricans do not favor the current territorial status. There is consensus among the U.S. Senate leadership that the people of Puerto Rico oppose the current status.

Governor García Padilla does not accept the validity of the results of the consultation, arguing that the Commonwealth was not included on the ballot. However, in his comments at the hearing, García Padilla was not even capable of defining the Enhanced Commonwealth for Senator Wyden.

On December 13, 2013, Senators Wyden and Murkowski sent a letter regarding the Hearing to Resident Commissioner Pedro Pierluisi in which they emphasized their opposition to including the option of the Enhanced Commonwealth in any formal process regarding Puerto Rico's political status. They stressed that the Enhanced Commonwealth is a non-viable option and that the only thing it does is to confuse the debate and undermine the efforts to resolve the issue of the status. Incidentally, the aforementioned Task Force Report describes the Enhanced Commonwealth as constitutionally problematic. Moreover, it stresses that any Commonwealth option (i.e. current Commonwealth and Enhanced Commonwealth) would fall under the territorial clause of the U.S. Constitution.

U.S. citizens located in the territory of Puerto Rico expressed their will in the consultation and conclusively rejected the territory, the Enhanced Commonwealth, the Commonwealth, or any other name by which Puerto Rico's status may be identified. The will of the Puerto Rican people expressed through the consultation has the logical effect of withdrawing the consent to continue living under a territorial, colonial status.

Trying to disregard the free, democratic will expressed by a people and, further, using public funds to discredit said majority decision violates the fundamental civil right to vote and also discredits and undermines the democratic process, the cornerstone of our society and republican form of government.

We invite the Civil Rights Commission to express a conclusive opinion on the historical juncture in which the people of Puerto Rico find themselves to have the result of the fundamental civil right expressed freely and democratically by a large majority be recognized and validated and finally allow Puerto Rico to come out of the political limbo it has experienced for over a century.

Speaker: Juan Dalmau Ramírez, Esq., Secretary General of the Pro-Independence Party

Date: February 18, 2014; 1:30 pm

Place: Puerto Rico Civil Rights Commission

Summary:

Juan Dalmau Ramírez, Esq., affirms that the consultation of November 6, 2012, was valid. Said consultation was held by virtue of the legislation proposed by the executive, which was later considered and passed by both legislative chambers and then signed by the governor of Puerto Rico at the time, Luis Fortuño Burset.

The plebiscite incorporated the characteristics of integrity, accuracy, and legality, elements that constitute the word *validez* [validity] as defined by the Real Academia Española.

The victory of the “no” in the plebiscite established that Puerto Rico’s condition of subordination is not legitimate and determined that Puerto Ricans have agreed not to continue with the current territorial status, something that had never been manifested before.

The result of the plebiscite of November 6th was the creation of a political and moral mandate ordering the government of the United States of America and the colonial government in power to recognize that Puerto Rico is a people who demands to be able to decide its political destiny. By virtue of international law standards, this mandate forces us to recognize that the power of the United States of America over Puerto Rico is an unlawful and tyrannical imposition that operates to the disadvantage of Puerto Ricans’ right to exercise their right to self-determination. At the same time, the mandate forces the colonial government in power to abstain from deterring initiatives that have been created to articulate a demand for decolonization.

Therefore, the administration of Alejandro García Padilla and the speakers of the two legislative chambers are under the obligation to process Bill 0719 introduced by the Pro-Independence Party on September 3, 2013, before the Puerto Rico Senate. The Bill proposes the creation of a Status Convention, which would be given the essential task of drafting the language of the decolonizing formulas that Puerto Ricans would present before the U.S. Congress. The obligation of “presenting” the mandate would fall on the Status Convention and, consequently, the U.S. Congress, bound by international law standards, must respect the work of said Convention.

In the colonial Constitution of Puerto Rico, there is no civil, political, or human right of citizens to have the Government comply with the electoral results of a plebiscitary consultation. The Organic Act creating the Civil Rights Commission of this Commission enables it to receive the information it intends to receive by means of these public hearings and must also be in a position to collaborate by disclosing the information and the educational efforts, along with any other initiative tending to strengthen Puerto Ricans’ claim for self-determination.

The legal mandate predates the political and moral mandate that stems from the victory of the “no” in the consultation of November 6, 2012. International Law commentators recognize the concepts of “external self-determination” and “internal self-determination.” The concept of “external self-determination” is defined as the right of peoples to promote and choose their own sovereignty, and the concept of “internal self-determination” is defined as the right of peoples to freely choose their own leaders and to have real participation in political processes and choose their own social order and forms of government.

The emergence of the League of Nations in 1919 and the creation of the “Mandate System” were important events in the development of concrete “self-determination” standards. The “Mandate System” is a tool by means of which the allied forces displaced the powers that lost the war and began to administrate the colonies maintained by the countries that were defeated “by means of a mandate.” Later on, in 1945, the Charter of the United Nations, which creates said organization, includes the legal concept of “self-determination” in Articles 1.2 and 55.

Later on, on December 14, 1960, the General Assembly of the United Nations adopted Resolution 1514 (XV) known as the Declaration on the Granting of Independence to Colonial Countries and Peoples. This resolution establishes that “The subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights...” and that “All peoples have the right to self-determination; by virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development.”

Cases from the International Court of Justice mentioned previously maintain that the right to self-determination is a fundamental human right. It is established that the right to self-determination is a customary law standard of the international law on human rights and is binding and imperative in relation to each and every Nation State that is a member of the international community. Thus, the usurper power of a country that has not attained self-determination is under the obligation to enforce international standards and is called to facilitate and promote a process by means of which the subordinated people may freely express their political will in accordance with the parameters established by the pertinent resolutions of the General Assembly of the United Nations. Likewise, said usurper power is under the obligation to create conditions that facilitate that, when choosing a decolonizing option, the people subject to a colonial regime will express their will free of pressures and influences from the usurper power that would tend to manipulate the criteria of the voters.

From the execution of the Treaty of Paris on December 10, 1898, to this date, the U.S. Congress has exercised plenary powers over Puerto Rico by virtue of the faculties recognized to it in the Treaty itself and under the provisions of the so-called “Territorial Clause.” The Commonwealth is the colonial political status that has kept Puerto Rico subject to the will of a foreign government.

The territorial nature of the relations between Puerto Rico and the United States has remained unaltered since the “Insular Cases.” Said cases establish that Puerto Rico is an unincorporated territory of the United States of America that, therefore, belongs to, even if it is not part of the United States, and is subject to the plenary powers of Congress under the “Territorial Clause.” This doctrine is still in effect, reiterated by the U.S. Supreme Court in its decisions regarding the detainees in Guantanamo and, later, in the report of March 16, 2011, from the President’s Task Force, which points out that the Commonwealth is a territorial status that subjects Puerto Rico to the plenary powers of Congress.

The result of the plebiscite of November 6, 2012, was accepted by the United Nations Special Committee on Decolonization in its Resolution of June 17, 2013. By means of said Resolution, the Committee recognized that Puerto Rican voters rejected the current relations of “political subordination” with the United States in the plebiscite of November 6th. Later on, in the II Summit of the Community of Latin American & Caribbean States (CELAC [Spanish acronym]) held in Havana, Cuba, on January 28, and 29, 2014, said international organization stated, by means of a Declaration from its members, that Puerto Rico was an issue of interest for CELAC. The declaration states that the CELAC member countries commit themselves to continue working, in the framework of international law, to make the region of Latin America and the Caribbean a territory free of colonialism and colonies.

The U.S. government is under the obligation to enforce a process in Puerto Rico that will facilitate the full exercise of the right to self-determination. The U.S. Congress is under the obligation to declare what decolo-

nizing options it is willing to implement and under what terms and it is also under the obligation to commit to a definitive project for Puerto Rico's transition to independence. The U.S. is under the obligation to guarantee to the people of Puerto Rico a fair transition that will transform Puerto Rico, from a colony subject to dependence, into a Nation State vested with the powers characteristic of sovereignty and independence, capable of entering the world of international relations and business. The U.S. is currently in violation of the international human rights protection system and will continue to be in violation indefinitely until it fulfills its obligation to decolonize Puerto Rico by means of a genuine process that will guarantee its self-determination.

Memorandum: Luis Enrique Romero Nieves, Esq.

Supplementary paper to comments of Juan Dalmau Ramírez, Esq., Secretary General of the Puerto Rican Pro-Independence Party

Date: May 6, 2014

Place: Memorandum received by email

Summary:

By means of this memorandum supplementing the comments made by Juan Dalmau Ramírez, Esq., on February 18, 2014, we intend to expand upon some of the topics addressed in the comments and raise certain legal concepts underlying the arguments that were presented.

International law has been typically defined as the “body of standards and principles of action that are binding between civilized nations in the context of their relations with each other” [translation ours]. The definition that is generally accepted by U.S. scholars is included in Restatement of the Law, Third, Foreign Relations Law of the United States. That source defines international law as the set of “rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or juridical.”

Furthermore, international law is included in various sources, which can be found listed in Article 38 of the enabling statute of the International Court of Justice. According to the provisions of said article, international conventions are first in the hierarchy of the formal sources of international law, and international custom, better known as “customary law,” are in second place. Restatement of the Law, Third, Foreign Relations Law of the United States defines customary law as that which “results from a general and consistent practice of states followed by them from a sense of legal obligation.”

The right to self-determination has a dual position within the hierarchy of the formal sources of international law. Thus, for example, article 1.2 of the Charter of the United Nations encourages “...friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...” The same document establishes in Article 55 that the purpose of the organization is the “...creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...”

For some international law scholars, the right to self-determination played an essential constitutive role in the creation of the United Nations and thus makes up one of the foundational pillars of the organization.

The right to self-determination is also established in the International Covenant on Civil and Political Rights, which came into effect on March 23, 1976. Article 1.1 of said treaty establishes that, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Then, Article 1.3 establishes that “The States Parties to the present Covenant... shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.” We should mention that the United States of America signed the Covenant on October 5, 1977, and ratified it effective June 8, 1992.

The right to self-determination has also been recognized in resolutions of the General Assembly of the United Nations, for example, in Resolution 1514 (XV) of December 14, 1960 (entitled Declaration on the Granting of Independence to Colonial Countries and Peoples). For some international law scholars, the adoption of this Resolution transformed the concept of “self-determination” from a political concept of uncertain application into a fundamental human rights standard. Even though the resolutions of the General Assembly are not a source of law per se, some of them, such as 1514 (XV) have become customary law.

For many human rights law scholars, the right to self-determination is also *jus cogens* and an *erga omnes* standard. In relation to the concept of *erga omnes*, it has been said that the right of self-determination is a standard opposable before any entity in the framework of international relations because it is a protection that the international community, as a whole, is called upon to vindicate, protect, and respect in relation to all peoples to whom said right has not been recognized. In relation to the *jus cogens* category, it has been said that the right to self-determination is the highest-placed standard in the entire body of international law standards. It is then an irrevocable standard that does not admit exception or agreement to the contrary and is binding just as if it were a principle of “international public order.” In that context, because of its importance for international order, the right to self-determination is compared to the international prohibitions against torture and slavery.

The International Court of Justice has had an opportunity to express its opinion about the right to self-determination. Seen together, in the cases of Namibia (1971), Western Sahara (1975), and the opinion in the case of East Timor (1995), said court ruled that:

“The right of self-determination is a fundamental human right the main sources of which are the aforementioned resolutions of the General Assembly of the United Nations and the two Covenants of 1966”; that it is “...a customary law standard of the international law on human rights and, therefore, binding and imperative in relation to each and every Nation State that is a member of the international community”; that “The usurper power of a country that has not attained self-determination is under the obligation to enforce international standards and is called to facilitate and promote a process by means of which the subordinated people may freely express their political will in accordance with the parameters established by the pertinent resolutions of the General Assembly of the United Nations”; and that said usurper power of a country that has not attained self-determination “...is under the obligation to create conditions that facilitate that, when choosing a decolo-

nizing option, the people subject to a colonial regime will express their will free of pressures and influences from the usurper power that would tend to manipulate the criteria of the voters.”

Commentators have stated that the aforementioned cases of the International Court of Justice have fully portrayed the two components of the right to self-determination, the legal component and the political component. For commentators, the obligation of international adjudicative bodies is only to identify the legal problem and determine whether the right to self-determination has been violated or not and order the usurper power to initiate the necessary political process to make the full exercise of the right effective. Therefore, according to commentators, the right to self-determination is always subject to the observance of ulterior political processes that will make the realization of the right effective.

Speaker: José Hernández Mayoral, Esq., presenting in public hearing comments by Alejandro García Padilla, Governor of the Commonwealth of Puerto Rico and Chair of the Popular Democratic Party of Puerto Rico. The comments were originally made before the U.S. Senate Committee on Energy and Natural Resources on August 1, 2013

Date: March 27, 2014; 1:30 pm

Place: Puerto Rico Civil Rights Commission

Summary:

Testimony of Hon. Alejandro García-Padilla, Governor of the Commonwealth of Puerto Rico and President of the Popular Democratic Party, before the U.S. Senate Committee on Energy and Natural Resources August 1, 2013

Dear members of the Senate Committee on Energy and Natural Resources: You have requested my opinion on the plebiscite celebrated in Puerto Rico on November 6, 2012 and President Obama’s proposal for an appropriation of \$2,500,000 for the celebration of a new plebiscite. I will address the aforementioned matter in that order.

The 2012 Plebiscite was not a legitimate exercise of self-determination. On November 6, 2012, the day of the general elections, voters were given a ballot with two questions. The first question read “Do you agree that Puerto Rico should continue to have its present form of territorial status?”, the second question asked the voter to choose between statehood, independence, and sovereign free associated state, regardless of the selection in the first question.

The pro-Commonwealth Popular Democratic Party opposed this plebiscite based on three main facts: (1) the process’ biased structure, (2) the unfair characterization of the Commonwealth option, and (3) the disenfranchisement of pro-Commonwealth voters. This was an electoral process rigged in favor of statehood.

The plebiscite’s structure was rigged in favor of statehood. The plebiscite’s structure closely followed the process proposed in H.R. 2499 (111th Congress) by Resident Commissioner Pedro Pierluisi in 2009. H.R. 2499 only differed in that it called for the two separate votes to occur on different dates, holding the second vote only if the status quo was defeated in the first round. This structure was severely criticized on the House Floor. The Congressional Record shows that criticisms of H.R. 2499 in its original form came from both sides of the aisle and focused mainly on the exclusion of the Commonwealth option in the second vote. As a result of those objections, the bill was amended to include the Commonwealth as an option in the second ballot and passed.

Revealingly, on May 20, 2010 Resident Commissioner Pierluisi came before this very Committee and acknowledged the fairness of the amendment. Former Governor Luis Fortuño, did so as well.

The 111th Congress ended without Senate action on H.R. 2499. The pro-statehood Puerto Rico legislature and Governor vowed to legislate it locally but delayed any action in anticipation of the White House Task Force Report on Puerto Rico's Status, released on March 16, 2011. The report expresses that it is "critical that the process is accepted by the people of Puerto Rico as fair", and that it should be a fair process even for those "whose status option is not selected". Expressing such a concern is unusual, for fairness as a procedural specification should go without saying. Evidently, the Task force felt that need. President Obama himself, during his visit to Puerto Rico in June of 2011, reiterated that warning. H.R. 2499, in its original form, led to these admonitions.

The ruling pro-statehood legislature and Governor of Puerto Rico disregarded the concerns of both the House and the White House, and disregarded what they told this Committee. The inclusion of the Commonwealth option in the second round was not given serious consideration by the legislative assembly. All the rhetoric about "not leaving anybody Out" or Commonwealth "standing equally alongside the other alternatives" was not sincere. This is the typical behavior of a statehood party that speaks about fairness in Congress but acts unfairly in Puerto Rico.

The two-question structure sought to conceal the fact that Commonwealth is still the preferred option among Puerto Ricans. In the 1993 plebiscite, Commonwealth got 48.6% of the vote, statehood 46.3% and independence 4.4%. Commonwealth won, although it did not pass the 50% mark. Those same results under the 2012 plebiscite structure, would have meant a Commonwealth defeat. The results, nonetheless, show that statehood is on the decline and suggest that Commonwealth is still the preferred option.

The Puerto Rico Elections Commission certified that 1,878,969 participated and that 834,191 voted for statehood. The truth is that of the total of votes cast, only 44.4% favor statehood.

The statehood group claims the number is 61%, but that is because they changed the manner in which the Elections Commission calculates percentages. Until this past plebiscite, percentages were calculated based on total ballots cast. The 2005 Report by the President's Task Force on Puerto Rico's Status calculated the 1993 result percentages based on total participation including blank and void ballots. Using that method, the Report states that statehood got 46.3% and 46.49% in those plebiscites. Statehooders recognize these percentages as valid. However, the November 2012 plebiscite was the first election in which the Commission could no longer include blank and void ballots when calculating percentages. When blank and void ballots are excluded, the statehood percentage jumps from 44.4% to 61%. There has not been a surge in statehood support, just a change in how votes are counted or, should I say, excluded.

Also the plebiscite ballot had a serious language problem. The Committee should wonder why the Puerto Rico legislature chose not to refer to the Commonwealth option in the ballot by its rightful and legal name, but instead used a derogatory "present form of territorial status." The reference to Commonwealth as "present form of territorial status" was meant to offend its supporters and deter them from voting "Yes". The reference to the Commonwealth of Puerto Rico as "present form of

territorial status” in the ballot was ill intended. It sought to deny the achievements of the compact created by the United States and Puerto Rico in 1952.

The plebiscite disenfranchised pro-Commonwealth voters because it failed to recognize the possibility of an enhanced Commonwealth. Referring to the Commonwealth as territorial in nature is only part of the problem. From its inception, the Commonwealth concept has always been conceived as a dynamic relationship subject to development and growth. However, the 2012 ballot limited the Commonwealth option to its “current” form only, thus excluding from the ballot those who believe that the best option for Puerto Rico is a further developed form of Commonwealth.

The establishment of the Commonwealth status was undoubtedly a significant achievement. Until then, no territory or possession had been allowed to adopt its own constitution and elect its own governor and legislature. Until then, Congress had delegated to some extent the administration or governance of local affairs to territories through organic acts, but it had not relinquished those powers and granted state-like sovereignty. The creation of the Commonwealth of Puerto Rico was not the culmination of an innovative process of self-determination and US federalism. From the very beginning, Commonwealth adherents recognized the need to address certain issues. One of these issues was the applicability of certain Federal Laws in Puerto Rico.

Since 1952 there have been several efforts, taking various forms, to further develop Commonwealth. These merit discussion for they show that a further development of Commonwealth status is a matter of political will and statesmanship.

In October, 1975, an Ad Hoc Advisory Group on Puerto Rico appointed by President Nixon and Governor Hernandez Colón presented a “Compact of Permanent Union Between Puerto Rico and the United States.” The proposed compact was the result of a process of studies, inquiries, public hearings, reports and discussions over a two-year period. The proposed “New Compact” dealt with matters such as legal title to lands and navigable waters, citizenship, internal revenue, immigration, representation (proposing one nonvoting representative in the Senate in addition to the one it has since 1900 in the House of Representatives), assignment of federal functions to Puerto Rico (if Puerto Rico agrees to assume the “expenses and responsibilities”), labor, and the environment. The proposal further provided a solution to one of Commonwealth’s most vexing problems: the automatic application of federal laws to Puerto Rico. The compact proposed an objection mechanism wherein Puerto Rico could protest the application of a given legislation triggering a process whereby Congress, following certain criteria, could exclude Puerto Rico from the application of a given law. While this has always been contemplated as an exceptional mechanism that would be used very sparingly, it helps resolve the current democratic fault of having the governed automatically ruled by laws adopted without their participation.

A bill incorporating the compact was introduced in the House, H.R. 11200 (approved in subcommittee), and Senate, S. Res. 215, but the Commonwealth party’s defeat in the 1976 elections for reasons unrelated to the status issue, put an end to such effort.

Another significant effort to enhance Commonwealth occurred during the 101st Congress, where the House of Representatives unanimously passed H.R. 4765, a bill calling for a plebiscite on status. As with the 1975 compact proposal, the definition of New Commonwealth in this bill

provided for the “exemption of Puerto Rico from federal laws and for the entry of Puerto Rico into international agreements, so long as the proposals are consistent with the vital national interests of the United States.” The Senate did not consider H.R. 4765. Instead, Senator Johnston, the Chairman of the Energy Committee, and Senator Wallop, the Ranking Minority Member, introduced their own bill, S.224, in the 102nd Congress. This bill also promoted a referendum in the various status alternatives, with a Commonwealth definition that made explicit some of its characteristics and established its further enhancement as a policy of the United States.

S.224 was defeated in mark up by members of the Energy Committee because some had objections to the inclusion of statehood as an option in the self-executing bill. None had objections to the enhanced Commonwealth definition. The U.S. Supreme Court has pointed out that “modify[ing] the degree of autonomy enjoyed by a dependent sovereign that is not a State- is not an unusual legislative objective.” History shows that Congress has engaged in far more radical adjustments to the autonomy of non-States (e.g. the Philippines) than those required for the enhanced Commonwealth formulations discussed above. By failing to present the option of Commonwealth with enhancement potential, supporters of Commonwealth status ‘were denied the opportunity to vote for their choice of association. They were unable to reiterate their desire that Puerto Rico continue to pursue enhancements of the Commonwealth for the benefit of both Puerto Rico and the United States.

Furthermore, the plebiscite wrongful and ill-intentionally applied the term Commonwealth to the Free Association option. In Spanish, Commonwealth is known as Estado Libre Asociado, which translates literally to “Free Associated State”. The term “Commonwealth” was chosen over “Free Associated State” because of its familiarity among members of Congress in 1952. In the November plebiscite, while pro-statehood legislators avoided using the term Commonwealth in reference to the Commonwealth option itself, they unabashedly used the term in the ballot to denominate the free association option, calling it “Estado Libre Asociado Soberano” or “Sovereign Free Associated State.” There are marked differences between the concepts of free association and Commonwealth. The U.S. defined both in the 1980s when it offered them to its protectorates in the Pacific. The Mariana Islands chose to become a Commonwealth while the Republic of Palau, Micronesia and the Marshall Islands chose free association.

Free association, as applied in those three cases, is a form of independence. Those compacts of association are for a specific term subject to renewal and renegotiation. The residents of the associated country are not U.S. citizens. In contrast, residents in a Commonwealth are citizens by birth and the compacts do not have an expiration date subject to renegotiation. Their sovereignty is not that of an independent nation but similar to that of the States. The ballot’s definition for “Sovereign Free Associated State” was that of free association. It specifically describes the relationship between the U.S. and Puerto Rico as between sovereign nations and makes no mention of U.S. citizenship.

During legislation, the statehood party fended off criticism that they were deliberately trying to confuse voters claiming that “Sovereign Free Associated State” was taken from the PDPs 2008 platform. “Sovereign Free Associated State” in such platform did not refer to an independent Puerto Rico in association with the U.S., as would be the case under free association and as asserted

in the ballot the term “sovereign,” as used in the platform, referred to the relationship resulting from specific consent by the people of Puerto Rico.

The PDP charged the statehood party with deliberately stacking the deck against Commonwealth with the two question structure and seeking to exclude and divide Commonwealth supporters by manipulating the ballot’s language. In February 2012, the party’s governing board passed a resolution recommending that voters disregard the reference to Commonwealth as the “present form of territorial status” and vote “yes” in the first question. Since Puerto Rico’s Supreme Court recently stated that a blank ballot “expresses an inconformity with the presented proposals,” the Party asked voters to leave the second question blank as a form of protest.

Some party leaders, including a former governor, argued that leaving a ballot blank was susceptible to fraud and would allow statehood supporters to claim an artificial victory with an inflated percentage. They openly recommended voting for “Sovereign Free Associated State,” although under the pledge that it would not be interpreted as a vote for free association. The unusually high number of blank ballots and votes for free association demonstrate an inconformity with the ballot in the previous plebiscite, only 0.1% cast blank ballots and 0.3% for free association. That is less than half of a percentage point combined. But in the November plebiscite, 26.5% cast blank ballots and 24.2% voted for free association. Combined, their numbers rose from 0.4% in the previous plebiscite to 50.7%. One could disingenuously interpret that as a massive shift in voter preference. But the most reasonable explanation is that those were the two options where Commonwealth supporters sought refuge.

We are optimistic about the Administration’s Efforts. While under normal circumstances the Department of Justice’s participation in this process is unnecessary -historically this type of referenda have been conducted locally- there are at least two justifications for the Department of Justice’s involvement this time around. One is the mistrust caused by all matters surrounding the last plebiscite. Two, while the Department of Justice’s involvement is not legally a commitment to the results, I understand the President would become morally obligated to support the result. Some claim that the language in the budget proposal that says “not incompatible with the Constitution and laws and policies of the United States” is a reference to precluding the enhanced commonwealth concept. This is not the case. There is no blanket rejection there, but rather an assurance that the “enhanced commonwealth” proposal that ends up in the ballot is constitutionally viable. That becomes clear when read in conjunction with Report by the President’s Task Force on Puerto Rico’s Status, published on March 2011. The report addresses some areas of enhancement that are not constitutionally problematic, and that Puerto Rico would need to negotiate with Congress. Since the Administration has not expressed an objection to enhanced Commonwealth per se, only to some aspects of it, we welcome the opportunity of discussing the enhancement potential of the Commonwealth with the Department of Justice. In sum, I am optimistic that the Administration and Congress will act in a fair and balanced manner. I hope that the proposal put forth by the President is an opportunity to hold a plebiscite that is transparent, democratic and respectful of all self-determination options, including the pursuit of a more perfect compact between the United States and the Commonwealth.

Appendix J • Final Report on Senate Resolution 201

Appendix J

COMMONWEALTH OF PUERTO RICO

14th Legislature

3rd Ordinary
Session

PUERTO RICO SENATE

March 11, 2002

Final Report on Senate Resolution 201

TO THE PUERTO RICO SENATE:

The Commission on Legal Affairs of the Senate, having studied and considered Senate Resolution 201, will now issue its final report with its findings, conclusions, and recommendations.

For evident legislative reasons, this report is not intended to be a treatise on our task nor to exhaust the many details that warrant attention. It is a work document, so it is simple and concise; its purpose is to convey to the full Senate the essential elements regarding the concept in order to prepare the Chamber to address any related legislation and to urge its Members to delve deeper into the matter individually.

It is also intended to give an official response to the mandate of the electorate's vote in the last general elections. The Popular Democratic Party, the winning party, presented as an integral part of its *Government Program*, *Puerto Rican Project for the 21st Century*, *Status*, *Semicentennial Project* ("aimed at guaranteeing that the voice of all Puerto Ricans is heard" [translation ours]), three grounds on which to address the issue. One, the second ground, is the "search of a *procedural understanding* among Puerto Ricans," for which a *Unity and Consensus Commission* would be appointed that would be responsible for "analyzing all the procedural alternatives of the People of Puerto Rico to exercise their right to self-determination" [translation ours]. We have here, in *The Status Convention of the Puerto Rican People*, the other alternative.

It would then be in order to have a detailed discussion of the parameters that were studied resulting from an exquisite dialogue between deponents who are thinkers on the topic and kindly and generously answered the call of this Commission and the Members of the Commission on Legal Affairs.¹

¹ Hon. Carlos Vizcarrondo, Noel Colón Martínez, Esq., Juan Mari Brás, Esq., Oreste Ramos, Esq., Juan Manuel García Passalacqua, Esq., Professor Julio Muriente, Luis Vega, Esq., Hon. Néstor Duprey, Charlie Rodríguez, Esq., Osvaldo Villanueva, Esq., Carlos Gorrín, Esq., Marco Rigau, Esq., Eduardo Morales Coll, Esq., Bar Association, Civil Rights Commission, Dr. Ángel Rivera Ortiz, Dr. José Javier Colón Morera, Dr. Antonio Fernós, Luis Muñoz Rivera, Esq. (member of the Constitutional Convention).

I. Prior Considerations

The events leading to the adoption of the Commonwealth Constitution were the last formal Congressional recognition of the status issue.² Since then, there have been multiple attempts to reintroduce the topic, but they have been unsuccessful.³ The new relationship⁴ between Puerto Rico and the United States and its inherent problems were then relegated to the courts of justice and the political debate both in Puerto Rico and in Washington. The former created more confusion than solutions and the latter produced a long list of problems typical of the schemes of partisan and electoral “opportunities.”

Until and including the last event of a Congressional initiative sponsored by U.S. Representative Don Young from Alaska, which brings to memory the previous one by Senator Bennet Johnson, the governmental reality between Washington and San Juan in matters of status has an overtone of irrelevance and, at certain points, even elements of disrespect from elected and non-elected officials in their personal capacities. [Washington] did not even take cognizance of the last plebiscite. This, together with the apparent official strategy of ignoring Puerto Rican electoral results, forces us to address novel alternatives that will trigger a higher level of attention from Congress and political parties in the United States.

There is a possibility that events being developed in both Puerto Rico and the United States are directly and indirectly, in the short- and long-term improving the level and intensity of attention of U.S. legislators to Puerto Rico and its problems. We can mention the case of Vieques as a recent event, and perhaps also the set of events related to corruption and involving high-profile figures, and even the strategic reconfiguration of the United States before the world after the terrorist attacks and what appears to be a new “arrangement” with Cuba and the implications thereof, as well as the new world market view of the United States as a result of the presence of the European Union and the “new world order.”

On the other hand, the philosophy of conquest that drove the U.S. to the Spanish-American War from which it obtained Puerto Rico, has started to wane. The doctrine of the so-called Insular Cases⁵ that validate the principle of acquiring territories whose inhabitants would only enjoy the rights chosen by Congress, to which the great jurist Justice Harlan ardently objected at the time, received the first stab in the dissenting opinion of Justice Thurgood Marshall in the case of *Harris v. Rosario*⁶ when he stated that the validity of those decisions is now questionable. The second stab was from Justice Brennan in his *concurrent opinion* in *Torres v. Puerto Rico*⁷, which questions the validity “of the old cases such as *Downes v. Bidwell*, *Dorr v. United States*, and *Balzac v. Porto Rico*.”

2 Apart from the reasons given in the Commission Reports recommending the passage, in 1956, of H.R. 9038 (to treat Puerto Rico as a state for purposes of the federal court) and, in 1961, of H.R. 7038 (to appeal directly to the U.S. Supreme Court).

3 Ramírez Lavandero and Ortiz Dalliot, *Documents on the Constitutional Relationship of Puerto Rico and the United States*, Puerto Rico Federal Affairs Adm., 1988.

4 82nd Congress, July 3, 1952, Public Law 447, 66 Stat. 327, Chap. 567, validating the Constitution.

5 *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Dooley v. United States*, 183 U.S. 151 (1901); *Pepke v. United States*, 183 U.S. 176 (1901); *Hawaii v. Mamkichi*, 190 U.S. 197 (1903); *Dorr v. United States*, 195 U.S. 138 (1904); *Rasmussen v. United States*, 197 U.S. 516 (1905); *Kopel v. Bingham*, 211 U.S. 468 (1909); *Balzac v. People of Puerto Rico*, 258 U.S. 298 (1922); *Puerto Rico v. The Shell Co.*, 302 U.S. 253 (1937).

6 446 U.S. 651 (1980), pgs. 1930-1931.

7 442 U.S. 465, 475-476 (1979).

It would be worthwhile to quote the analysis of Judge Pregerson from the Court of Appeals for the Ninth Circuit in a lengthy dissenting opinion in a matter of applicability of the 14th Amendment of the U.S. Constitution:

Moreover, it is important to remember that the Insular Cases are a product of their time, a time when even the Supreme Court based its decisions, in part, on fears of other races... Justice Harlan warns in his vigorous dissent in *Downes* that the principles announced in that case could work “a radical and mischievous change in our system of government.”⁸

We must also note the evolution in the “judicial sociology” of the U.S. Supreme Court between the case of *Harris, ante*, and the later case of *Puerto Rico v. Brastad*.⁹ The majority justices in the first case join the majority in the second case in the opinion by Marshall, who had written the minority opinion in the former, and the decision-making philosophy changes between one case and the other.¹⁰ In short, it is very possible that a different governmental position is being reconfigured in this matter.

II. Legal Grounds

This Commission believes that this factor has garnered more attention than really necessary. It is enough to recognize that, regardless of sectorial opinion or preferences, the Puerto Rican people have enough legal power to call the Convention.

It is therefore the people of Puerto Rico who must be directly involved in the decision about their final destiny or in the approval of measures that significantly affect their relations with the United States. The Puerto Rico Legislature has the power to order non-discriminatory plebiscites regarding said measures or regarding the general issue of status. The allocation of funds for such purposes undoubtedly constitutes an allocation of funds for public purposes. [Translation ours.] *P.S.P. v. E.L.A.*¹¹

The Convention shall be the outcome of a consultation and shall lead to another consultation or consultations and undoubtedly constitutes a “general issue of status,” all the more so when it exclusively deals with the “final destiny” of the relations with the United States, exercising the power reserved by the people to such effects, a power that arises from Resolution Number 23 of the Constitutional Convention and was judicially validated in *P.S.P. v. E.L.A.*, pg. 608.¹² The U.S. government does not have the power to object or prevent it, as said legislation is the result of the internal sovereignty granted by means of the constitutional process, equivalent to the “quasi-sovereign” power of a state of the union.¹³ Obviously, this does not imply that the Congress must, perforce, address and respond to the results.

⁸ *Rabang v. U.S.*, 35 F.3d 1449 (9th Cir. 1994), 1463-1464.

⁹ 107 U.S. 2802 (1987)

¹⁰ Regarding the interpretation given to *Harris* by the Government Accounting Office, see *Briefing Notebook for the Committee on Energy and Natural Resources, U.S. Senate*, June 1989, pg. 4-7. In *Brastad*, see note no. 5, majority opinion.

¹¹ 107 DPR 590 (1978), pg. 609. See also, *Báez-Galib v. C.E.E.*, 146 DPR ____ (2000), 2000 T.S.P.R. 161.

¹² “For greater clarity, the Constitutional Convention stated in the third paragraph, clause (e) of its Resolution No. 23 that [translation ours] ‘The people of Puerto Rico reserve the right to propose and accept modifications in the terms of its relations with the United States of America...’” See also *Ramírez de Ferrer v. Mari Brás*, --- DPR ----.

¹³ *Alfred L. Snapps & Sons, Inc. v. Puerto Rico*, 458 U.S. 592 (1982). See also, *Rodríguez v. Popular Democratic Party*, 457 U.S. 1 (1982); *Posadas v. Tourism Co.*, 478 U.S. 328 (1986).

Albeit of more importance, Puerto Ricans' natural rights as social beings that are separate and different from the rest of the world, who constitute a sociopolitical nationality, offer solid grounds understandable by international law. This, however, lends itself to ideological suspicions in Puerto Rico that we must avoid in view of the existence of latent openings. Having Congress itself, after the Preamble was submitted before it and Congress analyzed and approved it, recognized said Preamble, which includes the concept of "**We, the people of Puerto Rico... do ordain and establish this Constitution for the Commonwealth which, in the exercise of our natural rights, we now create,**" [translation ours] said Body is prevented (estopped) from questioning that legal capacity.

It is important to emphasize that our highest court has ruled that the Preamble is not a mere proclamation of principles, it has the full value of a positive constitutional right and is translated into commitments or principles to which the constituents, the People, adhered.¹⁴

Another source of right, albeit more complicated and subject to debate, is the status of the international Treaties of the United States and their application to Puerto Rico. Article VI, Clause 2 of the U.S. Constitution establishes that "This Constitution, and the laws of the United States which shall be made in pursuance thereof; **and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land...**" (Emphasis ours.) This means, therefore, that any treaty granting rights to an ethnic or political person, such as the political body known as the People of Puerto Rico, is the law *in* the United States and affects any citizen. We should remember that the Charter of the United Nations is a treaty that the United States signed, it is the law¹⁵ and it is binding, as long as the matter is self-executing.¹⁶ Experts on constitutional law maintain that the issue herein is governed by these precepts.¹⁷

We should also take cognizance of Article II, Section 19 of the Commonwealth Constitution. This conditional clause in the Bill of Rights rejects that, because they are enumerated, rights of the people not included therein are excluded. It reads as follows, "The foregoing enumeration of rights shall not be construed restrictively nor does it contemplate the exclusion of other rights not specifically mentioned which belong to the people in **a democracy...**" [Translation ours.] (Emphasis ours.) We must note that the protected rights are not merely "Puerto Rican," they are the rights of "a democracy."¹⁸

Alternatively, both this one and the one that inspired its inclusion in our Bill of Rights, the 9th Amendment of the U.S. Constitution, may be recognized as a source of law, even despite ideological or personal preferences or inclinations. The 9th Amendment states the following, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."¹⁹ In view of the fears of the Founding Fathers of the U.S. Constitution, which were sufficient to vote against the amendments (Bill of Rights), that the enumeration of rights could exclude others just as important, James Madison solved

14. *P.I.P. v. C.E.E.*, 120 DPR 580 (1988).

15. *Diggs v. Richardson*, 555 F.2d 848 (D.C. Cir. 1976).

16. *People v. Saipán*, 502 F.2d 90 (9th Cir. 1974), and *Pauling v. McElory*, 164 F. Supp. 390 (D.C. Dist. 1958), confirmed in 207 F.2d 252.

17. For example, Deponents' Round Table, Professor Carlos Gorrín Peralta's Turn.

18. Our Bill of Rights has a greater scope than that construed by the U.S. Supreme Court in the U.S. Constitution. *López Vives v. Policía de Puerto Rico*, 118 DPR 219 (1971).

19. *House of Representatives*, Folleto sobre Documentos Básicos.

the controversy with the 9th Amendment. In fact, it is considered a counterweight to the Supremacy Clause.²⁰ It is obviously accessible to all citizens.

Justice Abe Fortas, concurring in the case of *Griswold v. Connecticut*²¹, explained: “The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments.” Between Saeger and Arnold, cited in the notes, the clause is presented as one recently rediscovered and dynamic that, in doubtful balance cases, operates against the government. Without this report being a medium for legalistic disquisitions, we must remember that the right to self-determination, as a right *in personam* principle that was essential at the time of the Convention and one of the *sine qua non* grounds of the Revolution, coexisted with the rights established in the Bill of Rights when it was drafted,²² so it must be taken into consideration in the construction of the contents of the Amendment.

III. Purpose

This democratic decision-making mechanism has been identified with an ideological sector in Puerto Rico. Due to the deep barriers that divide us as a people, it is difficult to accept concepts arising from and promoted by those who think differently. The Convention is a democratic structure originally presented by Hostos²³ and taken up by Albizu²⁴, and it was only recently recognized by leaders of a different ideology.²⁵ Perhaps therein lies the reason for the difficulties in its acceptance to date.

The people of Puerto Rico have tried all the mechanisms available in the arsenal of electoral provisions to address the issue of the status. The plebiscite, a process of electoral excellency, has turned out to be unsuccessful and costly. Its results have been ignored by Congress and, locally, it has been mostly used to support the electoral strategies of every four years to elect the government. Its results have even been misrepresented on occasion.²⁶

So-called congressional initiatives, consisting of introducing bills in the U.S. House or Senate, are processed in Congress under the influences of the leadership of Puerto Rican parties, each seeking its own inclination. Both initiatives, the one promoted through Senator Johnson and the one through Representative Young, became battles between opposing interests that caused their destruction. One of the them, Senator Johnson's, was derailed by the members of Congress themselves when it showed signs of possibility. There was a Status

20 Sager, *You Can Raise the First, Hide Behind the Fourth, and Plead the Fifth, But What on Earth Can You Do with the Ninth?* 64 Chicago-Kent L. Rev. 239, *et seq.*; *The Ninth Amendment and the Unwritten Constitution*, 64 Chicago-Kent L. Rev. 177 (1988); Barnett, *Reconceiving the Ninth Amendment*, 74 Cornell L. Rev. 1; Arnold, *Doing More than Recommending the Ninth Amendment*, 64 Chicago-Kent L. Rev. 268.

21 381 U.S. 479 (1965), 517.

22 The concept of “pillars of justice” as a right recognized at the time. See, Barnett, *ante*, pg. 31.

23 Mari Bras, *La Base Hostosiana del Planteamiento Constituyente*, *Materiales de Estudio, Congreso Nacional Hostosiano*, July 8, 2000.

24 Delgado Cintrón, *La Convención Constituyente en Pedro Albizu Campos*, *idem ante*.

25 See comments of Hon. Carlos Vizcarrondo Irizarry, Speaker of the House of Representatives (Popular Democratic Party), on September 19, 2001, before this Commission, and public pronouncements of Hon. Sila M. Calderón, Governor and Chair of the Popular Democratic Party, and Hon. Anibal Vega Borges, House of Representatives Spokesman for the New Progressive Party.

26 See *Báez-Galib v. Rosselló*, 99 TSPR 3, 147 DPR ____.

Commission (*Stacom*)²⁷ in which both Puerto Ricans and members of Congress participated that, after multiple meetings, studies, depositions, and debates, produced a report as its endpoint. A true endpoint.²⁸

In the range of known possibilities, there is only this never-before-tried decision-making mechanism left. It contains all the basic elements of a democratic self-determination process that would produce a legally-valid mandate. Its formulation and the ratification of its decisions will come from “equal, direct, and secret universal suffrage...” protected from “any coercion”²⁹ and will answer to the basic principle of “one man, one vote”³⁰ if the corresponding electoral system is structured on those constitutional grounds.

The only objection raised—that prior congressional authorization, or at least their parliamentary expression, is an indispensable requirement for it to be legal—can be reasonably addressed. First, in all instances in which the Puerto Rican leadership has tried to formally obtain the “view of Congress,” it has failed. There is no question about it. Secondly, the final stage of this model inevitably requires congressional intervention. If the people of Puerto Rico have risked, through plebiscites, status commissions, and “congressional initiatives,” to try political determination processes without a prior commitment in the former and in the futile search for one in the latter, there is no reason to resist this other model.

Like any calculated adventure in the world of high politics, the essential element is and will be the political will to do so and the awareness that, by failing to obtain the minority opinion there, all, or part of, the goals, the willingness to join, albeit reluctantly and painfully, the mandate of the majority is the true triumph of democracy. We thus have there the key to this social enterprise. This model also requires that the majority be willing to yield elements to the minority to offer a vital space where the minority may meet part of their expectations.

IV. The Convention

It would be unreasonable and improper to try to design the model of what it should be. That picture is an integral part of the dialogue in the search for consensus. This Commission would be occupying the field of those who have the primary authority over said design, in both procedural and substantive terms. That initial authority lies with the political and civil leadership of the country as tentative interpreters of the people’s view to then present to the electorate their agreed-upon product in pursuit of a mandate. We must, however, establish certain essential elements.

To fulfill its purpose and overcome any legal challenge, it is essential that: a) it be convened correctly; b) the composition thereof is in keeping with the electoral principles set forth in the Constitution so that it correctly represents the electorate; c) its internal procedures allow for the broadest participation of its members and promote the highest degree of dialogue; d) its decisions be supported by the electorate; and e) the processing of said decisions, if they consist in congressional intervention, be faithfully in keeping with what the electorate supported.

²⁷ Trias Monje, *Historia Constitucional de Puerto Rico*, Vol. IV, pg. 219, *et seq.*, Ed. UPR, 1983.

²⁸ “As soon as the report was submitted, the status debate resumed in Puerto Rico with equal or greater intensity than before, while the usual placidity and indifference toward the local agitation reigned in Washington. It was as if nothing had happened. [Translation ours.] Trias Monje, *idem.*, pg. 244, emphasis added.

²⁹ Article II, Section 2, Commonwealth Constitution [translation ours].

³⁰ Or rather, “one person, one vote” [our translation], *Fuster v. Busó*, 102 DPR 327 (1974). See *Cerezo v. Busó*, 419 U.S. 1098 (1975).

A. Convening

Evidently, the legislative mechanism is the *Concurrent Resolution*. It has force of law but only until the purpose for which it was introduced has been fulfilled, and it follows the same procedure as a bill. Both Legislative Bodies are involved. In the Senate, it is addressed in Rule Number 16 of the Regulations, Senate Resolution 323 of March 29, 2001. The *Joint Resolution* is ruled out because it does not have the nature of legislation nor is the purpose thereof to amend the Constitution. See Rule No. 17, Regulations, *ante*.

The Resolution has the purpose of presenting to the electorate the advisability of the Convention or the lack thereof and the authorization to convene the same by electing delegates and outlining the jurisdiction within which the issue of the status may be addressed. A detailed, certain description of how the result would be managed will be essential. It must be determined if a period of time will be imposed to conclude the same and funds will be allocated, which will be managed by the Convention itself in keeping with its indispensable independence of action.

B. Composition

This is the most delicate and difficult condition to set up due to the constitutional rulings related to the electoral process.

We recognize that multiple systems may be designed depending on how the candidates are qualified—whether from civil society or from parties—or if we choose not to involve non-partisan groups or if Puerto Ricans who live outside the island are allowed to participate under the premises that are established (*animus manendi/animus revertendi?*).³¹

C. Internal Procedures

Since the *indispensable* requirement of the model is a broad dialogue for substantially educated debates, internal processes must provide maximum guarantees of participation. A system of *ad hoc* Commissions by topic and for limited periods of time according to needs could be adopted to conduct more thorough studies on specific matters that would not yield results in the full Convention. Private, individual dialogue would be promoted to put conclusions on public record in due time.

An issue to consider is whether we would prohibit the caucus system, thus providing more individual freedom, such as parliamentary rules of conduct, including speeches, to eliminate, insofar as possible, if possible, any frictions that would lead to a stubborn, unproductive impasse.

Another element to be considered is whether the chairmanship of the Convention should be rotated on a weekly basis (or for short terms) to avoid creating a source of power conducive to internal pressures. This, together with management of the system by agents other than the members, but accountable to them, could offer a greater breadth of action in a parliamentary body. The financing of the model must consider considerable investment in the best counseling available on the matters to be discussed. Our universities have exceptional talent that could

³¹ If a person proves that he or she intends to return to the island or to stay abroad “forever.”

be accessed by means of agreements with those teaching centers without affecting their principal educational work.

D. Back to the Voters

The Convention may not reach an agreement, in which case its mandate would end. It may reach a defining agreement of a single status formula, it may design several formulas, or it may reach agreements that are inconceivable at this time. When the time comes to record the results, they must unavoidably and irreplaceably be presented to the voters for their endorsement. The number of votes to grant the final mandate for action shall be reasonable, which is another vital area of analysis.

Given the importance of this intervention, the final product to be presented must be at the level of understanding of the most humble denominator of our electorate. There should not be even a possibility of defects in the presentation, so an alternative to explore is for the Convention itself to be the entity authorized to present and explain its determinations to the voters, as well as to manage the electoral process even if it delegates the immediate management thereof to the Puerto Rico Election Commission.

E. Processing the Determinations

The obvious purpose is to present a united front to Congress and a demand for action, all of it endorsed by the people and grounded on recognized rights. The Convention, in the way deemed appropriate in practical terms, must determine the form and means of presentation, a mechanism that faithfully conveys the mandate issued and addresses the ever-present possibility of excising sectors prior to the presentation.

The government, with its official relations, would be under the obligation to facilitate the transmission of the mandate and will show support from its institutions to the entire process. A requirement of the transmission would be transparency and constant communication with the electorate, reporting back to the public constantly and at each step.

V. Conclusion and Recommendation

The *Status Convention of the Puerto Rican People* is a feasible and appropriate mechanism to address this political issue. This Commission on Legal Affairs recommends that it be considered as a priority alternative, aware of the impotence shown by the other traditional alternatives. The U.S. Congress has not considered the purposes or the results of the *plebiscite*, the *congressional initiative*, and the so-called *status commission*, even when they have arisen from the majority will of the people.

Respectfully submitted,

Eudaldo Báez Galib
Chair
Commission on Legal Affairs

Appendix K • Senate Concurrent Resolution 107

Appendix K

(S. Con. Res. 107)

CONCURRENT RESOLUTION

To set forth the public policy of the Puerto Rico Legislature in facing and addressing the urgent need to review the political relations between Puerto Rico and the United States by means of a Constitutional Status Convention elected by the people in the exercise of their natural right to self-determination and sovereignty and direct its organizational process.

PURPOSES ARTICLE

The right of Peoples to choose their system of government and political destiny freely in relation to the other countries is an inalienable natural right: neither legislation contrary to this right nor a regime or piece of legislation contrary to the full exercise of this right can be admitted, as established by various resolutions of the General Assembly of the United Nations applicable to Puerto Rico.

The regime of political relations between Puerto Rico and the United States of America has been subject to future deliberation since the conclusion of the work of the Constitutional Convention on the political status of the People of Puerto Rico in 1952 that drafted the Constitution of the Commonwealth of Puerto Rico, by virtue of the fact that Public Law 600 of the 81st United States Congress of 1950, accepted in a referendum held in Puerto Rico, limited the deliberative and governmental framework of the Constitutional Convention to 1951 to 1952.

The Constitutional Convention of 1952 expressed through Resolution No. 23 that “The People of Puerto Rico reserve the right to propose and accept modifications in the terms of its relations with the United States of America, in order that these relations may at all times be the expression of an agreement freely entered into between the People of Puerto Rico and the United States of America.” (Enacted February 4, 1952, and forwarded to the President of the United States.)

This expression, based on natural, constitutional Law of the highest democratic nature, was later on included by the General Assembly of the United Nations in Resolution 748 (VIII) of November 1953 regarding the documents submitted by the United States Government in relation to the Constitution of the Commonwealth of Puerto Rico. This is encompassed in its ninth dispositive paragraph, when it “expresses its assurance that, in accordance with the spirit of the present resolution... due regard will be paid to the will of both the Puerto Rican and American peoples... in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association.”

Since the current status of political relations between Puerto Rico and the United States came into effect, insistent efforts have been made to review the issue of the political status of Puerto Rico and the scope

of its relations with the United States of America. In particular, a process to consult the country was carried out in 1967 in which the majority of the participants reaffirmed their support to the alternative of the Commonwealth. Later on, in 1993, a second plebiscite was held in which the alternative of the Commonwealth was again favored. Finally, in 1998, a new plebiscite was held in which the Puerto Rico Legislature, and not political parties or groups representing particular ideologies, defined the status alternatives to be submitted to the people. The alternative of “None of the Above” was favored in that plebiscite.

Similarly, in the last fifty-two years, various efforts have been made to get the U.S. Congress to pass legislation allowing the discussion of this issue to move forward. In particular, we take cognizance of the efforts made in the 1960’s and 1970’s with the Status Commission, from 1989 to 1991 with the Committee on [Energy and Natural] Resources of the U.S. Senate, and in the mid-1990’s with the Committee on [Natural] Resources of the U.S. House of Representatives. None of these efforts was able to produce legislation that would effectively address the discussion of the status.

Having repeatedly attempted various methods across decades, the Puerto Rico Legislature, in the exercise of its powers and authorities pursuant to the Constitution of the Commonwealth of Puerto Rico, proposes to consult the country to determine the procedural mechanism it deems appropriate to address the issue of the political status of Puerto Rico and the scope of its relations with the United States of America. Instituting a Constitutional Status Convention shall be offered as an alternative in said consultation.

More than fifty years after the current status came into effect, in view of the manifest expression of all the sectors representing the country on the need to consider changes in the current relations, this Legislature must consult the people to initiate the process of choosing an appropriate mechanism to address the political status of Puerto Rico and its relations with the United States of America.

NOT, THEREFORE, BE IT RESOLVED BY THE PUERTO RICO LEGISLATURE:

GENERAL RESOLUTIONS

Article 1.- Declaration of Public Policy

It is hereby declared that the People of Puerto Rico have the inalienable natural Right to Self-Determination and political sovereignty. Pursuant to the same, this Legislature hereby declares that, having several processes to exercise said right failed, it is imperative that the people exercise said right through a Constitutional Convention on the status of the relations between Puerto Rico and the United States of America.

Article 2.- The Legislature takes cognizance of the Report issued on March 11, 2002, as mandated by Senate Resolution 201 and House Resolution 3873, both recommending the mechanism of a People’s Convention to address the issue of the status.

Article 3.- It is in order to study and prepare the legislation so that the people will decide on the desirability of convening a Constitutional Status Convention. The legislation must include the mechanisms to implement the election of delegates and the organization of the Constitutional Status Convention if it is favored by the vote.

Article 4.- The Commission on Legal Affairs of both Chambers shall prepare a study and report including draft bills to hold the referendum on the convening of said Constitutional Convention, the allocation of funds, and any other process or procedure needed to implement said public policy. The following shall be guaranteed:

- a. the effective participation of representatives of the political parties and civil society;
- b. the proposals to be submitted to the consideration of the people shall be based on the principle of sovereignty in Puerto Rico's future political relations and be defined as not falling under the territorial clause of the United States Constitution.
- c. the Convention must have the power to deliberate and negotiate with the U.S. Government;
- d. any determination of the Body must be subject to ratification by the people in a referendum.

Article 5.- The Commission shall issue its report before December 31, 2004, and it shall be thus submitted to the consideration of the next Ordinary Legislature.

Article 6.- A copy of this Concurrent Resolution, together with the result of the vote for the approval thereof, shall be certified by the Offices of the Secretary of both Chambers and sent to the United Nations Special Committee on Decolonization, the President's Task Force on Puerto Rico's Status, and the U.S. Congress.

Article 7.- This Concurrent Resolution shall come into effect upon its approval and constitutes public policy until it is repealed or implemented.

NOTES



**We educate and protect
human rights in Puerto Rico.**

The Puerto Rico Civil Rights Commission is a public entity created by virtue of Public Law No. 102 of June 28, 1965, as amended (1 LPRA 151). Our main duty is to educate the people about the significance of human rights and the means to respect, protect, and honor them. We are under the obligation to manage the protection of human rights and the strict compliance with the legislation protecting said rights before individuals and government authorities. We encourage investigation and promote spaces for the discussion of the validity of human rights in our country. We investigate the complaints we receive in relation to violations of said rights and also appear in court as *amicus curiae* in cases in which human rights may be violated or breached. We actively participate in the discussion and development of public policies that have an impact on any aspect of human rights.