



June 20, 2016

Puerto Rico Civil Rights Commission
Presentation to the Special Committee of 24 – United Nations Organization

I. Introduction

A) Law 102 of June 28, 1965 – creation of The Puerto Rico Civil Rights Commission.

The Puerto Rico Civil Rights Commission was created by Law 102 on June 28, 1965 to promote, educate and to conduct investigations and report on the compliance of human rights, as well as complaints for human rights violation filed by individuals and organizations.

B) In our Commission's 50 year endeavors we have repeatedly called upon the United States Government to address its human rights violations against the Puerto Rican people. On May, 1999, the Puerto Rico Civil Rights Commission's letter to President William J. Clinton denounced the "flagrant and atrocious violations of human rights" of the people of Vieques, which is part of Puerto Rico, and demanded the United States Navy's exit from the Island as well as its environmental restoration. The Navy's practice were responsible for the death and health related problems of the Vieques inhabitants. On September 6, 1999 the Commission also intervened on behalf of political prisoners such as Oscar López Rivera, who has been imprisoned in U.S. correctional facilities for more than thirty (30) years. In our letter to President William J. Clinton we stated that the Puerto Rican political prisoners have served unprecedented lengthy sentences and deserved freedom. We reenacted our plea to the President of the United States on July 28, 2004, but our plea has been unanswered.

The Puerto Rico Civil Rights Commission has also addressed the people of Puerto Rico's human rights violation by its present territorial status. In our 2012 publication

“Puerto Rico and the Human Rights: A Plural Intersection”¹ the article “A Degraded Democracy on the Era of Human Rights”, author J.J. Colón Morera states: “Completing the process of decolonization is a crucial task for Puerto Rico’s future if we want a mature political system in compliance with the basic criteria provided by the international community regarding democracy...These criteria, based on the cardinal principle of the consent of the governed, is not capricious. It is based on the protection of human dignity.”

It is on behalf of the human dignity, which is one of the foremost principle of the Constitution of the Commonwealth of Puerto Rico, that the Puerto Rico Civil Rights Commission addresses this Special Committee.

II. The Quest for Self Determination of Puerto Rico

A) The Prime Human Right of Self Determination

Article 1 of the International Covenant on Civil and Political Rights as well as Article 1 of the International Covenant on Economic, Social and Cultural Rights both promulgated by the United Nations General Assembly through Resolution 2200A (XXI) December 16, 1966, state: “All peoples have the right of self-determination. By virtue of that right they freely determinate their political status and freely determine their economic, social and cultural development”.

B) The United States Government ratified the International Covenant on Civil and Political Rights on March 2, 1992 and was put in effect on September 8, 1992². On the December 10, 1998 Executive Order of President William J. Clinton regarding the compliance with the International Covenant on Civil and Political Rights it was stated:

“It shall be the policies and practice of the Government of the United States, being committed to the protection and 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”.³

¹ Javier Colón Morera, Idsa E. Alegría Ortega, Puerto Rico y Los Derechos Humanos: Una Intersección Plural, Libros El Navegante, Comisión de Derechos Civiles.

² Report on Resolution November 2013 – 01 of the Puerto Rico Civil Rights Commission page 34, February, 17 2016.

³ Supra, page 35

C) The Constitution of the Commonwealth of Puerto Rico of 1952

“Puerto Rico became a territory of the United States in 1898, as a result of the Spanish - American War. The treaty concluding that conflict ceded the island, then a Spanish colony, to the United States, and tasked the Congress with determining “the civil rights and political status” of its inhabitants”. Treaty of Paris, Art. 9, December 10, 1898, 30 Stat. 1759.⁴

Overtime, Congress guaranteed Puerto Rico additional autonomy. A federal statute passed in 1917, in addition to giving the island inhabitants US citizenship, replaced the upper house of the legislature with a popularly elected senate. See Organic Act of Puerto Rico, Ch. 145, Sec. 5, 26, 39 Stat. 953, 958. And in 1947, an amendment to that law empowered the Puerto Rican people to elect their own governor, a right never before accorded in a U.S. territory. See Act of Aug. 5, 1947, Ch 490, sec. 1, 61 Stat 770”.⁵

In 1952: “the constitution became law, in the manner Congress had specified, when the convention formally accepted those conditions (imposed by Congress) and the governor “issued a proclamation to that effect”. “The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico - or in Spanish *Estado Libre Asociado de Puerto Rico*.”⁶

After the enactment of the Constitution, the Department of State submitted a memorandum through the U.N. Delegation to the United Nations that stated Puerto Rico was no longer a non-self-governing Territory and therefore the United States would no longer submit periodic reports under Resolution 222(III), November 3, 1948. The United Nations in Resolution 748 VIII noted that: “the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity”.⁷

B.) Plebiscites after the 1952 Constitution of the Commonwealth of Puerto Rico.

After the proclamation of the Constitution of the Commonwealth of Puerto Rico the issue of self-determination was not quenched and four different referendums ensued

⁴ Commonwealth of Puerto Rico V Sánchez Valle, 579 US – (2016 June 9, 2016 page 2.

⁵ Supra, page 2 - 3

⁶ Supra, page 4

⁷ Supra, J Breyer dissenting, page 10

to determine the political status of Puerto Rico. None of them have been binding for the United States Government as well as for the Congress.

In 1967, only fifteen years after the Constitution the first plebiscite was held. Only 700,000 voters participated and the commonwealth status prevailed with a 60.4 % of votes.

In 1993 a second plebiscite was held and the commonwealth status also prevailed with a 48.6% of the votes and a near second statehood with 46.3%. Independence got a 4.4% of the vote.

In 1998 a third plebiscite was held in which the “None of the Above” got the 50.5%, statehood got a 46.6% and independence got a 2.6% of the votes.

In November 6, 2012 the Referendum which stated the question: “Are you in agreement to maintain the present political territorial condition? Yes ___ No ___,” 53.97% of voters answered “no” a total of 970, 910 and 828,077 a 46.03% answered “yes”.

"In December 2013, the White House issued a statement noting that:

“[T]he results were clear, the people of Puerto Rico want the issue of status resolved, and a majority chose statehood in the second question. Now is the time for Congress to act and the administration will work with them on that effort so that the people of Puerto Rico can determine their own future.”⁸

It is transparent that the United States Government acknowledged that the people of Puerto Rico are denouncing their present colonial status and claim for change.

For the first time since the establishment of the current form of colonial rule, the people of Puerto Rico have denounced their present political status and expressed their unwillingness to remain as such.

III. The Puerto Rico Civil Rights Commission’s Report on the November 6, 2012 Referendum

A) Origins of the Report

On June 17, 2013, the Puerto Rican Civil Rights Commission approved Resolution 2013-01 in regard to a complaint, to investigate, research and hold public hearings

⁸ *Id.*, at page 8.

in regard to the November 6, 2012 Referendum to determine the suitability, transparency and efficacy of the Referendum's result and to identify any human rights violation pertaining to the implementation of its outcome. There was a Special Commission designated to that effect of three distinguished lawyers. As a result of the Puerto Rico Civil Rights Commission Resolution Number 2013-01 the Report on the Referendum of November 6, 2012 was approved.

The investigation and research that was conducted included hearings that were held in a six month period and the deposition of the current Governor of Puerto Rico, Honorable Alejandro Garcia Padilla, past Governor, Dr. Pedro Rosselló Gonzalez, as complainant, Dr. Ricardo Rosselló Nevaes, as well as the Puerto Rico Bar Association and among other personalities and entities.

B) The Report on the November 6, 2012 Referendum Conclusions

The November 6, 2012 Referendum was mandated by Law Number 283-2011 for the purpose of "establishing an effective process, which will allow the Puerto Rican people to express itself in regard to the status of Puerto Rico in a fair, transparent and expedited manner." The law expressed that: "this process will give the Puerto Ricans a unique opportunity to send a clear message to the President and to Congress on how do we want to resolve our status problem and how we want to define our relationship to the United States."

Law Number 283-2011 required that the Governor of the Commonwealth of Puerto Rico certify the Referendum results to the President and the Congress of the United States, expressing the following:

"The People of Puerto Rico have expressed themselves free and democratically in regard to the political status of Puerto Rico in the following manner, providing the results of the Referendum and it is required to the Congress of the United States and the President to effectively answer the claim of the People of Puerto Rico to make true their will."

The Governor of Puerto Rico, Honorable Luis Fortuño Buset complied with his duties and reported the results of the Referendum to the Congress and to the President of the United States of America.

The Puerto Rico Civil Rights Commission Report concluded that the Referendum had no effectiveness because there had been no commitment on the part of Congress to abide by the will of the Puerto Rican people, nor a recognition by the United States

Government of the Puerto Rican will to disown the present political status. The conclusion of the Report is that this lack of commitment and the disregard of the will of the Puerto Ricans is a violation of their human right to self-determination. It is imperative that the Government of the United States and the Government of the Commonwealth of Puerto Rico comply with the International Covenant on Civil and Political Rights, and start immediate action to begin the self-determination process for Puerto Rico. This is our plight and our claim to this Special Committee, to intervene on behalf of the human rights of all Puerto Ricans.

IV. Recent Developments in the United States – Puerto Rico Territorial Status

Recent events have magnified the contemptuous disregard of the United States government toward the will of the Puerto Rican people. In the recent case of *Puerto Rico v. Sanchez Valle*⁹, the United States Supreme Court reinstated that Puerto Rico is not a sovereign, different from a state of the union, because unlike a state, a territory's power derives from Congress. This same statement was previously expressed by the United States Department of Justice in 1959.¹⁰

The consequences of Puerto Rico's lack of self-determination have manifold effects, for example in the *Sánchez Valle* case, *supra*, the U.S. Supreme Court established that: "Put simply, Congress conferred the authority to create the Puerto Rico Constitution, which in turn confers the authority to bring criminal charges. That makes Congress the original source of power for Puerto Rico's prosecutors as it is for the Federal Government. The island's Constitution, significant though it is, does not break the chain."¹¹

That is, Puerto Rico does not possess sovereignty status as has been acknowledged by the Supreme Court and the Executive Branch. It is crystal clear that previous representation by the Government of the United States that regarded Puerto Rico as achieving "the full measure of self-government"¹² is in conflict with the present territorial condition of Puerto Rico that has no "original source of power" in prosecutorial matters.

⁹ *Pueblo v. Sánchez Valle*, 579 US ____ (2016)

¹⁰ Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Report, concerning Puerto Rico, A/AC.109/2016/L.13 at page 5.

¹¹ *Supra* *Sánchez Valle*, at page 16.

¹² *Supra*, *Sánchez Valle* at page 10.

Lastly, but as important is the H.R. 5278 that was approved in the House of Representative a week ago. The United States Congress, proposes a bill that goes against the people of Puerto Rico's right to determine their destiny as a group. The H.R. 5278, titled "Puerto Rico Oversight, Management, and Economic Stability Act" or "PROMESA", establishes the supremacy of the decisions to be made by the Oversight Board ("Board") concerning financial, public policy and programmatic matters over the ones of democratically elected officials in Puerto Rico.

The H.R. 5278 bill specifies, in section 4, that "the provisions of this Act shall prevail over any general or specific provisions of territory law, state law, or regulation that is inconsistent with this Act"¹³. This excludes Puerto Rico from the decision-making process on matters that concern the people actually living in the Island. It undermines the authority of the established Puerto Rican institutions and democratic processes.

The proposed legislation reduces the authority of the democratically elected Governor, who must submit any law enacted by the Legislature with a formal cost estimate and a certificate of compliance with the Fiscal Plan to the Oversight Board. It is the Board that has to approve these laws, interfering with the political process that the people of Puerto Rico designed in the Constitution of the Commonwealth of Puerto Rico. Furthermore, the Oversight Board would have full autonomy and "neither the Governor nor the Legislature may exercise any supervision or review over the Board or its activities", even though it is an entity of the Government of Puerto Rico.

The Board retains the power to make final decisions on everything related to budget in Puerto Rico. The responsibilities of the Board include the approval of fiscal plans (Sec. 201) and the approval of budget plans (Sec. 203), limiting the will of the people through their institutions and elected officials. The Board would undermine the authority of existing Puerto Rican institutions and interfere with the political processes of the Government of Puerto Rico. It would have the power to abolish government agencies, departments and other entities, furthermore it will encroach on the present limited power Puerto Rico has in its own affairs.

V. Final Address to the Special Committee

Puerto Rico presently faces a dismal political and economic situation. It has been repeatedly acknowledged by the Executive, Legislative and Judicial Branches of the

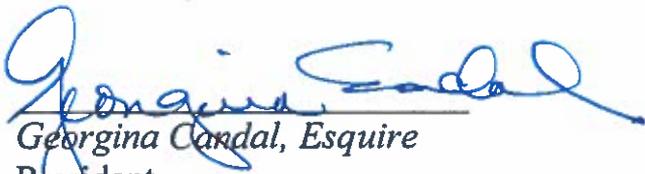
¹³ H.R. 5278, Sec. 4

United States Government that Puerto Rico is in a crisis. In the recent cases of Commonwealth of Puerto Rico v. Franklin California Tax Free Trust¹⁴ it was stated: “The Commonwealth of Puerto Rico and its municipalities are in the middle of a fiscal crisis”.

President Barack Obama on his June 11, 2016 weekly White House address stated: “Today the island continues to face a crippling economic crisis. Schools are closing. Power is being cut off at homes and hospitals. Teachers have to choose between turning on the lights or turning on the computers. Doctors can’t get medicine to treat newborns unless they pay in cash.”

The House of Representatives stated in HR 5278 Sec. 101(a) “Purpose – the purpose of the Oversight Board is to provide a method for a covered territory to achieve fiscal responsibility and access to the capital markets.” This Act is pursuant to Article IV, Section 3 of the Constitution of the United States that empowers the Congress to dispose of and make rules for territories, including Puerto Rico. The people of Puerto Rico have denounced the present territorial status and the urgent need for change. As has been previously presented the United States Government has only acted to further infringe on the right to self-determination, clipping even their democratic official’s authority.

The Puerto Rico Civil Rights Commission addresses this international institution to intervene on behalf of the Puerto Rican people and their right to self-determination by including Puerto Rico in the list of countries under your jurisdiction.



Georgina Candal, Esquire
President

Comisión de Derechos Civiles
Puerto Rico Civil Rights Commission

¹⁴ 579 US ___ (2016), page 2, J. Sotomayor and J. Ginsburg, dissent.