



NEW YORK
CITY BAR

TASK FORCE ON PUERTO RICO

NATASHA LYCIA ORA BANNAN
CO-CHAIR
nbannan@latinojustice.org

PETER A. GARCIA
CO-CHAIR
peter.a.garcia@gmail.com

INTERNATIONAL HUMAN RIGHTS COMMITTEE

LAUREN MELKUS
CHAIR
laurenmelkus@gmail.com

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Via Email

Congresswoman Nydia Velasquez
U.S. House of Representatives
2302 Rayburn House Office
Building Washington D.C. 20515

Congresswoman Alexandria Ocasio-Cortez
U.S. House of Representatives
229 Canon House Office
Building Washington, DC 20515

Re: Puerto Rico Self-Determination Act, H.R. 8113

Dear Congresswoman Velasquez and Congresswoman Ocasio-Cortez:

The New York City Bar Association's Task Force on Puerto Rico ("Task Force") would like to commend you for your co-sponsorship of H.R. 8113, known as the Puerto Rico Self-Determination Act ("the bill" or "the Act"). We recognize that this piece of legislation is intended to initiate a long-overdue process of decolonization that begins with an autonomous act of self-determination by the people of Puerto Rico. The bill calls for a status convention with elected delegates who will ultimately help draft a referendum for the people of Puerto Rico to vote on. The referendum will be binding on Congress, signaling congressional intent to ensure the United States adheres to its international legal obligations.

This bill is a welcome and timely act to address the political status of Puerto Rico. However, there are some elements of the bill that may be strengthened by addressing the following issues:

Internationally Recognized Right to Self-Government & Self-Determination

International law is instructive as to Congress' obligations to abide by its international legal commitments to self-determination processes and decolonization. The principle of self-determination has been considered by the International Court of Justice as a *jus cogens* norm and is a foundational principle in the U.N. Charter itself, which has treaty status for all U.N. member states. Under Article 73(b) of the U.N. Charter, administrative states have a non-delegable duty in the dependent (non-self-governing) territory “to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions.”

Moreover, as the bill correctly notes, the principle of self-determination is present in Article 1 of the International Covenant on Civil and Political Rights, which is binding on the United States given that the United States has signed and ratified the treaty.¹ The principle is also present in the International Covenant on Economic, Social and Cultural Rights, which the United States has signed. As a signatory, the United States has an obligation not to undertake any actions which would violate the purpose or effect of the treaty.² Lastly, self-determination is a fundamental concept in the Universal Declaration of Human Rights (“UDHR”), also binding on all U.N. member states, which upholds the rights of all people including, as Article 2 of the UDHR points out, those in non-self-governing territories.

Decolonization Pursuant to United Nations Resolution

As you are aware, under U.N. General Resolution 1514 (15),³ countries holding territorial possessions or non-self-governing territories must initiate or allow for a decolonization process that enables the transfer of power to the non-self-governing territory and removes all remnants of colonial control previously present. U.N. General Resolution 1514 is instructive as to what the decolonization process must involve, including acts prior to any referendum or vote in order to ensure that those engaged in any voting process can do so under free, informed and consensual conditions.⁴ It also recognizes the associated territory's right to internal self-government without outside interference. Pursuant to that end, we strongly encourage your consideration in having the Act place a greater focus on the use of terminology to address the *de facto* status of Puerto Rico as a “colony” rather than what we believe to be the more misleading use of the term “commonwealth.” As is the case with any bill, accurate, transparent language leads to a crystallization and improved understanding of the core issues the bill is intended to address; for purposes of the Act, this effort can only serve to better inform the relevant stakeholders in the delegate voting and convention process.

¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) (hereinafter ICCPR).

² United Nations, *Vienna Convention on the Law of Treaties*, Article 18, United Nations, Treaty Series, (23 May 1969).

³ General Assembly Resolution 1514 (XV), *Declaration on the granting of independence to colonial countries and peoples* (14 December 1960).

⁴ General Assembly Resolution 1541 (XV), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter* (15 December 1960).

Task Force Recommendations

To bring the bill more fully into alignment with international law and the United States' legal commitments, we recommend the following:

- Act Section 2(2) through (5): include a more illustrative historical description in the preamble of the bill of the political and constitutional relationship between Puerto Rico and the United States that reflects the on-going colonial status of the island under the Insular Cases,⁵ which to date has never been altered or interrupted by subsequent acts of Congress or overturned by the U.S. Supreme Court;
- Act Section 2(6): a clarification under “Findings” concerning the recognition by the U.N. that Puerto Rico is a self-governing territory. The U.N. Special Committee on Decolonization has continuously reviewed the colonial status of Puerto Rico for 48 years, and has issued 38 resolutions recognizing Puerto Rico as a non-self-governing territory under G.A. Resolution 1514. The Committee has called upon the United States to decolonize the island and to transfer political and economic rule to Puerto Rico;
- Act Section 6: in order to ensure the self-determination process is upheld, and the will of the people of Puerto Rico is respected, we propose changing the language of “may” to “shall” so that the decision of the referendum is binding upon Congress.

The Task Force is honored to weigh in on the Act with our recommendations and very much looks forward to providing you with any further guidance on your continuing effort to address decolonization and provide the people of Puerto Rico with the right of self-determination.

Respectfully,

Natasha Lycia Ora Bannan
Peter Garcia
Co-Chairs, Task Force on Puerto Rico

Lauren Melkus
Chair
International Human Rights Committee

⁵ The Insular Cases are a series of cases decided by the Supreme Court over a period of approximately two decades after the Spanish-American war that laid out the contours of the constitutional relationship between the newly acquired territories as a result of the war and the United States.