

ROP v. Ngiraboi, 2 ROP Intrm. 274 (1991)
REPUBLIC OF PALAU
Appellee,

v.

JESSE NGIRABOI,
Appellant.

CRIMINAL APPEAL NO. 4-89
Criminal Case No. 20-88

Supreme Court, Appellate Division
Republic of Palau

Concurring opinion
Decided: May 8, 1991

Attorney for Appellee: Ernestine K. Rengiil

Attorney for Appellant: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice.

NGIRAKLSONG, Justice:

I agree with the Court's opinion, but I write separately to state that the Palau Constitution is the supreme law of the land and is not inconsistent with the Trusteeship Agreement.

The *Kazuo/Yano* Court reasoned that by virtue of the Trusteeship Agreement (between the United States and the Security Council of the United Nations) the United States undertook to protect fundamental human rights in Palau (TTPI). Since these human rights are not clear and are not "consistently determined", the Palau Supreme Court could interpret the laws of the United States to represent "a minimum quantum of protection which must be afforded to the inhabitants of a Trust Territory." Among these rights is the right to be free from cruel and unusual punishment. Applying the "proportionality test" of the case of *Solem v. Helm*, 463 U.S. 282, 103 S.Ct. 3001 (1983), the *Kazuo/Yano* Court concluded that the mandatory 15 years minimum 1275 jail term for firearms violation in the Palau Constitution, implemented by 17 PNC § 3306(a), conflicted with the Trusteeship Agreement and the right against cruel and unusual punishment embodied in the Eight Amendment of the United States Constitution. Accordingly, the Court suspended the operation of Article XIII, Section 13(2) and 17 PNC(a) for the duration of the Trusteeship Agreement.

I do not see a conflict between Article XIII, Section 13(2) of the Palau Constitution, with its enabling legislation and the Trusteeship Agreement. The primary purpose of the Trusteeship

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Agreement is to provide “self government” or “independence” to the inhabitants of the Trusteeship. Article 6, Sec. 1, Trusteeship Agreement, Article 73 UN Charter, 59 Stat. 1031, 1048, J.S. No. 993 (1945); *People of Saipan v. United States Dept. of Interior*, 502 F.2d 90, 9698 (1974); *CNMI v. Bordallo*, No. 90-003, slip op. (June 8, 1990) (concurrence). I see the Constitution as perhaps the best living expression of what the people of Palau want. As such, the Palau Constitution is consistent with the obligation of the Administering Authority to “promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its people and the fully expressed wishes of the peoples concerned; . . .” Trusteeship Agreement, *supra*. (emphasis added).

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I accept and recognize, as I believe we must, the supremacy of the Palau Constitution.

We hold that the Constitution is supreme in Palau, and that it takes primacy (sic) over any Compact or other international agreement . . . (emphasis added).

Gibbons, et al., v. Salii, et al., 1 ROP Intrm. 333, 351 (App. Div. September, 1986), (Article 1, Sec. 1, Palau Constitution). The mandatory 15-year jail term for possession of a firearm is controlled by the Palau Constitution, which is the supreme law of the land.