

**Further Submission to Mr. Francisco Calí Tzay, Special Rapporteur on the  
rights of indigenous peoples, regarding ongoing human rights violations of  
the indigenous Chamorro people of Guam under U.S. colonization and  
militarization**

**October 2024**

**BLUEOCEANLAW**  
a professional corporation

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## Executive Summary

1. This submission follows on from an August 2020 submission lodged with the Special Rapporteur on the rights of indigenous peoples by Blue Ocean Law and the Unrepresented Nations and Peoples Organization on behalf of Prutehi Litekyan: Save Ritidian (**Annex A**). That filing detailed myriad rights violations suffered by the indigenous Chamorro people of Guam caused by the United States' ongoing colonial administration of Guam and, in particular, the intensifying U.S. military buildup of the island. In January 2021, in response to that submission, two additional Special Rapporteurs—on the issue of human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment and on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes—joined with the Special Rapporteur on the rights of indigenous peoples to issue a joint allegation letter expressing serious concerns over the apparent rights violations caused by the United States' conduct in relation to Guam, including violations of the rights to self-determination, free, prior and informed consent, life, health, food, safe drinking water, and a clean, healthy and sustainable environment (**Annex B**). In the letter, the Special Rapporteurs urged the United States to take immediate measures to bring these rights violations to a halt and to remediate past violations.
2. Far from taking the requested ameliorative actions, the intervening years have seen the United States only further intensify its military buildup of Guam, resulting in deepening and increasingly irreparable harms to land and sea environments and to the indigenous Chamorro people. The United States has continued to move forward with its militarization of the island without adequately consulting—let alone obtaining the consent—of the Chamorro people. These military actions include: installing an invasive missile defense system in preparation for combat with U.S. adversaries in the region; bringing thousands of new personnel to Guam, resulting in a population increase which the island's housing market and civilian infrastructure are unable to support; constructing and commencing operation of a large-scale live firing range complex adjacent to sacred sites, critical habitat, and the island's only fresh water resource; engaging in dangerous open detonation practices that imperil environmental and human health; and making Guam's territory available for the storage of the Republic of Singapore's fighter jets and other military materials.
3. This unilateral use of Guam's territory and exploitation and degradation of its natural resources violate the Chamorro peoples' rights to self-determination and permanent

sovereignty over natural resources (**PSNR**) as well as their right to free, prior and informed consent. The environmental degradation and toxic contamination caused by these actions have exacerbated the myriad human rights violations already suffered by indigenous Chamorro and other local people as a consequence of the U.S. military presence in Guam.

4. The United States' virtually unfettered authority to undertake such destructive actions within the ancestral lands and seas of the Chamorro people is premised on its ongoing colonial administration of Guam, which remains on the United Nation's non-self-governing territory list. A small island in the North Pacific region of Micronesia, Guam has been subject to colonial rule for nearly 400 years, first under Spanish authority from 1668 to 1898, and under U.S. authority from 1898 to the present. Pursuant to the United States' domestic law Guam is a mere possession: it "belongs to" but is "not a part of" the United States.<sup>1</sup> As such, the U.S. Congress retains plenary power over Guam—able to do with the island whatever it pleases. Guam is of immense strategic value to the United States, providing a piece of "American soil in the Pacific."<sup>2</sup> Perhaps for this reason, the United States has made no attempt to facilitate Guam's self-determination despite its international legal obligation to do so.<sup>3</sup> To the contrary, as detailed in the 2020 filing, the United States has consistently and actively frustrated attempts by the Chamorro people of Guam to exercise their right to self-determination.<sup>4</sup> Moreover, as colonial subjects, the Chamorro people have little power within the domestic legal system to protect their homeland or vindicate their own rights. In the words of a top U.S. military official, this colonial situation effectively empowers the military to "do what we want" in Guam "without fear of being thrown out."<sup>5</sup>
5. Given this situation, we request the intervention of the Special Rapporteur on the rights of indigenous peoples. Specifically, we ask that the following actions, or any combination of them, be taken:
  - A site visit by the Special Rapporteur on the rights of indigenous peoples to Guam to assess the military buildup and associated harms to the Chamorro people;
  - A report investigating the harms alleged in this submission;
  - A follow-up communication to the U.S. government about its continued failure to address human rights violations in Guam;
  - A public statement about the unlawfulness of the military buildup and the situation of the Chamorro people under international human rights law;

- Communications to appropriate international bodies that focus on or include coverage of the human rights violations suffered by the Chamorro people of Guam;
- Recommendations to international bodies, including the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples, also known as the Special Committee on Decolonization, or C-24, regarding actions that could be taken to assist the Chamorro people in their self-determination efforts; and
- Any other actions that the Special Rapporteur on the rights of indigenous peoples may consider appropriate in light of this submission.

## **I. Introduction and background**

6. Blue Ocean Law makes this submission on behalf of the indigenous Chamorro people of Guam, and specifically, on behalf of Prutehi Litekyan: Save Ritidian (**Prutehi**), a community-based organization dedicated to defending sacred sites and protecting Guam's natural and cultural resources.<sup>6</sup>
7. This submission follows on from a prior submission to the Special Rapporteur on the rights of indigenous peoples, filed by Blue Ocean Law and the Unrepresented Nations and Peoples Organization on behalf of Prutehi on 7 August 2020. That filing detailed ongoing human rights violations suffered by the indigenous Chamorro people of Guam at the hands of the United States and its military. The filing drew particular attention to Guam's status as a U.S.-administered non-self-governing territory and the United States' systematic efforts to undermine Guam's decolonization and aspirations for self-determination. The filing further described the United States' plans to build up its military presence on the island, including by transferring thousands of military personnel and associated workforce to the island and constructing a massive live-fire training range and other new infrastructure over sacred sites and sensitive habitats. The filing explained how all of these activities were undertaken without meaningful consultation of local communities and with total disregard for the Chamorro people's right to free, prior, and informed consent. The filing further detailed the long history of toxic and nuclear contamination of Guam by the United States, resulting in some 90 un-remediated toxic sites on the 540 square kilometer (210 square mile) island. The filing demonstrated that this contamination, coupled with the colonial displacement of local agriculture by highly processed imported food, among other harms, have resulted in negative health outcomes among the Chamorro people.
8. On 29 January 2021, three Special Rapporteurs— on the rights of indigenous peoples; on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; and on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes—responded via a joint allegation letter to the United States. In the letter, the Special Rapporteurs collectively expressed serious concern that the U.S. military buildup is proceeding without respecting the Chamorro people's right to free, prior and informed consent, and is causing irreparable harm to Guam's land and sea environments, thereby threatening “the physical and cultural

survival of the Chamorro.”<sup>7</sup> The Special Rapporteurs also expressed serious concerns over the impacts on the rights to life, health, food, safe drinking water, and a clean, healthy and sustainable environment caused by U.S. conduct resulting in toxic contamination and food insecurity in Guam. Finally, the Special Rapporteurs expressed concern more broadly that the United States “has not supported self-determination for the Chamorro people of Guam.”<sup>8</sup> The Special Rapporteurs requested that the United States provide observations on these issues and urged the United States to take all necessary measures to halt the alleged violations and prevent their reoccurrence.

9. On 21 October 2021, the United States issued a response to the joint allegation letter (**Annex C**). This response was consistently disingenuous, suggesting that Guam is “self-governing” despite its classification as a non-self-governing territory under both domestic and international law. While stating that the people of Guam were responsible for establishing their priorities and that the United States was committed to working with the people of Guam towards a resolution of the territory’s current political status, the response also stated in no uncertain terms that the United States, and not the people of Guam, retain political and legal control over the island. Although the United States’ response nominally recognized the Chamorro people as indigenous to Guam, it explicitly denied the existence of their collective rights as an indigenous and colonized people.
10. In the intervening years, the United States has taken no efforts to address ongoing rights violations as requested by the Special Rapporteurs, but rather has ramped up its military buildup of Guam, including by bringing more infrastructure and personnel to the already overtaxed island; continuing and resuming unsafe practices such as open detonation, which is known to harm both the environment and human health; and readying the island for war as tensions with China rise. Long considered “the tip of America’s spear,” Guam is now referred to as a “first strike community”—meaning the first place likely to be attacked in the case of conflict with China.<sup>9</sup> All of these decisions—including the decision to turn Guam into a war zone—have been made unilaterally by the United States and further imperil the health, safety, and very survival of the lands, waters, species, natural resources, and indigenous people of Guam.

11. This submission proceeds as follows: we first provide an update to the Special Rapporteur on the activities of the United States in Guam since the 2020 filing was submitted (**Part II**). We then set forth some of the ways in which these activities exacerbate ongoing violations of the rights of indigenous Chamorro people (**Part III**). We conclude with brief recommendations for interventions that the Special Rapporteur may take to encourage the United States to bring its activities in relation to Guam into compliance with international law (**Part IV**).

## **II. U.S. militarization is intensifying, resulting in additional harm**

12. This section details five of the most significant military activities implemented by the United States in Guam since our last communication in 2020. These are: (1) development of the Enhanced and Integrated Air and Missile Defense System; (2) transfer of U.S. Marine Corps and other military personnel to Guam; (3) construction and initial operation of the Mason Live Fire Training Range Complex; (4) unpermitted open detonation practices; and (5) the decision to permanently house Republic of Singapore F-15 fighter jets and associated infrastructure and personnel in Guam.
13. It is important to emphasize that these activities are occurring in the context of a long history of destructive U.S. colonization and militarization, throughout which the United States has consistently violated the rights of the Chamorro people in pursuit of its own military agenda.
14. As described in the 2020 filing, since assuming colonial administration of the island in 1898, the United States has seen Guam as little more than a strategic military asset. As its Western-most territory, Guam is “indispensable” to the United States’ strategy to “provide presence, deterrence, and power projection in the [Indo-Pacific] region.”<sup>10</sup> The military occupies approximately 30% of Guam’s land,<sup>11</sup> with that footprint increasing with the current buildup. Much of the occupied land is of great cultural and spiritual significance to the Chamorro people and was seized by the U.S. government without consent or adequate compensation.<sup>12</sup> The military has consistently treated that land—and its people—as disposable. Guam was exposed to radioactive fallout from the U.S. nuclear weapon testing program in the nearby Marshall Islands. Contaminated vessels from that program were then brought to Guam, where Chamorros were hired to work on decontaminating them—without being informed of the risks or provided protective equipment.<sup>13</sup> Guam has also long



served as a site for storage and disposal of the U.S. military's toxic and radioactive waste. This has resulted in contamination of important resources, including the island's only freshwater aquifer, as well as increased incidences of cancer, thyroid disease, and other ailments among Chamorro people. There are at least 90 un-remediated toxic waste sites on the small island today.<sup>14</sup> The United States regularly invites foreign militaries into Guam's lands, waters, and airspace to engage in largescale war games, which pose serious risk to the environment as well as to human health.<sup>15</sup>

15. The 2020 filing also explained that, as the dominant presence on the island, the military has an outsized impact on Guam's economy. This impact is largely negative, with the ever-expanding military population placing strain on the island's resources and throwing the local housing market into crisis. The military presence has thus created widespread conditions of unemployment and poverty. These conditions, in turn, make the Chamorro community an easy recruiting ground for the military. And indeed, Guam has among the highest recruitment levels in the country. Huge numbers enter into military service to fight and die for a country that does not consider them full citizens. As residents of an unincorporated territory, they do not have the right to vote in federal elections and do not have meaningful representation in the U.S. Congress. To be sure, Chamorros have suffered more deaths per capita in recent U.S. wars than any other ethnic group but are not entitled to full veterans benefits because they are mere territorial citizens.<sup>16</sup>
16. As further detailed in the 2020 filing, all of these long-felt harms are exacerbated by the current military buildup, which is already resulting in the destruction of historically and culturally significant sites and artifacts; loss of ecosystems and critical habitats for endangered and culturally important species; and degradation of natural resources, including fresh drinking water. All of these impacts are well understood by the military: they are detailed in numerous Environmental Impact Statements (**EIS**) related to the buildup.
17. It is in the context of this litany of historic and ongoing abuses that the following selection of military actions must be understood.

*A. The Enhanced and Integrated Air and Missile Defense system*

18. As U.S. tensions with China escalate and the likelihood of armed conflict grows ever more certain, the United States has unilaterally made the decision to install a 360-degree Enhanced and Integrated Air and Missile Defense (**EIAMD**) system on Guam. The EIAMD system is intended to protect Guam from “complex integrated attacks”—simultaneous onslaughts of missiles and other weapons coming from various speeds, altitudes, and directions.<sup>17</sup> It is also intended to prepare the island for “fighting in a contested environment.”<sup>18</sup>
19. The proposed system consists of a network of variable technologies, including command and control centers, radars, sensors, missile launchers, missile interceptors, and support facilities, networked across some 20 sites on the island.<sup>19</sup> Some of these sites are planned to be installed in civilian areas, including near sacred sites.<sup>20</sup> Other technologies are expected to be mobile, moving across the island.<sup>21</sup>
20. Funding for development of the EIAMD system has been included in the Department of Defense’s (**DoD**) annual budget since 2022.<sup>22</sup> In December 2022, DoD awarded Lockheed Martin a USD \$500 million contract to “implement Integrated Air and Missile Defense capabilities into an Aegis Guam System,”<sup>23</sup> and in April 2023, DoD awarded a USD \$14.6 million contract to a Honolulu-based engineering firm to undertake work related to installation of the EIAMD System on Guam.<sup>24</sup> Yet it was only in May 2023 that the territorial government of Guam received official notice from the U.S. military that it intended to establish the EIAMD system on the island.<sup>25</sup>
21. There was absolutely no consultation with the territorial government of Guam, local communities, or the indigenous Chamorro people during the conception, design, or planning process for the EIAMD system—this despite the fact that the system includes construction and operation in civilian areas. The U.S. Missile Defense Agency, the branch of the military responsible for developing the system, indicated that a draft environmental impact statement for the EIAMD system would be circulated for public comment in Spring 2024. The people of Guam received no information about the draft EIS until mid-October 2024, when the Military Defense Agency indicated that a draft environmental impact statement would become available later that month.<sup>26</sup>

22. The Missile Defense Agency has, however, already released an Environmental Assessment (EA) concerning one component of the EIAMD system: the planned testing of long-range ballistic missiles in Guam. The missile testing, slated to begin in December 2024, will occur twice a year for a decade.<sup>27</sup> According to the EA, this testing program will entail temporary land restrictions around Anderson Airforce Base, during which local residents will be required to evacuate their lands for up to four days at a time.<sup>28</sup> The tests will also result in debris fallout into the marine environment, as well as noise impacts with the potential to affect the behavior and hearing sensitivity in birds, marine mammals, sea turtles, and fish.<sup>29</sup> The EA was developed without any community consultation, and while there was an opportunity for public comment on the EA from 2 July to 2 August 2024, this engagement was woefully inadequate.
23. The EA lacks transparent information about the project and its impacts, impairing Chamorro people and other community members from understanding the potential risks and from providing meaningful feedback. So dire is the need for transparent information about the missile testing program and the EIMAD system more generally, that the Guam Legislature introduced a resolution in July 2024 calling for the release of a classified independent report about the EIMAD system prepared for the DoD by the Massachusetts Institute of Technology's Lincoln Lab.<sup>30</sup> The illegibility of the project has also been criticized by the U.S. Congress.<sup>31</sup>
24. Activists, local people, and Guam's government have raised concerns that the EA presents an insufficient analysis of environmental, public health, cultural, socio-economic, and cumulative impacts.<sup>32</sup> In particular, the missile tests are anticipated to pollute the ocean with debris from missile collisions, parachutes, pallets, batteries, hazardous chemicals, expended parts of the missiles, and possibly entire missiles. The EA does not contain any plans for cleanup or remediation of this damage; to the contrary it states that all debris will sink to the sea floor and will not be removed.<sup>33</sup> This pollution threatens to harm endangered species, including sea turtles, whales, fruit bats, and tree snails. For example, debris may directly strike individual animals, cause entanglement, and degrade habitats. The EA also lacks analysis on well-documented harmful contaminants associated with missile testing sites such as polychlorinated biphenyls (PCBs) and per-and polyfluoroalkyl substances (PFAS).<sup>34</sup>

25. From a procedural perspective, the two-month public comment period allowed little time for community members to engage with the 378-page, highly technical document. This window was initially a mere 30 days and was only extended in response to numerous requests from local leaders—all of whom requested a longer extension period than was granted.<sup>35</sup> More fundamentally, the fact that the U.S. military has already awarded contracts for the entire EIAMD system (for which no EIS has yet been produced) and intends for missile testing to begin before the end of 2024 indicates that the military has no intent to genuinely engage with public comments or adjust its plans in response to public concerns.
26. This lack of community consultation is particularly troubling given the serious implications of the EIAMD system for the future of Guam and its people. While the current proposal entails approximately 20 sites to be constructed by 2027, DoD officials have indicated that there is “no end state” to the project; rather, the military will “continue to build it out” indefinitely.<sup>36</sup> The island is already overcrowded with military personnel and infrastructure, which is causing contamination, loss of land and resources, and socioeconomic challenges. With no end to the buildup in sight, the effect is an ongoing denial of the right of indigenous Chamorro people to enjoy self-determination and sovereignty over their own lands and natural resources.
27. At bottom, the installation of the EIAMD system baldly demonstrates the United States’ decision to sacrifice Guam and its people in service of its own military objectives. While the nominal purpose of the EIAMD system is to defend Guam from attacks, the DoD has emphasized that this increased militarization is as much about “bolster[ing] U.S. operational strategy in the Indo-Pacific region”—whatever the costs to the U.S. citizens living on Guam.<sup>37</sup> To be sure, the EIMAD system is equally intended to ensure that Guam can be used as a “combat power projection hub”<sup>38</sup>: a place from which U.S. “combat power will aggregate and congregate and from which it will emanate.”<sup>39</sup> As indicated, the EIAMD system is also intended to prepare for “fighting in a contested environment”<sup>40</sup>: a clear indication that the United States is treating Guam as a future war zone.
28. It should be noted that the effectiveness of the EIAMD system to protect Guam is uncertain. It is a first-of-its-kind system, which remains wholly unproven. The efficacy of the system can only be tested in the circumstance of a strike on the island, leaving many local people feeling as though they are guinea pigs in the United States’ war games.<sup>41</sup> Moreover, the system appears focused more on protecting U.S. military assets than the environment and

people of Guam. The proposed system contains no specific provisions for ensuring safety of civilians in the case of a conflict, nor have there been any plans developed or investment made to that end.<sup>42</sup> Analysts are also split as to whether the EIAMD system will have a deterrent effect or will antagonize U.S. adversaries into mounting an attack on Guam.<sup>43</sup> Currently, China has an arsenal of over 400 “Guam killer” missiles capable of striking Guam with both conventional and nuclear warheads.<sup>44</sup>

29. It is Guam’s colonial status that allows the United States to sacrifice the island in this way. The United States has chosen to center its war efforts in Guam precisely because Guam’s status as a U.S. territory provides the military with absolute authority to act as it pleases, regardless of the wishes of Guam’s residents. Indeed, Guam is an ideal combat hub because it offers “an added level of political reliability, compared to allied governments such as Japan, South Korea, and the Philippines, whose acceptance of U.S. forces mounting offensive operations from their territories in the event of a regional conflict may be uncertain.”<sup>45</sup>
30. The apparently unending growth of the EIAMD system directly effects the health, wellbeing, and future survival of Guam and its people. Yet decisions about the system have been made unilaterally by the United States, depriving Guam’s indigenous and colonized people of autonomy over their own future. If Guam becomes a conflict zone, the possibility to achieve self-determination or enjoy PSNR may be foreclosed forever.

#### *B. Transfer of U.S. Marine Corps and other military personnel to Guam*

31. In our 2020 filing, we detailed the planned relocation of 5,000 marines and their 1,300 dependents from Okinawa to Guam. We explained how the relocation was bilaterally negotiated between the United States and Japan, with no opportunity for input from the Chamorro people or other residents of Guam, and how the small island is ill-equipped to absorb this massive increase in personnel.<sup>46</sup>
32. The planned transfer of marines from Okinawa to Guam is set to begin in December 2024, with an initial 100 Marines and their families expected to be relocated.<sup>47</sup> This first small detachment of logistics Marines will prepare the new facilities at Marine Corps Base Camp Blaz for the impending influx of new troops. Some 2,500 Marines are expected to be in

Guam by 2026, with the full 6,300 troops on-island by 2028.<sup>48</sup> This transfer alone will result in a 4% increase to Guam's population of 160,000.

33. It is well-understood that the relocation of these Marines and their dependents will push Guam's already untenable housing situation into crisis. Housing security has long been a major issue in Guam precisely because of the U.S. military presence on the island. U.S. land grabbing for military purposes has forcibly displaced many Chamorro people from their homes. For example, U.S. seizures of Chamorro lands beginning during World War II and continuing through the 1960s resulted in an estimated 1,350 families losing their homes.<sup>49</sup> With one-third of the island occupied by the military, and with that footprint growing, the land on which the Chamorro people may continue to live is growing increasingly scarce.
34. This already limited civilian land is being steadily overtaken by military personnel. Today, there are approximately 26,000 military personnel stationed in Guam—a significant presence on a 210 square mile island with a total population of just 160,000.<sup>50</sup> Military personnel are given generous stipends to pay for off-base housing, which drives rent increases and allows them to outcompete local people. This has resulted in housing insecurity for Guam's civilian population, especially Chamorro communities.<sup>51</sup> In 2020, the Guam Housing and Urban Renewal Authority determined that approximately 900 individuals in Guam are homeless; that 9,000 households in Guam are experiencing "hidden homelessness," meaning households are overcrowded with individuals who wish to move out but cannot for financial reasons; and that 10,000 new housing units will be needed between 2020 and 2025 in order to meet housing needs on Guam.<sup>52</sup> The report further projected that housing insecurity will increase rapidly into the future, with the population pressure caused by the military buildup playing a major role in driving present and future housing insecurity.<sup>53</sup>
35. The military is well aware of Guam's housing issues but has taken grossly inadequate steps to meet the housing needs of its own personnel. The DoD has funded construction of just 281 additional housing units to accommodate the 6,300 new residents coming from Okinawa.<sup>54</sup> Accounting for these new housing units, the DoD estimates that housing for personnel coming from Okinawa will be short by over 1,750 units.<sup>55</sup> Rather than constructing additional housing for its personnel, however, it appears that the U.S. military has assumed that Guam's already oversaturated civilian housing market will absorb the shortfall. The Okinawa transfer was agreed to nearly 20 years ago, giving the military ample

time to plan for housing its own personnel in Guam. The military has completely failed to do so, demonstrating a clear disregard for the well-being of Guam's civilian population.

36. Alarming, this transfer of personnel from Okinawa represents only a fraction of the population boom associated with the military buildup of Guam. The DoD anticipates that the military population on the island will nearly double to 44,000 by 2037, inclusive of active duty personnel, civilian support, and dependents.<sup>56</sup> This number does not appear to include the thousands of temporary laborers and contractors that the military has indicated will be brought to the island to work on construction of military facilities and infrastructure as part of the buildup.<sup>57</sup> While DoD has plans to analyze (if not address) housing requirements for its own personnel, military contractors and other temporary workers associated with the buildup are not included in the military's projected requirements or needs assessments.<sup>58</sup>
37. Beyond 2037, there is no end to this population increase in sight. As discussed, the military views the growth of the EIAMD system as a project with "no end state," meaning that ever more contractors and laborers will be needed for construction and ever more personnel will be needed to operate the expanding system. Already, indigenous families are being forced to leave the island because they can no longer afford housing on the island.<sup>59</sup> The ever-increasing military presence is thus amounting to a slow yet inexorable forced dislocation of the Chamorro people from their ancestral homeland.
38. The glut of military personnel and contractors is also expected to put strain on Guam's civilian infrastructure and resources. The military relies on Guam's civilian infrastructure, including its electrical grid, drinking water, and wastewater treatment systems. These systems have been characterized as "aging"<sup>60</sup> and "requir[ing] improvements."<sup>61</sup> It is well understood that this infrastructure "may not be sufficient to handle additional military and civilian population growth on the island."<sup>62</sup>
39. To take just one example, the military already exacts a considerable toll on the civilian electrical grid, accounting for 20% of the island's energy load.<sup>63</sup> In recent years, the aging grid has experienced repeated rolling power outages, impacting daily life for Guam's residents.<sup>64</sup> The Guam Power Authority, the territorial governmental entity responsible for operating and maintaining the grid, has expressed concern about the impacts of the ongoing military expansion on grid infrastructure and the ability of the system to meet peak

demand.<sup>65</sup> The DoD has plans “for updating and expanding existing infrastructure on Guam to support U.S. forces and facilities,” but it is unclear to what extent—if any—this will benefit civilian access to electricity.<sup>66</sup> Further, efforts to improve Guam’s electrical infrastructure have been halted in the past in furtherance of military prerogatives. For example, in 2022, the Navy unilaterally overrode the Guam Power Authority’s plan to expand the Dandan solar farm on the basis that the land allocated for the expansion was needed for new missile defense system sites.<sup>67</sup>

40. In short, the rapid, largescale, and seemingly unending increase in population associated with the military buildup is making life in Guam untenable for the island’s local and indigenous people. Not only is the increase in population driving housing insecurity and forced relocation, it is also overburdening Guam’s civilian infrastructure, thus impeding the ability of Guam’s government to meet the basic needs of the island’s people. The military has taken insufficient action to understand or address these impacts, belying the United States’ claim that it cares about the well-being or security of the people of Guam.

### *C. Construction and operation of the Mason Live Fire Training Range Complex*

41. As detailed in the 2020 filing, the military buildup of Guam includes construction of the Mason Live Fire Training Range Complex: an 1,800-acre installation consisting of five live-fire ranges, where thousands of Marines will practice deploying machine guns and other weapons of war each year. The complex was originally slated for construction in Pāgat, an ancient Chamorro village containing pre-contact structures of cultural significance, sacred sites, and burial grounds.<sup>68</sup> Fierce and adamant local opposition coupled with Congressional criticism concerning the feasibility of the proposed site ultimately resulted in the military relocating the complex within the boundaries of the Anderson Air Force Base.<sup>69</sup> Although this change may appear to be an improvement, in reality it amounts to little more than a cynical choice to destroy one sacred place instead of another.
42. Anderson Air Force Base is located within the Ritidian wildlife refuge. Known as Litekyan in the Chamorro language, this is a place that, like Pāgat, is sacred. Litekyan is home to ancient Chamorro villages, burial grounds, and culturally precious artifacts.<sup>70</sup> Litekyan is also the site of Guam’s last pristine limestone forest.<sup>71</sup> This unique and precious ecosystem, once prevalent on Guam but largely lost as a consequence of U.S. occupation and militarization, provides special conditions that plants essential to Chamorro traditional



medicine require to grow.<sup>72</sup> It is also the last remaining habitat for many of Guam's endemic and critically endangered species, including the åga (Mariana Crow), the sihek (Guam Kingfisher), the ko'ko' (Guam Rail), the fanihi (Mariana fruit bat), and the ababang (Mariana eight-spot butterfly).<sup>73</sup> The last surviving hăyun lågu tree on the island is also located approximately 100 feet from the firing range complex.<sup>74</sup>

43. Each of these species play a role in the proper functioning of the island's ecosystem and are essential for the environmental health of the island. For the Chamorro people, these plants and animals are relatives. The spiritual relationships that Chamorro people share with their non-human kin is at the core of culture.
44. The construction of the firing ranges imperils the continued survival of many of these species. Already, the military has razed hundreds of acres of the pristine limestone forest upon which these species depend and plans to destroy over 1,000 acres all told.<sup>75</sup>
45. In the course of construction, the military has uncovered numerous cultural artifacts, including ancestral human remains, and coldly removed from their resting places. In 2019 alone, more than 15 sites containing such artifacts were uncovered and destroyed by the military.<sup>76</sup> The removal of the dead from their final resting places is an unspeakable cultural violation. It disturbs the spirits and prevents Chamorro people from connecting to their ancestors. In October 2019, over 20 community groups, as well as the Guam Legislature, called on the military to pause construction in order to develop a collaborative plan for preserving the discovered artifacts in place.<sup>77</sup> These requests were denied by the DoD, which, under a 2011 Agreement,<sup>78</sup> retains sole decision-making authority concerning the treatment of cultural artifacts and human remains discovered in the course of the buildup.
46. Chamorro people lack rights over their ancestors' remains because of Guam's colonial status as an unincorporated territory under U.S. domestic law. U.S. federal law provides partial (though still inadequate) protection for the cultural rights of indigenous peoples through the Native American Graves Protection and Repatriation Act.<sup>79</sup> The Act requires consultation with Native peoples and the return of Native human remains and cultural objects. But federal regulations provide that these protections do not apply in "the territories of the United States."<sup>80</sup> Moreover, even if the Act did apply in the territories, it is unclear that Chamorro people would benefit because U.S. law does not recognize the Chamorro people as indigenous.<sup>81</sup>

47. Although construction of the ranges is not yet fully complete, the first live-fire operations began in 2023 and the range complex is anticipated to be fully operational by October 2024.<sup>82</sup> The operation of the complex is associated with a whole slew of additional harms. Most notably, the complex is surrounded by a so-called “surface danger zone,” defined in federal law as a massive area covering 3,660 acres of land and extending 2.8 miles offshore into the Pacific Ocean.<sup>83</sup> When the ranges are in operation—which the military has indicated may be as much as 273 days of the year—local people will not be allowed to enter the surface danger zone.<sup>84</sup> This means that for much of each year Chamorro people will be denied access to their ancestral lands and burial sites as well as to natural resources that are essential for cultural practices, health, and food security.
48. For example, the limestone forests of Litekyan provide some of the last locations in Guam where plants essential to traditional medicine can be harvested. These restrictions effectively prevent yo’ámte (traditional healers) from accessing these resources and therefore from providing medical treatment to their communities.<sup>85</sup>
49. Likewise, the ocean portion of the surface danger zone encompasses important subsistence fishing grounds for many Chamorro families. The restrictions will further exacerbate economic and food insecurity on the island by inhibiting access to these fishing grounds for as much as three-quarters of the year. The restriction is also a cultural assault, preventing Chamorro fishers from engaging in traditional fishing practices. Chamorro fishing—like many aspects of cultural life—is guided by the lunar calendar, with certain moons associated with the right time for fishing and certain moon phases associated with specific fish species. For example, the last quarter moon in late April and early May is the time to fish for mañâhak (rabbitfish) because this is the time of year that schools of mañâhak are running. The restrictions imposed by the surface danger zone will be implemented at arbitrary intervals, with no awareness or consideration for the impacts on Chamorro fishing practices. The cultural consequence of this is devastating. It is not just that opportunities for fishing in general will be significantly reduced, but rather that the entire seasonal fishing calendar will be disrupted, and that specific cultural practices tied to specific species and ecological phenomenon will be prohibited entirely.

50. The imminent operation of these firing ranges also imperils the island's drinking water supply. The complex is being constructed directly over the Northern Guam Lens Aquifer, the island's only source of freshwater, which currently provides 85% of the drinking water on the island.<sup>86</sup>
51. The aquifer has already been contaminated by toxic and hazardous wastes dumped by the U.S. military in and around Anderson Air Force Base. The contamination of the base is so severe that it has been designated a Superfund site—a classification under U.S. domestic law available only for the nation's most contaminated and dangerous sites. Toxic and hazardous substances at the site include trichloroethane and paint thinners; fuels such as JP-4 and gasoline; pesticides; antifreeze; aircraft cleaning compounds; polychlorinated biphenyls (PCBs); metals; solvents; and military munitions.<sup>87</sup>
52. Legally mandated sampling by the Air Force has revealed that “contamination plumes” have penetrated deep within the aquifer.<sup>88</sup> In 1998, the Air Force selected the remedy of “monitored natural attenuation” to deal with this contamination—meaning that no intervention would be taken; rather the hope was that natural processes would result in the contaminants eventually dissipating.<sup>89</sup> However, by 2014, long-term monitoring revealed that the contaminants at the bottom of the aquifer “are not decreasing.”<sup>90</sup> The Air Force obtained a waiver of technical impracticability from the U.S. Environmental Protection Agency (**EPA**) and was discharged of its duty to remediate the site. Today, the aquifer remains contaminated, and pumping of deep ground water in the contaminated portions of the aquifer is now prohibited.<sup>91</sup>
53. The operation of the firing ranges threatens to further degrade this already compromised resource. Based on the Air Force's planned use of the ranges, up to 6.7 million lead bullets will be fired over the aquifer per year for the foreseeable future.<sup>92</sup> Lead is known to be an exceptionally mobile contaminant with a high potential to enter groundwater systems.<sup>93</sup> This risk is exacerbated by Guam's highly permeable karst limestone geology.<sup>94</sup> Further, hundreds of thousands of gallons of solvents—a material that has already caused permanent contamination of the aquifer—will be used to clean the weapons used at the firing range.<sup>95</sup> Although the U.S. military maintains that there will be no significant environmental impacts from operation of the ranges, this is belied by the fact that the soils and surrounding areas of over 30 similar installations and firing ranges across the continental United States and Hawai'i have been contaminated by lead and other toxic chemicals.<sup>96</sup> For example, lead

levels up to 70 times the accepted residential levels have been found on a public beach adjacent to the Pu‘ualoa Range Training Facility in O‘ahu.<sup>97</sup>

54. The risks of groundwater contamination have been repeatedly raised, by both members of the public and other U.S. federal agencies, in public comments on the Air Force’s environmental impact statement regarding the range complex.<sup>98</sup> The Air Force has declined to address these concerns and has moved forward with construction and early operations of the facility without adequately assessing the risk of contamination or preparing any plans or strategies for mitigation in the event that the aquifer is contaminated.

#### *D. Unpermitted open detonation practices at Anderson Air Force Base*

55. The Northern Guam Lens Aquifer and the broader marine and terrestrial environments of the Northern coastline are at risk of further contamination from the Air Force’s ongoing open detonation and proposed open burning (**OB/OD**) practices, which are carried out to dispose of waste munitions. These practices involve exploding waste munitions directly on the ground and burning waste munitions in the open air. OB/OD results in the uncontrolled release of toxic contaminants—including lead, arsenic, dioxins, and PFAS—directly into the air, soil, and water.<sup>99</sup> Once this contamination occurs, “the removal of hazardous waste residuals and explosive kickout, is generally difficult and costly to achieve.”<sup>100</sup> Tarague Beach, where the military conducts its OB/OD operations, is an important nesting ground for the endangered green sea turtle and abuts culturally significant fishing and medicine collection sites.<sup>101</sup> The OB/OD site also sits approximately 6 feet above part of the Northern Guam Lens Aquifer.<sup>102</sup>
56. The federal Resource Conservation and Recovery Act bans OB/OD of hazardous wastes due to the risks these practices pose to human health and the environment, with one narrow exception for “explosives with no safe mode of treatment.”<sup>103</sup> This legislation and its implementing regulations require that “OB/OD facilities must evaluate—and re-evaluate—whether safe alternative technologies are available to treat their waste explosives. Where safe alternatives are available, facilities must use those alternatives in lieu of OB/OD.”<sup>104</sup> In order to continue OB/OD practices, the operator of the OB/OD facility must prove that “their waste explosives cannot safely be disposed of through other modes of treatment.”<sup>105</sup> In 2019, the National Academy of Sciences and the U.S. EPA released comprehensive studies authoritatively determining that safe alternatives have become viable “for most, if

not all” types of hazardous waste currently treated with OB/OD and that “there are no significant technical, safety, or regulatory barriers to the full-scale deployment” of these alternative technologies.<sup>106</sup>

57. Permitting authority for OB/OD operations in Guam has been delegated to the Guam EPA. The Air Force has been continuously detonating waste munitions on Tarague Beach since 1982, with open burning discontinued in 2002.<sup>107</sup> These practices are subject to a three-year permit from the Guam EPA, which the agency has approved at each required instance through 2021.<sup>108</sup>
58. In 2021, the Air Force submitted a permit renewal application for both open detonation and open burning of waste explosives for a permit set to expire that year. The application openly acknowledges the serious risks of planned OB/OD activities, including environmental emergencies stemming from spills of toxic materials and uncontrolled fires; contamination of the Northern Guam Lens Aquifer; contamination of the reef and marine environment, with impacts to human health and food security for nearby families who rely on the reef fishery for subsistence; and probable death and injury to endangered species including nesting green sea turtles and migratory birds. The permit application states plainly that the military does not intend to take proactive measures to minimize the environmental harm. For example, it states that, “[t]he nature of OB/OD [hazardous waste] treatment on the EOD Range does not provide for procedures to minimize releases to the atmosphere.”<sup>109</sup> The permit application fails to adequately consider the viability of alternative technologies or measures to mitigate the environmental and human health consequences of continuing OB/OD practices as required by law.<sup>110</sup>
59. The permit application remained under review until August 2024, when the Guam EPA and U.S. EPA jointly determined that the application failed to meet “important aspects of applicable requirements,” including development of prevention procedures to avoid contamination, a plan to protect against groundwater contamination, a plan to address the impacts of floods and other natural disasters on the site, a plan for eventually closing the unit, and an evaluation of alternative technologies.<sup>111</sup> The Air Force is required to address these deficiencies and resubmit the permit application.<sup>112</sup>

60. Alarming, during the three years in which the permit application was pending, the Air Force continued with its open detonation.<sup>113</sup> This extralegal continuation of unpermitted practices—all without any effort to mitigate or prevent environmental harm—demonstrates the deep disdain that the United States has for the government of Guam and its people. Indeed, the Guam Legislature attempted to stop this unpermitted activity in December 2022 by passing a law banning the practices of open burning and open detonation of hazardous waste “until such time that Guam is equipped with a safe alternative.”<sup>114</sup> The law included an exception for the decommissioning of ordinance from World War II.<sup>115</sup> However, less than a week before the law was set to come into operation, the U.S. military effectively coerced the Guam Legislature into repealing the ban by refusing to take any measures to decommission any undetonated ordinances, including in civilian areas, while the law remained in place.<sup>116</sup> The danger of unexploded ordinances was created by the U.S. military, which is also the only actor in Guam with the capability to safely decommission them. This withholding of services needed to protect the lives and safety of Guam’s people in order to force the Guam Legislature to repeal its own law exemplifies the United States’ active opposition to Guam’s autonomy and self-determination, as well as an abdication of its obligations to respect, protect and fulfil the human rights of the people of Guam.

*E. Permanent housing of Republic of Singapore Air Force F-15s in Guam*

61. Finally, the U.S. military is planning to permanently host twelve of the Republic of Singapore’s F-15 fighter jets and associated mission support at Anderson Air Force Base. The decision to relocate the twelve F-15s—which represent half of Singapore’s entire fleet—to Guam stems from a 2019 agreement between the United States and Singapore.<sup>117</sup> The agreement also provides for the creation of a permanent Singaporean training detachment in Guam. Much like the agreement between Japan and the United States concerning the relocation of Marines from Okinawa to Guam, neither the Guam territorial government nor the Chamorro people nor Guam’s public more broadly were consulted or had any input in this decision to open Guam’s borders to a foreign military and house that military’s equipment and personnel on the island.
62. The purpose of housing the Singaporean F-15s in Guam is to project airpower into the region and “expand combat capability” in Guam.<sup>118</sup> Here again is a clear indication that the United

States is preparing Guam to be a battleground, prioritizing its own strategic interests over the well-being of Guam's people.

63. In June 2024, the Air Force released a draft EIS concerning the transfer of the F-15s. Per the document, this transfer will entail the construction of new facilities covering 209 acres, to include construction of a new hanger and ramp space, maintenance and support facilities, fuel systems, ammunition storage, and other infrastructure. Identified impacts include loss and disruption of native vegetation; long-term habitat loss, including for critically endangered species; and degradation of marine ecosystems, including essential fish habitats.<sup>119</sup> Like the EA for the EIMAD missile testing program, the document lacks transparent and genuine information. For example, the Air Force maintains that the critically endangered Marianas fruit bat will not be impacted because its roost is not within the designated construction area, but rather is 800 feet away.<sup>120</sup> Likewise, the Air Force acknowledges that construction has the potential to “affect the physical integrity” of culturally significant sites and artifacts, including at least 22 culturally significant sites already known to be within the construction area, but concludes that this does not amount to a significant impact.<sup>121</sup>
64. This initiative also entails the transfer of approximately 240 permanent personnel, contractors, and dependents to operate and maintain the facility, as well as an additional 200 personnel during 4-week training events anticipated to take place twice a year. An additional 500 construction workers will be needed for the duration of the construction phase, anticipated to last between three and seven years.<sup>122</sup> Despite the known housing shortage in Guam, which, as detailed above, will be exacerbated by numerous other military actions, the military does not have a plan to accommodate these new personnel. Rather, “[i]t is assumed that all personnel would reside in off-installation housing on Guam.”<sup>123</sup> While the number of new personnel associated with the F-15s may seem small, this must be considered in the context of Guam's pre-existing housing issues and the influx of tens of thousands of Marines and other personnel associated with the overall buildup.

### III. Intensifying militarization is exacerbating human rights violations

65. We submit that, through carrying out these additional military activities in Guam, the United States is deepening numerous violations of the rights of the Chamorro people already suffered as a consequence of pre-existing U.S. colonial administration and military conduct on the island. These include violations of the right to self-determination, the right to free, prior and informed consent, and myriad human rights, including cultural rights and the right to a clean, healthy and sustainable environment. By failing to respect, protect, and fulfil these rights, the United States is in breach of its corresponding obligations under international law.

#### A. Self-determination

66. The right to self-determination is a *jus cogens* norm of international law, encompassing the right of peoples to freely determine their political status and development paths, to be self-governing, and to enjoy PSNR.<sup>124</sup> All States hold *erga omnes* obligations to protect, respect, and uphold this right wherever it is being violated.<sup>125</sup> As the island's administering power, the United States holds a "sacred trust" obligation to promote the well-being of the territorial inhabitants and to effectuate their right to self-determination.<sup>126</sup> In the process of decolonization, there is "no alternative to the principle of self-determination."<sup>127</sup>
67. The United States' continued colonial administration of Guam constitutes a fundamental denial of the Chamorro people's right to self-determination. At a structural level, the United States' legal system does not recognize Chamorro peoples' indigeneity or colonial status, and thus does not contemplate a remedy for colonization or pathway to self-determination.<sup>128</sup> As explained in the 2020 filing, the United States has taken no steps toward discharging its international legal obligation to effectuate Guam's self-determination, and has actively taken steps to frustrate efforts from within Guam to achieve the same.<sup>129</sup> Moreover, the ever intensifying military presence on the island, and the repeated rhetoric around Guam's "indispensable" strategic importance to U.S. prerogatives in the Indo-Pacific region, demonstrates in no uncertain terms that the United States has no intention to relinquish its colonial control over the island or its people.<sup>130</sup>
68. Throughout the military buildup, the United States has also engaged in unilateral actions that demonstrate its utter disregard for the self-determination of the Chamorro people.



These include opening Guam's borders to foreign militaries; bilaterally negotiating agreements affecting Guam's territory and resources with other States without providing any opportunity for input or engagement from Guam's territorial government or indigenous people; and effectively forcing Guam's territorial government to repeal its own laws.

69. The United States is further violating the Chamorro people's right to self-determination by impairing their ability to enjoy PSNR. Both a subcomponent of the right to self-determination and a stand-alone peremptory norm of international law,<sup>131</sup> PSNR guarantees all peoples the right to "freely dispose of their natural wealth and resources" and provides that "[i]n no case may a people be deprived of its own means of subsistence."<sup>132</sup> Here, the United States is violating the Chamorro people's right to PSNR by unilaterally making decisions about the use and management of Guam's lands, waters, and natural resources, necessarily precluding Chamorro people from enjoying sovereignty over the same. Moreover, these use decisions have resulted in widespread destruction and degradation of Guam's natural resources, thereby foreclosing the possibility that the Chamorro people can exercise PSNR over these lost resources in the future. This conduct includes razing thousands of acres of pristine limestone forest, compromising the continued survival of endangered and endemic species, and permanently contaminating the island's soil, air, marine environment, and sole freshwater resource. Moreover, military projects across the island have compromised important food systems and natural resources, impeding the ability of impacted communities to provide for their own subsistence.
70. In its recent advisory opinion on *The Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory*, the International Court of Justice reaffirmed that the right to self-determination also protects peoples "against acts aimed at dispersing the population and undermining its integrity as a people."<sup>133</sup> Here, the United States' continued militarization of Guam is resulting in the forced dispersal of Chamorro people from their ancestral homeland. The expanding military footprint and rapid swell of military personnel on the island is reducing the land available for residents, overtaxing the island's civilian infrastructure, and resulting in increasingly dire housing insecurity. This is exacerbated by preferential treatment and benefits provided to military personnel, including generous stipends to pay for off-base housing and discounts for basic household items from base supply stores. The current situation must also be understood against a history of federal land grabbing and discrimination against Chamorro people that have left

them marginalized and grappling with high levels of poverty on their own island. These factors have made life in Guam increasingly untenable, forcing many Chamorro families to leave the island. Chamorro communal identity is tied to the island, and so the continued collective existence of the Chamorro people is severely compromised by this forced dispersal. Moreover, as the small Chamorro population disperses, possibilities for undertaking a collective act of self-determination become increasingly challenging.

71. Finally, as we have explained, the United States is readying Guam for combat. As the United States increasingly focuses on developing Guam as a “combat power projection hub”<sup>134</sup> and preparing the island for “fighting in a contested environment,”<sup>135</sup> it seems ever more certain that the island will be turned into a site of warfare, including against adversaries that possess nuclear capabilities. Both China and North Korea have already explicitly threatened to strike Guam with nuclear weapons.<sup>136</sup> Given the destructive power of current military technology, there is a real risk that Guam will not survive should the United States go to war. This outcome would permanently foreclose any possibility for the Chamorro people to meaningfully achieve full self-determination. By imperiling Guam and its people in this way, the United States is further breaching its obligations as administering power to effectuate the Chamorro peoples’ right to self-determination.

#### *B. Free, prior and informed consent*

72. As the indigenous people of Guam, the Chamorro have the right to free, prior and informed consent (**FPIC**) with respect to all development projects affecting their ancestral lands and resources.<sup>137</sup> FPIC guarantees them the right to provide or withhold consent for any project affecting their lands, territories, and resources, including the present military build-up.<sup>138</sup> The opportunity to provide consent must occur before the project begins and must be based on open, transparent, and complete information about the project and its potential impacts.<sup>139</sup> Consent must be given freely—absent any manipulation, intimidation, or coercion. If consent is not given, the project cannot go forward.<sup>140</sup> Indigenous peoples are entitled to FPIC protections in order to avoid repetition of the long history of outside forces seizing control of and damaging their lands and resources. Such protections take on special importance in a colonized place like Guam, where the colonizer’s domestic law does not recognize the sovereignty of indigenous people over their own territory and resources.

73. There is no law, policy, procedure, or mechanism within U.S. domestic law to effectuate the right to free, prior and informed consent for indigenous peoples in relation to State actions, including military actions. The primary opportunity for public engagement with respect to such projects is provided by the National Environmental Policy Act (**NEPA**).<sup>141</sup> Pursuant to this statute, the government agency responsible for a project with potential to adversely affect the human environment must prepare an EIS assessing the likely impacts of the project. The Act provides an opportunity for the public to comment on the EIS and requires the responsible agency to provide responses to “substantive” public comments.<sup>142</sup> The agency is not, however, required to make any changes to the project in response to public comments.<sup>143</sup> The NEPA process also provides no special protections for the Chamorro people as an indigenous people, but rather treats them generically with the rest of the public. The NEPA process thus at best provides a limited consultation opportunity for the general public with no requirement that the consent of indigenous people is obtained before a project affecting their lands and resources can go forward.
74. In the course of this process, EIS documents are typically prepared and shared with the public only after the project has been fully conceived and planned by the responsible agency. There is no legally required opportunity for the public to comment or contribute to the conception or design of the project itself. Moreover, as exemplified by the EIAMD system, in the case of military actions on Guam, projects are often budgeted and work contracts awarded before there has even been an opportunity for public comment. The result is that projects typically move forward as designed regardless of the concerns raised during the public comment process.
75. Additionally, the EIS documents for military projects in Guam are often disingenuous regarding the potential impacts of the project. To take but one example, in analyzing the acquisition of additional land for the Mason Live Fire Range Complex, the Navy simply concluded, “because all of Guam is considered a racial and ethnic minority population, minorities would not experience disproportionately high and adverse effects due to land acquisition.”<sup>144</sup>
76. Moreover, the information shared in EIS documents—particularly those prepared by the military—is far from transparent. These documents are dense technical manuscripts typically hundreds to thousands of pages in length and full of jargon that is inaccessible to the general public.<sup>145</sup> On top of this, public comment periods are often shockingly short

considering the volume of content to review—on the order of four to eight weeks to review thousands of pages. There are typically numerous EIS processes running simultaneously regarding different aspects of the military buildup in Guam, further increasing the burden on affected communities to read and respond within applicable time periods (while also struggling to get by on an island that is increasingly expensive and housing insecure due to the military presence).

77. The numerous yet separate ongoing EIS processes in Guam demonstrate a more fundamental problem: failure to consider cumulative impacts. Through these documents, the military is providing information about the impacts of different components of the military buildup in isolation. This approach fails to assess or convey information about the impact of the buildup in its totality or consider how various components of the buildup may interact and compound each other. As a result, Chamorro people lack complete information about the full scope and scale of the impacts of the buildup on their lands and resources. They would thus be unable to provide free, prior, and informed consent even if the question of consent was on the table.
78. In short, the current public engagement process provided by the United States falls far short of the requirements of FPIC. Opportunities for public engagement are too late, the information provided is inaccessible and incomplete, and Chamorro people are not given adequate time to consider and provide their input. More fundamentally, the consent or lack thereof of Chamorro people is irrelevant. At the end of the day, the military is empowered to unilaterally proceed as it wishes, in clear violation of the Chamorro people's right to FPIC.

### *C. Human rights*

79. As the sovereign State with jurisdiction over Guam, the United States holds legal obligations to protect, respect, and fulfil the human rights of the residents of Guam, including the individual and collective human rights of the Chamorro people. Far from upholding those obligations, the United States is systematically, severely, and continuously violating many core human rights on Guam, including cultural rights and the right to a clean, healthy and sustainable environment.
80. Cultural rights are enshrined in numerous human rights instruments and encompass the right to “take part in cultural life,” through “access to essential aspects of [] culture,

including not only language, traditions, and customs,” but also “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there.”<sup>146</sup> Cultural rights also protect the ability of indigenous peoples to “enjoy their own culture, to profess and practise their own religion, [and] to use their own language.”<sup>147</sup> Indigenous peoples are guaranteed heightened protections for cultural rights in recognition of both the histories of cultural genocides inflicted by colonial powers, and the intertwined nature of indigenous cultures and their specific environments. The cultural rights of indigenous peoples thus include “the inalienable right to enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity.”<sup>148</sup>

81. As we have explained, the military buildup has violated the individual and collective rights of the Chamorro people by destroying sites of immense cultural importance; removing the dead from their burial grounds, thereby severing spiritual connections between Chamorro people and their ancestors; and destroying ancient villages and cultural sites, thereby preventing Chamorro people from gaining cultural knowledge and transmitting it to future generations. This loss of historical cultural knowledge is particularly troubling because much of living Chamorro culture was lost during the extended period in which the United States criminalized Chamorro culture and instituted policies of forced assimilation.<sup>149</sup>
82. The restrictions on access to ancestral lands and waters imposed by the Mason Live Firing Range Complex’s surface danger zone also foreclose cultural practices including fishing and medicine making. More fundamentally, the interconnection of the Chamorro people with the lands, waters, species, and resources of Guam forms the core of culture. The destruction and contamination of these same lands, waters, species, and resources by the military thus constitutes a deep and systemic assault on Chamorro culture.
83. Militarization has also resulted in violations of the right to a clean, healthy and sustainable environment. This right encompasses the right to clean air, a safe climate, healthy and sustainably produced food, safe water, adequate sanitation, non-toxic environments in which to live, work and play, and healthy ecosystems and biodiversity.<sup>150</sup> As we have detailed, much of Guam’s environment is already contaminated due to a long history of military activity, with 90 known toxic waste sites sitting un-remediated on the island. The current military buildup is causing further degradation. For example, imminent full operation of the Mason Live Fire Range Complex threatens to further contaminate the already compromised Northern Guam Lens Aquifer, while the military’s unpermitted open

detonation practices have released a slew of dangerous contaminants directly into the air, soil, and marine environment. Construction of new military sites and infrastructure has caused the further loss of environments, habitat, and species. This construction will only intensify in the coming years, threatening the integrity of the island ecosystem as a whole. The population increase associated with the buildup is expected to overburden Guam's civilian drinking water and wastewater systems, with implications for access to safe water and adequate sanitation. The end result is that the Chamorro people no longer have a clean, healthy and sustainable environment in which to live. It should be noted that these same impacts also undermine other human rights, including the rights to food, safe drinking water, health, and life.

#### **IV. Recommendations**

84. This updated submission demonstrates that the United States continues to be untrustworthy in safeguarding the Chamorro people's permanent sovereignty over their natural resources, incapable of meaningfully consulting them on matters vital to their collective rights and interests, and altogether unwilling to allow them the free exercise of their fundamental right to self-determination. The continued colonial administration and unilateral militarization of Guam represents gross violations of these rights. Further, by continuing to militarize the island with no regard for the basic physical security and health of the island's population, the United States is also in breach of its obligations to protect, respect and fulfil the human rights of Chamorro people and other inhabitants of Guam.
85. In light of the severity and immediacy of the harms described in this updated submission, we request the intervention of the Special Rapporteur on the rights of indigenous peoples. Such intervention is urgent given the scale and rapidity of the escalation of military actions on the island and the utter lack of recourse available to the Chamorro people under U.S. domestic law. The intervention of the Special Rapporteur could provide vital support to the Chamorro people by raising international attention concerning the human rights situation in Guam, delaying destructive activities, and encouraging the United States to bring its conduct into conformity with its international legal obligations.

86. We ask that the following actions, or any combination of them, be taken:

- A site visit by the Special Rapporteur on the rights of indigenous peoples to Guam to assess the military buildup and associated harms to the Chamorro people;
- A report investigating the harms alleged in this submission;
- A communication to an international body that focuses on or includes coverage of the human rights violations suffered by the Chamorro people of Guam;
- A follow-up communication to the U.S. government about its failure to address ongoing human rights violations on Guam;
- A public statement about the unlawfulness of the military buildup and the situation of the Chamorro people under international human rights law;
- Recommendations to international bodies, including the Special Committee on the situation with regard to the implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples, also known as the Special Committee on Decolonization, or C-24, regarding actions that could be taken to assist the Chamorro people in their self-determination efforts; and
- Any other actions that the Special Rapporteur on the rights of indigenous peoples may consider appropriate in light of this submission.

87. The authors of this submission remain attentive to any requests by the Special Rapporteur for more information about the facts discussed in this updated submission or to provide a more detailed analysis of Chamorro self-determination and other rights under international law, though we are well aware of the expertise of the Special Rapporteur in the field.

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<sup>1</sup> *Downes v. Bidwell*, 182 U.S. 244, 279 (1901).

<sup>2</sup> Statement of U.S. Major General Dennis Larsen, as reproduced in Vine, D., *Base nation: How U.S. bases abroad harm America and the world* (2015, New York, NY: Metropolitan Books).

<sup>3</sup> UN Charter, art. 73; *see also Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 2019 I.C.J. Rep., p. 95, para. 160 (“[T]he peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.”)

<sup>4</sup> Annex A, Submission to Mr. Francisco Calí Tzay, Special Rapporteur on the rights of indigenous peoples, regarding ongoing human rights violations of the indigenous Chamorro people of Guam under U.S. colonization and militarization (2020), p. 3 [hereinafter “2020 Filing”].

<sup>5</sup> Statement of U.S. Major General Dennis Larsen, *as reproduced in* D. Vine, *Base nation: How U.S. bases abroad harm America and the world* (2015, New York, NY: Metropolitan Books).

<sup>6</sup> For further information about Prutehi Litekyan: Save Ritidian, *see* Annex A, 2020 Filing, p. 20.

<sup>7</sup> Annex B, Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, AL USA 7/2021 (29 Jan. 2021), p. 5 [hereinafter “Joint Allegation Letter”].

<sup>8</sup> Joint Allegation Letter, p. 5.

<sup>9</sup> *See, e.g.*, “Life in the first-strike community”, Pacific Island Times (10 Jul. 2023), available at: <https://www.pacificislandtimes.com/post/life-in-the-first-strike-community>.

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<sup>12</sup> Annex A, 2020 filing, p. 5; *see also* 48 U.S.C.A. § 1424(c); *Gov’t of Guam ex rel. Guam Econ. Dev. Auth. v. United States*, 179 F.3d 630 (9th Cir. 1999) (finding Guam’s various arguments as to its claims over certain real property in the territory unavailing).

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<sup>125</sup> *Legal consequences arising from the policies and practices of Israel in the occupied Palestinian territory, including East Jerusalem*, Advisory Opinion of 19 July 2024, General List No. 186, para. 241 (citing *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para. 155; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 I.C.J. Rep., p. 95, para. 180).

<sup>126</sup> UN Charter, art. 73.

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- <sup>127</sup> *Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory Including East Jerusalem*, Advisory Opinion, I.C.J. Rep. 2024, General List No. para. 233 (citing UNGA resolutions).
- <sup>128</sup> Towards Decolonization & Repair, pp. 5-6; *see also*, Davis v. Guam, 932 F.3d 822 (9th Cir. 2019) (holding that “native inhabitants of Guam” is a race-based classification); Addie Rolnick, *Indigenous Subjects*, Yale L. J. vol. 131 (2022).
- <sup>129</sup> Annex A, 2020 Filing, p. 3.
- <sup>130</sup> Congressional Research Service, Guam: Defense Infrastructure and Readiness (3 Aug. 2023), p. 2, available at: <https://crsreports.congress.gov/product/pdf/R/R47643>.
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- <sup>132</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, art. 1(2); International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 U.N.T.S. 3, art. 1(2).
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- <sup>138</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach*, U.N. Doc. No. A/HRC/39/62 (Aug. 2018), para. 25.
- <sup>139</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach*, U.N. Doc. No. A/HRC/39/62 (Aug. 2018), paras. 22-23.
- <sup>140</sup> Expert Mechanism on the Rights of Indigenous Peoples, *Free, prior and informed consent: a human rights-based approach*, U.N. Doc. No. A/HRC/39/62 (Aug. 2018), para. 20.
- <sup>141</sup> 42 U.S.C. § 4321.
- <sup>142</sup> 40 CFR pt. 1503.
- <sup>143</sup> 40 CFR pt. 1502.
- <sup>144</sup> United States Department of Navy, Guam & CNMI Military Buildup Final Environment Impact Statement, Vol. II at 19-9 (2010), available at: [https://www.guambuildupeis.us/documents/final/volume\\_2/Vol\\_o2\\_Ch19\\_Environmental\\_Justice\\_and\\_the\\_Protection\\_of\\_Children.pdf](https://www.guambuildupeis.us/documents/final/volume_2/Vol_o2_Ch19_Environmental_Justice_and_the_Protection_of_Children.pdf).
- <sup>145</sup> *See, e.g.*, United States Department of Navy, Final Supplemental Environmental Impact Statement for Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2015), available at: <https://apps.dtic.mil/sti/tr/pdf/ADA623122.pdf>.
- <sup>146</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life*, E/C.12/GC/21, (21 Dec. 2009), para. 16(a).
- <sup>147</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, art. 27.
- <sup>148</sup> Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019: Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019 (22 Sept. 2022), para. 8.13 *see also* Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of*

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*everyone to take part in cultural life*, E/C.12/GC/21, (21 Dec. 2009), para. 36 (“Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity”); Human Rights Committee, *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2552/2015* (*Benito Oliveira Pereira et alv. Paraguay*), CCPR/C/132/D/2552/2015, (21 Sept. 2022), para. 8.6 (“The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”).

<sup>149</sup> See, e.g., Anne Perez Hattori, *Colonial Dis-Ease: US Navy Health Policies and the Chamorros of Guam, 1898–1941* (University of Hawaii Press, 2004).

<sup>150</sup> David Boyd (Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment), *Right to a healthy environment: good practices*, UN Doc A/HRC/43/53 (30 Dec. 2019), paras. 8-18; see also Committee on the Rights of the Child, *General Comment No. 26 on children’s rights and the environment, with a special focus on climate change*, CRC/C/GC/26 (22 Aug. 2023), para. 64.



## **ANNEX A:**

**Submission to Mr. Francisco Calí Tzay, Special Rapporteur on the rights of indigenous peoples, regarding ongoing human rights violations of the indigenous Chamorro people of Guam under U.S. colonization and militarization (Aug. 2020)**

**Submission to Mr. Francisco Calí Tzay, Special Rapporteur on  
the rights of indigenous peoples, regarding ongoing human  
rights violations of the indigenous Chamorro people of Guam  
under U.S. colonization and militarization**



**UNREPRESENTED  
NATIONS & PEOPLES  
ORGANIZATION**  
Brussels

**Submission to Mr. Francisco Calí Tzay, Special Rapporteur on  
the rights of indigenous peoples, regarding ongoing human  
rights violations of the indigenous Chamorro people of Guam  
under U.S. colonization and militarization**

Executive Summary

- I. Introduction
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## **Executive Summary**

This submission details the ongoing human rights violations suffered by the indigenous Chamorro people of Guam at the hands of the United States government and military. Guam is currently a U.S.-administered non-self-governing territory, whose decolonization process has been stymied for 122 years and counting. Guam has been inhabited for over 3,500 years by the Chamorro people, who have suffered numerous harms since the United States took colonial control over the island in 1898, including racist and discriminatory treatment by naval authorities; negative health outcomes resulting from the storage and usage of nuclear weapons, radioactive vessels and toxic chemical agents; and massive land seizures to make way for U.S. military bases and installations, among other things. The United States has also denied the Chamorro people their fundamental right to self-determination, thwarting their decolonization process in domestic and international fora, and denying them the ability to express their desires regarding their future political relationship with the United States.

Far from being remedied, these harms are aggravated today by a massive military buildup and expansion of the U.S. military footprint in Guam. With insufficient consultation of the entire island population and total disregard for the Chamorro people's right to free, prior, and informed consent, plans to transfer thousands of military personnel and associated workforce to the island have proceeded, along with the construction of live-fire training ranges and other installations on sites of great significance to Chamorros. Construction has begun around some of the island's most sacred, sensitive habitats, including in the Litekyan/Ritidian area, home to ancient villages and traditional medicine-gathering and fishing grounds. Moreover, the buildup has unearthed human remains and cultural artifacts at no less than five construction sites. Rather than halt work, as requested on multiple occasions by Guam's legislature and local activists, the military has continued to excavate, destroying much in its wake.

Meanwhile, the United States has yet to address longstanding environmental contamination in Guam, and continues to create new health risks for local populations as U.S. military servicemen break local ordinances respecting COVID-19. Moreover, the treatment of Guam and its peoples as a sacrificial bargaining chip in the war games of superpowers has been clearly demonstrated by President Trump's cavalier attitude towards Guam throughout escalated hostilities with North Korea and China.

The Chamorro people, through community-based organizations such as Prutehi Litekyan: Save Ritidian, are fighting the loss of their traditional lands, territories, and resources, and the suppression of their self-determination and their right to transmit their traditional and customary practices to future generations. As this submission will show, the military buildup now underway in Guam violates the rights of Chamorros under international law in several respects. We respectfully petition the Special Rapporteur to investigate these harms and to take action, within his authority, to urge the United States to prevent the further erosion of those rights.

## **I. Introduction**

Blue Ocean Law and the Unrepresented Nations and Peoples Organization make this submission on behalf of the indigenous Chamorro people of Guam, more specifically, Prutehi Litekyan: Save Ritidian (PLSR), a community-based organization dedicated to defending sacred sites and protecting Guam's natural and cultural resources.

Guam – the southernmost and largest island in the Marianas archipelago – has long been subject to colonial domination. In fact, Guam is one of the longest colonized islands in the Pacific, beginning with Spanish colonization in the 17<sup>th</sup> century, continuing to U.S. capture in 1898, Japanese occupation during World War II, and postwar U.S. control through to the present. Despite having placed Guam on the UN list of non-self-governing territories in 1946, the United States, as Guam's administering power, has made little progress to definitively terminate colonial rule.

As the indigenous people of Guam, the Chamorro have a historical continuity with the pre-invasion, pre-colonial societies that developed on their island, and thus they are identified, and identify themselves, by reference to identities that predate historical encroachments by other groups and the ensuing histories that have wrought, and continue to work, oppression against their survival as a distinct people. As a culturally distinctive community whose ancestral roots are embedded in the land in which they live and who possess a continuity of existence and identity that links them to the communities of their ancestral past, they are determined to preserve their culture as well as their lands and resources—and to transmit the same to future generations.

Several recent developments make this submission timely – and, indeed, cry out for critical intervention from the international community. The first concerns the U.S. military's execution of a massive buildup and expansion of bases and armed forces in Guam. The military first announced its plans in 2006 and has since commenced with them, clearing broad swaths of native limestone forests and demolishing several sites of great historical and cultural significance to the Chamorro people. Construction of a massive firing range complex consisting of five live-fire training ranges and support facilities is now underway, in dangerous proximity to ancient burial grounds and critical habitat for several endangered species. These are mere samplings of the hugely damaging impacts portended by the buildup; the additional transfer of thousands of new U.S. military personnel and associated civilians promises to exact a heavy toll on the limited resources and demographic composition of the island.

This submission also addresses the broader context in which the current military buildup is unfolding, that is, the most recent period of colonial history and the bevy of harms visited upon the Chamorro people by U.S. colonization and militarization. Contrary to prevailing depictions, the story of the United States' treatment of Guam is not one of benign trusteeship. Rather, massive land theft from the Chamorro people, the contamination and destruction of the terrestrial and marine environment, and ongoing suppression of civil, political, social and cultural rights characterize the colonial relationship. The treatment of the island as a strategic military outpost for U.S. force projection in the Asia-Pacific theater has had real and deleterious impacts on the

Chamorro people, leaving them vulnerable in a region increasingly fraught with geopolitical tension caused in large part by the United States.

Additionally, and most recently, the transfer of hundreds (if not thousands) of U.S. military personnel from the stricken USS Theodore Roosevelt during the COVID-19 pandemic to civilian hotels in Guam has further endangered the health and wellbeing of local populations – particularly as these military personnel violated lockdown orders and local ordinances, subjecting the civilian community of Guam (including but not limited to the Chamorro people) to additional, unnecessary exposure to disease.

Amidst these actions, the United States has made clear that it has no intention to facilitate the exercise of self-determination of the native inhabitants of Guam. In the case of *Davis v. Guam*, U.S. federal courts judicially invalidated longstanding efforts by the government of Guam to hold a purely symbolic (non-binding) plebiscite for the native inhabitants to express their desires regarding their future political relationship with the United States. Review of the case was denied by the U.S. Supreme Court, meaning that the native inhabitants of Guam have exhausted their domestic remedies.

The Chamorro people are emblematic of indigenous Pacific Islanders at large, whose health, environments, and traditional economies have been decimated by the schemes of colonial powers, including decades of catastrophic nuclear testing. Few remedies, if any, have ever been offered to colonized islanders – not least, the power to determine their own futures. Guam is not an “unsinkable aircraft carrier” or “the tip of the spear,”<sup>1</sup> as it is perennially described by the United States government and military, required to self-immolate at the behest of a nation that denies the people of Guam their fundamental rights. Rather, Guam, or Guåhan, as it is known in the Chamorro language, is the ancestral homeland of a people with rich, meaningful traditions, revolving around sustainability, the careful treatment and appreciation of local environments, and a deep sense of reciprocity – traditions presently under threat.

The submission proceeds as follows: we begin with a brief history of Guam’s colonization, including notable recent developments in the colonial relationship. We then provide some details around the history of U.S. military intervention in Guam, focusing on changes to the island’s traditional economy, health, and environmental impacts from weapons testing on Guam and nearby islands, and other human rights violations stemming from colonization and exploitative trusteeship. We proceed with an in-depth examination of the current military buildup and associated rights violations. We conclude with recommendations regarding next steps.

## **II. Overview of Guam’s colonization**

The Mariana Islands were settled more than 3,500 years ago, making them one of the earliest inhabited island chains in the Micronesian sub-region of the Pacific.<sup>2</sup> The Chamorro people of Guam were an organized cultural and linguistic society marked by advanced seafaring, horticulture, hunting, and fishing.<sup>3</sup> By 800 A.D., Chamorro villages were characterized by unique latte structures, one-story houses resting on sizable limestone, basalt, or sandstone pillars and capstones.<sup>4</sup> Ancient Chamorro society was

matrilineal and revolved around the core values of respect and reciprocity, with shared access to communal resources and with family clans at the center of community life.<sup>5</sup> This complex, multifaceted society engaged in trade with other islands and practiced rice cultivation, pottery, weaving, boat-building, navigation, herbal medicine, and other trades far in advance of European arrival.<sup>6</sup>

The 16<sup>th</sup> century saw the first encounters between Western Europeans and Chamorros, following thousands of years of existence of the latter as a sovereign independent people. This included Magellan's landing in 1521, followed by the 1565 proclamation by Spanish navigator Miguel Lopez de Legazpi that Guam was a possession of Spain. However, colonization began in earnest in 1668 with the arrival of Spanish missionaries, whose attempts to convert Chamorros to Christianity encountered forceful opposition for the next thirty years during the Spanish-Chamorro Wars.<sup>7</sup> The Spanish responded to indigenous rebellion with vicious campaigns, resulting in the loss of thousands of native lives from both war and introduced disease.<sup>8</sup> Within a short time after Spanish colonization, the population of the Marianas had declined from 50,000 people to less than 4,000 in 1710.<sup>9</sup>

Despite near annihilation, Chamorro survivors of the Spanish colonial period were able to preserve and pass on many of their customary practices, including their central cultural values and many of their traditions relative to births, weddings, funerals, and deaths, among others.<sup>10</sup> After more than two centuries of Spanish control, Guam was ceded to the United States in the 1898 Treaty of Paris as a territorial spoil of the Spanish-American War.<sup>11</sup> The U.S. President then placed the island under the control of the Department of the Navy, where it would remain until 1950, with the exception of a brief period of Japanese occupation during World War II from 1941 through 1944.<sup>12</sup>

The period of naval control entrenched the Chamorro people's subordinate status, both legally and with respect to the military's strategic priorities. The U.S. government viewed Guam as an ideal naval base for strategic military purposes, and governed its indigenous inhabitants paternalistically, attempting to assimilate and "Americanize" them.<sup>13</sup> Under Naval rule, English was mandated and the Chamorro language was banned from the education system and other public places.<sup>14</sup> Although a plan to put Chamorro people on reservations and leave two-thirds of the land for military use did not materialize,<sup>15</sup> Chamorros continue to be denied various civil and political rights.<sup>16</sup>

A series of decisions by the U.S. Supreme Court in 1901, commonly referred to as the *Insular Cases*, gave judicial sanction to the discriminatory treatment of the Chamorro people, reaffirming Congress's "plenary power" over Guam and excluding it from equal treatment under the U.S. Constitution via the reasoning that "Anglo-Saxon principles" of government and justice would be impracticable to apply to "alien races" differing in "religion, custom, and modes of thought."<sup>17</sup> The Navy continued to exercise absolute control over the Chamorros, denying them basic rights within the American legal system, including the right to a jury and opportunities to appeal cases to federal courts outside of Guam.<sup>18</sup> Throughout this period, beginning in 1901, delegations of Chamorros petitioned the United States to end the Navy's rule of Guam,<sup>19</sup> filing petitions throughout the years leading up to (and after) WWII, all of which were ignored.<sup>20</sup>

Guam came under the control of Japanese military forces in December 1941.<sup>21</sup> During a 32-month period of Japanese occupation and martial law, the Chamorros experienced torture, internment, executions, hunger, forced marches, forced labor and additional cultural restrictions, resulting in some 1,170 Chamorro deaths.<sup>22</sup> Although a U.S. bombardment campaign helped end Japanese occupation, it also showed little concern for the local population, many of whom likely survived only because they were in concentration camps situated closer to the island's interior and not closer to the coasts.<sup>23</sup> During this period, the U.S. military seized Chamorro lands to build bases to launch more attacks on Japanese-controlled areas throughout the Pacific.<sup>24</sup>

On July 21, 1944, U.S. armed forces began to dismantle Japanese rule on Guam, leading to the return of the islands to U.S. control.<sup>25</sup> Despite mass decolonization on most continents across the globe, the aftermath of World War II brought a stronger U.S. military and political presence on Guam. Rather than returning land seized during the war, the military executed an aggressive policy of "land grabbing," taking some of the best and most valuable real property and water resources that had, for centuries, been in the possession of Chamorros, and denying them access to those ancestral territories.<sup>26</sup> By 1947, an estimated 1,350 families had lost their homes not to destruction by the Japanese occupation, but to the U.S. Navy's land seizures.<sup>27</sup> Many Chamorro landowners received little or no compensation for land that was taken.<sup>28</sup> The military officially retained – often through controversial eminent domain land condemnation proceedings – about 63% of the island, displacing more than 11,000 Chamorros, or almost half of the indigenous population at the time.<sup>29</sup>

Guam's self-sufficient pre-war agricultural economy never recovered from these land seizures;<sup>30</sup> instead, residents were forced to import 90 percent of their food, with canned and processed food overtaking traditional staples, leading to the high prevalence of Western lifestyle diseases such as diabetes and cardiovascular disease.<sup>31</sup>

Having been denied a wide range of rights, Chamorro leaders spent the years after the war pushing for greater autonomy, resulting in Congress's passage of the Organic Act of Guam in 1950. The Organic Act established Guam as an organized, unincorporated territory of the United States, with a civil government, and granted statutory U.S. citizenship to its peoples (who previously were U.S. nationals).<sup>32</sup> However, the Act reserved plenary power to amend or enact legislation for Guam to Congress, without the consent of the local citizenry. Drafted without the input of the Chamorro people, the Act reserved to Congress "the power and authority to annul" all laws passed by the Territory of Guam<sup>33</sup> and provided that the U.S. Constitution – and its rights and freedoms – did not necessarily or automatically apply in Guam as an unincorporated territory.<sup>34</sup> It also provided the Department of Interior with direct control and supervision over the affairs of Guam's local government, continuing to deny Chamorros the right to participate in national government. Even today Chamorros (and others) in Guam cannot vote for the U.S. President, have no U.S. Senate representation, and can only elect one non-voting member of the U.S. House of Representatives.<sup>35</sup> Moreover, the United States retained more than 42,000 acres of land that it had been using for other purposes, with Congress specifically excluding claims for property located on the island of Guam from the War



Claims Acts of 1948 as amended in 1962.<sup>36</sup> Thus, while the Organic Act did lead to a limited measure of local political governance, it allowed the United States to maintain – to this day – colonial control over Guam.

The decades since the Organic Act's establishment have seen major development and demographic changes to Guam. Local tourism and other industries have grown considerably, as has migration from Asia, other Pacific Islands, and the continental United States, including a significant percentage of resident military personnel and their dependents. This has resulted in Chamorros comprising just 37% of the population of Guam (while still constituting the largest single ethnic group).<sup>37</sup> Washington's immigration policy has allowed an unnecessarily high number of permanent immigrants into the island, contravening international self-determination principles regarding immigration to non-self-governing territories.<sup>38</sup>

In 1982, the Commission on Self-Determination organized a status referendum, in which 73% of Guam voters chose the Commonwealth option over Statehood (27%).<sup>39</sup> Guam residents subsequently approved a Guam Commonwealth Act to become a Commonwealth like the Northern Mariana Islands in 1987. The Act was submitted to the U.S. Congress in 1988 and to six subsequent congresses but was never passed.<sup>40</sup> Although previous administrations had been receptive to providing Guam with the same Commonwealth status already afforded to the Northern Mariana Islands, the George H.W. Bush and Clinton administrations consistently opposed the Commonwealth bill, with federal officials arguing that provisions ran counter to U.S. strategic defense interests, territorial policy, and non-discriminatory voting rights.<sup>41</sup>

In addition to the obstruction of Chamorro self-determination, U.S. rule over Guam continues to impact its economy. The Merchant Marine Act of 1920 (P.L. 66-261), more commonly known as the Jones Act, regulates commerce by requiring that all goods or passengers transferred on ships between U.S. ports – like Guam – must be carried on U.S.-flagged ships constructed in the U.S., owned by U.S. citizens, and crewed by U.S. citizens and permanent residents. The Jones Act severely limits the goods that can be brought into Guam, leading to exorbitantly high prices and shipping times for items like food staples (that could be imported much more cheaply, and with less environmental impact and spoilage, directly from Asia), and increasing food insecurity and economic hardship for Guam's substantial lower-income community.<sup>42</sup>

In a more recent example, in August 2014, the United States executed a maritime boundary delimitation agreement with the Federated States of Micronesia ("FSM"). In it, the United States, without prior consultation with the people of Guam, relinquished Guam's potential claims over Challenger Deep, the deepest part of the Marianas Trench.<sup>43</sup> The U.S. failure to consult the people of Guam before formally executing a maritime boundary delimitation divested them of inestimable marine resources.<sup>44</sup>

Most recently, U.S. federal courts decided *Davis v. Guam*—a case that concerned a legal challenge to Guam's Decolonization Registry Law. This local law provides that a self-determination plebiscite will be held in Guam, at which those persons who qualify as "native inhabitants"—defined by the statute as "those persons who became U.S. Citizens

by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons”<sup>45</sup>—will be able to express their desires regarding their future political relationship with the United States. They will do so by choosing one of three options, namely independence, free association, or statehood. Once ascertained, those desires will be transmitted to the United States and to the United Nations.

Arnold Davis, a white American and resident of Guam who neither gained his citizenship through operation of the 1950 Organic Act of Guam, nor had an ancestor who did, attempted to enroll onto the decolonization registry.<sup>46</sup> He was denied because he did not meet the definition of “native inhabitant” set out above. Represented by conservative American election attorneys, Davis filed suit against the government of Guam in 2011, claiming alleged violations of the Fourteenth and Fifteenth Amendments to the U.S. Constitution.<sup>47</sup>

In opinions devoid of the historical context of the U.S. colonization of Guam and the latter’s unique status as a non-self-governing territory under international law, the lower and appellate courts ignored the historical injury that the law sought to remedy and ruled that the Guam Decolonization Registry law violated Davis’s voting and equal protection rights. Today, the government of Guam has been forced to consider revising the decolonization law to allow all Guam residents to take part (including, potentially, transient U.S. military personnel), and to pay some \$947,717 in attorneys’ fees and costs to Arnold Davis and his attorneys.<sup>48</sup>

### **III. Brief history of the U.S. military’s intervention in Guam**

Despite the appearance of ceding control to Guam’s local government through the Organic Act, the U.S. military has entwined itself in Guam’s economy, environment, and culture to great and damaging effect over the last century. The impacts of the pervasive military presence in Guam has been profound, from economic dependency and the funneling of generations of Chamorro into military service, to high rates of terminal illness due to toxic waste and weapons pollution.

The U.S. military continues to occupy and control significant portions of the island. Two naval bases, one air force base, and a patchwork of ordinance depots, communications facilities, housing developments, and annexes cumulatively occupy around 30% of Guam’s land.<sup>49</sup> Even before the buildup, the military’s footprint in Guam was huge.

The land and coast occupied by the military – access to which is restricted to military personnel and their dependents – contain some of the most prized ecological environments on the island, including its longest and most beautiful beaches, nature reserves, the location where Guam’s second-largest village once stood, and other sites of great significance to Chamorros.

Claims to recover ancestral lands or receive fair compensation for their value have been mostly denied by federal courts, despite provisions in the Organic Act calling for this transfer.<sup>50</sup> In 1986, the federal government agreed to pay \$40 million in compensation

to Guam landowners; however, it set payments using land values from 1940, representing only a fraction of the land's actual value.<sup>51</sup>

In addition to land violations, U.S. militarism in the Pacific has had other adverse effects on the Chamorro people. This includes the United States' devastating 16-year nuclear testing program in the Pacific, in which the United States conducted 105 nuclear tests including the detonation of 67 nuclear bombs in the nearby Marshall Islands to catastrophic effect.<sup>52</sup> Guam received significant radioactive debris from the fallout.<sup>53</sup> Increased levels of radiation on Guam are suspected to have caused serious health and environmental problems for its residents, including high incidences of cancer, the second leading cause of death locally.<sup>54</sup> In addition, the U.S. Navy decontaminated 18 radioactive vessels exposed to nuclear tests in Guam, and Chamorros who served in the military were additionally radiated through hazardous clean-up of radioactive debris.<sup>55</sup>

According to a congressional panel formed to study in-depth radioactive contamination in Guam between 1946 and 1958, the U.S. military "put the population of Guam in harm's way knowingly and with total disregard for their well-being."<sup>56</sup> The impact of nuclear testing in the region, according to the report, "was the largest ecological disaster in human history."<sup>57</sup> In 2005, the National Research Council declared Guam's eligibility for compensation under the Radiation Exposure Compensation Act (RECA) program due to the "measurable fallout" Guam received from atmospheric testing of nuclear weapons in the Pacific; however, as of 2020, no one in Guam has received any compensation under RECA.<sup>58</sup>

U.S. military control of Guam has resulted in a number of other ecological and health disasters. These include the dumping and burying of hazardous and toxic chemicals around the island after World War II;<sup>59</sup> the storage and use of Agent Orange as a commercial herbicide in Guam during the Vietnam and Korean Wars;<sup>60</sup> the introduction of the invasive brown tree snake through U.S. military transports, which decimated Guam's forests and native bird population (in addition to the general large-scale clearing and conversion for construction of military installations;<sup>61</sup> and whale beachings and deaths due to the military's use of sonar.<sup>62</sup>

Guam has 19 Superfund sites (sites containing substances so hazardous they require a long-term clean-up response), and at least another 70 toxic sites.<sup>63</sup> In addition to the likely storage of Agent Orange and other toxic herbicides, Guam has also housed nuclear weapons, mustard gas, and countless other carcinogens.<sup>64</sup> In the late 1980s, the Navy discharged radioactive water into Apra Harbor, failing to inform the government of Guam of the discharge.<sup>65</sup> The increased exposure to radioactivity in Guam is linked to toxic goiters, a major contributor to thyroid issues that are abundant in the local population.<sup>66</sup> Multiple production wells accessing the island's sole-source aquifer have had to be shut down due to chemical contamination from U.S. government land holdings over or adjacent to this aquifer.<sup>67</sup>

In more recent years, the United States has held large-scale, multi-national training exercises around Guam, as part of the "Marianas Island Range Complex," which has expanded to become the "Mariana Island Training and Testing Area," or MITT.<sup>68</sup> A

2006 exercise entitled “Valiant Shield” included 22,000 military personnel, 280 aircraft, 28 ships, and 3 aircraft carriers from the U.S. Navy alone.<sup>69</sup> The United States has repeated these exercises in subsequent years with even more personnel and hardware. The scale and frequency of training events increase the likelihood of accidents, such as the leakage of radioactive waste from a nuclear submarine in 2008, and seven aircraft crashes in and around Guam between 2007 and 2008.<sup>70</sup>

It is difficult to adequately capture the sociocultural effects of the military’s presence in Guam. The decimation of Guam’s sustainable islander economy through land grabbing and other environmental destruction created optimal conditions for widespread poverty and unemployment – conditions also conducive to high military recruitment. Guam has among the highest recruitment levels in the country, with military service a generations-old tradition and economic bedrock for many Chamorro families.<sup>71</sup> The military actively recruits in Guam’s schools,<sup>72</sup> enticing young people with the promise of secure employment and perks like a military housing allowance (which increases the cost of housing for non-military residents) and discounts for basic household items from base supply stores,<sup>73</sup> as well as voting rights for active-duty soldiers.<sup>74</sup> The high degree of military service in Guam inculcates loyalty to the United States among many Guam residents, despite the lack of full benefits provided to Guam veterans as a result of the island’s status as an unincorporated territory.<sup>75</sup>

This funneling of human capital and cultural allegiance has obscured much of the colonial relationship from view, while diverting many Chamorros away from other economic and educational opportunities, both modern and traditional. Military service also exacts a high toll in terms of disability and fatalities, with Chamorros suffering more deaths per capita in Vietnam and recent U.S. wars than any other ethnic group.<sup>76</sup>

To be sure, though the relationship between Chamorros and the U.S. military is complex, this does not obviate U.S. obligations to facilitate Chamorro self-determination in line with international law.

#### **IV. Current military buildup**

##### *A. Background of the buildup*

In 2006, Pentagon officials announced a major multibillion-dollar buildup of new base infrastructure on Guam, including the transfer of 8,000 marines and 9,000 of their dependents from Okinawa to Guam by 2014.<sup>77</sup> The decision followed years of bilateral negotiations between the United States and Japan (at which Guam representatives were never present) amidst ongoing Japanese opposition to U.S. bases.<sup>78</sup> For the U.S. military, the buildup was a pragmatic and strategic decision that would help address public relations issues with Japan while countering China’s growing power in the Asia-Pacific theater.<sup>79</sup> The military has been clear about the advantages posed by Guam, which “is not Okinawa,” but rather a place where the U.S. military “can do what [it] want[s] . . . and make huge investments without fear of being thrown out.”<sup>80</sup>

As initially formulated, the buildup called for an influx of nearly 80,000 people, including almost 20,000 construction workers, arriving in Guam over a four-year period. The buildup was projected to peak in 2014, with an approximately 50% population increase to Guam's total population of 160,000.<sup>81</sup> In addition to dwarfing the native Chamorro population, the foreign population increases would have placed enormous stress on Guam's limited civilian infrastructure, including a 20% increase in demand for the island's sole public hospital (which operates at 100% capacity three weeks out of the month) and a 26% increase in student population.<sup>82</sup>

In February 2010, the U.S. Environmental Protection Agency conducted a mandatory review of the U.S. military's initial environmental assessment, deeming it unsatisfactory and giving it the lowest possible rating.<sup>83</sup> The EPA cited the lack of a specific water treatment plan, stating that the expected increase in population would impact Guam's "existing substandard drinking water and wastewater infrastructure;" it also highlighted "unacceptable impacts to 71 acres of high quality coral reef ecosystem," as well as carcinogenic effects from significant increases in diesel exhaust.<sup>84</sup>

While the U.S. military had budgeted for new military installations and base infrastructure, it had not budgeted to expand Guam's civilian facilities, despite its own assessment that the buildup would exceed the island's wastewater treatment capacities and lead to drinking water shortages.<sup>85</sup> Additionally, rather than lodge transfer personnel in already-built, vacant housing, the military had planned to build new housing in undeveloped wilderness on Guam.<sup>86</sup>

In addition to the relocation of U.S. Marines and their dependents, the buildup, as originally formulated, included significant expansions of military infrastructure and capabilities in Guam.<sup>87</sup> This included: an increased Air Force presence, with Guam now named as one of four major global hubs for strike forces;<sup>88</sup> the dredging and expansion of Apra Harbor to accommodate nuclear aircraft carriers and submarines, resulting in the destruction of 71 acres of pristine and endangered coral reef; new construction to accommodate an expanded presence for the Army National Guard; and the development of a ballistic missile defense system.<sup>89</sup> The expansion would also include land "acquisition" of an additional 2,200 acres from private and government land, increasing federal landholding to about 40% of the island.<sup>90</sup>

Of particular concern were plans to control 1,800 additional acres for a live-fire training range over Pãgat, a sacred indigenous village and burial ground dating from 2000 BC.<sup>91</sup> Registered at the Department of Historic Preservation as an archaeological site, Pãgat features freshwater caves and limestone cliffs, and jungle interspersed with ancient latte stones of cultural significance.<sup>92</sup> It is a sacred place where traditional healers gather rare plants and Chamorros seek to pay respects and reconnect to the past amidst the artifacts and the stone ruins of their ancestors' homes.<sup>93</sup> The military sought to position the firing range on Pãgat's cliffs and close off public access to the area, despite already having a live-fire range on Guam and the neighboring island of Tinian.<sup>94</sup>

Given the scale of impacts on the people of Guam and native Chamorro ancestral sites, the involvement of local communities in the plans for the buildup – as well as their

consultation and consent – would seem a given. Yet local communities were never consulted when the expansion plans were being developed and were given woefully inadequate opportunities for public meetings and comment.<sup>95</sup> The lack of consultation and sharing of plans around the buildup was glaring, and evidenced the military's attitude of ownership and consequent disregard towards the whole of the island's population in general, and the Chamorro people in particular.<sup>96</sup>

The military's plans engendered a significant amount of local opposition. Many Chamorro activists did not view the purported economic benefits as outweighing the impacts on island residents. When the U.S. Department of Defense (DoD) did finally release its 11,000-page-long draft Environmental Impact Statement (draft EIS) in 2009 – which it had taken some five years to prepare – the people and government of Guam were given only 90 days to respond—and only after requesting an extension from the original deadline of 45 days.<sup>97</sup> Despite the short timeframe, the draft EIS provoked a huge community response, with hundreds of community members showing up at hearings and submitting over 10,000 written comments and testimonies.<sup>98</sup>

In addition to opposition from more longstanding activist groups like I Nasion Chamoru, Guåhan Coalition for Peace and Justice, and Famoksaian, Chamorros formed new advocacy organizations including We Are Guåhan, which allied with the National Trust for Historic Preservation and the Guam Preservation Trust to challenge the Pågat shooting range plans in court.<sup>99</sup> During this time, Chamorro activists were subjected to threats and to demeaning, racist comments by U.S. military personnel.<sup>100</sup> They persisted in their efforts, however, and eventually the military agreed to undertake additional environmental assessments for the placement of the live-fire training range complex.<sup>101</sup> Following Congressional criticisms around feasibility and affordability, as well as the (perhaps unexpected) high level of local opposition, the military decided to revise the buildup plans as a whole in 2012.<sup>102</sup>

### *B. Commencement of the buildup*

The military's main change in the revised buildup was to reduce the Guam-bound force to 5,000 Marines and an additional 1,300 dependents between 2020 and 2025, with 10,000 new or temporary residents planned at the peak of buildup construction.<sup>103</sup> This increase, however, is still a significant influx and burden on resources for an island spanning less than 33 miles long and 12 miles wide (about 212 square miles).<sup>104</sup> Moreover, most of the planned construction projects survived the adjustment, with geostrategic plans stemming from the Obama administration's "Pacific pivot" and the Trump administration's escalation of affairs with China further justifying an increased U.S. military presence in the Asia-Pacific region.

Rather than eliminate environmentally damaging activities, the military retained many and shifted others to different areas on Guam. For instance, the final buildup plans still include the construction of a live-fire training range complex, the bulldozing of more than 1,000 acres of native limestone forest, and the destruction of other historically and culturally significant sites.

The military also shifted some of its plans to the Northern Mariana Islands – particularly the islands of Tinian and Pagan – which are less heavily populated and which were expected to offer less resistance.<sup>105</sup> Nonetheless, the military's plans to develop live-fire military training areas in Tinian and Pagan have continued to be widely opposed by Chamorro islanders throughout the archipelago.<sup>106</sup>

In 2015, DoD announced its plans to begin construction of the U.S. Marine base in Guam, in anticipation of the eventual closure of the Marine base in Okinawa. In 2017, the military awarded the buildup's first construction contracts, and crews started bulldozing in 2018.<sup>107</sup> The Navy has also implemented new plans around the Mariana Islands Training and Testing (MITT) project, intending to deploy sonar systems, test vessel platforms, detonate underwater explosives and fire weapons, among a host of other activities over the coming years.<sup>108</sup>

### *C. Environmental, social and cultural impacts*

The impacts of the buildup combined with the MITT plans are particularly damaging, causing significant harm to both land and sea environments around Guam and the rest of the Marianas archipelago. The commencement of construction has revealed the stakes of the buildup and validated many of the initial concerns of the Chamorro community, with the near daily discoveries of precolonial Chamorro artifacts and human remains at buildup construction sites throughout the island.<sup>109</sup> In addition, the military's live-fire training range complex in Ritidian will severely restrict access to the land and arguably threaten nearby natural resources, such as the Northern Guam Lens Aquifer and numerous endangered animal and plant species.<sup>110</sup>

#### *1. Chamorro artifacts and human remains*

The cultural costs of the buildup are incalculable. Including the firing range in question, contractors have unearthed Chamorro artifacts in no fewer than five military construction sites.<sup>111</sup> These include Latte-period ceramic, dark soil features, stone tools, possible volcanic stone tool fragments, and lusong (ancient Chamorro mortar and pestles).<sup>112</sup> Another area with Latte-period artifacts was discovered at the live-fire training range's future site at Northwest Field, according to a Marine Corps Activity Guam and Public Works Department announcement in June 2020. In addition, three sites with more remnants of the ancient village Magua' – including ceramic scatters, earth ovens, various stone and shell artifacts – were discovered on the future Marine Corps base in Dededo in late May and early June 2020.<sup>113</sup>

These discoveries include ancient human remains recovered on the sites.<sup>114</sup> News of the military clearing the site of ancient village Magua' – which along with two others, is potentially eligible for a National Register of properties significant in U.S. history, archaeology, architecture and culture – stirred controversy in October 2018. Community members protested the disruption of the cultural sites with a peaceful demonstration.<sup>115</sup> The military has continued to remove artifacts for preservation, rather than responding to requests to leave the sites undisturbed or return the artifacts to their

original resting places.<sup>116</sup> By July 2020, buildup construction had revealed a total of 15 sites containing human remains, and 28 containing historic artifacts.<sup>117</sup>

The concentration of millennia-old artifacts and human remains are indicative of entire historic villages and burial sites located in and around land the military seized from indigenous Chamorros. It is difficult to understate the importance of practices of ancestral veneration to the Chamorro people, for whom the skulls of relatives are considered sacred and serve as a conduit between the spirits of the deceased and the living on important spiritual concerns.<sup>118</sup> Burial practices and the bones of ancestors constitute one piece of ongoing ancestral veneration, which includes asking permission from and paying respect to ancestors before entering many natural and ancient spots on the island (including areas slated for military buildup, such as the limestone forests of Litekyan/Ritidian).<sup>119</sup>

In other contexts, heritage land, artifacts, and burial sites would remain with their original owners and be protected from interference. Elsewhere in the United States, the Native American Graves Protection and Repatriation Act was enacted as an attempt to address such tribal concerns, at least in part. It requires consultation with tribes and the respectful return of Native human remains and cultural objects, and criminalizes the trafficking of Native human remains or cultural items without right of possession.<sup>120</sup>

The same protections do not apply on Guam, where the military has continued construction despite opposition from community members, including a resolution from 13 of Guam's 15 senators asking the governor to pause clearance, construction, and other activities for the buildup.<sup>121</sup> Instead of leaving artifacts and human remains where they are discovered, they continue to be removed, even amidst calls by Chamorro advocates for a preservation in place agreement.<sup>122</sup> The bulldozing of Chamorro history and culture is a significant, ongoing violation of Chamorro rights.

According to Guam's former State Historic Preservation Officer, a total of 269 historic properties stand to be adversely impacted by the current military buildup—63 of which are eligible for listing on the National Registry for Historic Places.<sup>123</sup>

## *2. Litekyan/Ritidian*

The military buildup will also have destructive effect on natural environments and resources vital to Chamorro culture, sovereignty, and wellbeing. Nowhere is this devastation more evident than in the case of the planned live-fire training range at Ritidian Point.

Ritidian Point is a protected wildlife refuge in the northern end of Guam. It is the only designated critical habitat for the fanihi (Mariana fruit bat), sihek (Guam Micronesian kingfisher), and aga (Mariana crow), among other animals.<sup>124</sup> Its white sand beaches, platform reefs, and 500-foot limestone cliffs are home to numerous species, including threatened green and hawksbill sea turtles, and a wide array of fish, marine invertebrates, and other sea life.<sup>125</sup> Ritidian Point also contains the archaeological site of a pre-Magellan Chamorro village, a 3,300-year-old fishing camp, and ancient cave



paintings and pictographs, including drawings of humans,<sup>126</sup> constellations mapping Orion, Cassiopeia, and the Southern Cross, and an ancient star calendar.<sup>127</sup>

In short, Ritidian is one of the most spectacular and culturally significant sites on the island. As the chief of the National Wildlife Refuge testified, Ritidian hosts “the island’s best public beach, the oldest known and longest-lasting ancient Chamorro settlement site, and the only place to hear the songs of extirpated endemic birds.”<sup>128</sup>

Throughout the Cold War, Ritidian was under the control of the Navy, which used the area as a high-security communications station. Before that, indigenous Chamorro landowners and families with deep roots to the land lived there. In 1963, the federal government took ownership of eight large tracts of land, notifying the original inhabitants that they had to vacate the space so that the military could use the land for defense purposes.<sup>129</sup> Families were provided with between \$10,000 to \$25,000 in compensation for 10 to 30-acre parcels of prized coastal land.<sup>130</sup> In 1992, the Navy declared 371 acres of land at Ritidian Point and 15,571 acres of submerged land adjacent to the property as “excess” lands, which it then proceeded to transfer to other arms of the federal government.<sup>131</sup> The Ritidian parcels went to the United States Fish and Wildlife Service for use as part of a wildlife refuge, and the submerged lands went to the General Services Administration for later redistribution—despite objections that these transfers violated Chamorro land rights.<sup>132</sup>

As ownership of Ritidian continues to be contested, the military’s latest buildup plans further threaten indigenous land and cultural rights, in addition to posing numerous ecological hazards. The military’s revised buildup proposal relocated the proposed Live Fire Training Range Complex (LFTRC) from Pāgat to a site within the fence at Andersen Airforce Base; while seemingly an improvement,<sup>133</sup> the LFTRC calls for some of the adjacent Ritidian wildlife refuge to act as a safety buffer zone for more than half of each year when the training ranges will be in use.<sup>134</sup>

Entry to portions of the Ritidian trails, caves, and other cultural resources (including cave art) under the supposed protection of the U.S. Department of Fish and Wildlife Services will now be limited or eliminated.<sup>135</sup> According to Prutehi Litekyan: Save Ritidian, a community advocacy group trying to protect the natural and cultural resources around these sites, the firing range complex will impact four or more ancestral villages and their associated burial places (namely, Urunao, Litekyan, Pahon, and Inapsan).<sup>136</sup> Approximately 70 ancestral and historical sites in the Litekyan area will be adversely impacted or bulldozed.<sup>137</sup> The restrictions will also limit access to fishing sites, displacing Chamorro fishermen and impacting cultural fishing practices.<sup>138</sup> Traditional healers will be unable to access medicinal plants and herbs while the range is in use.<sup>139</sup> While DoD has characterized many of the Ritidian sites as “recreational,” they are more aptly termed “sacred” or “ancestral” given their rich cultural features and the fact that they also contain Chamorro graves and burial sites.<sup>140</sup>

In addition to these cultural impacts, the ecological damage is likely to be severe. Ritidian contains some of the most unique limestone environments and the most diverse plant communities of Guam, designated as “critical habitats” for several

endangered species.<sup>141</sup> Many of Guam's endemic and unique flora and fauna, including endangered bird species, were destined for resuscitation within the Ritidian National Wildlife Refuge.<sup>142</sup> The LFTRC and cantonment now threaten close to a thousand total acres of recovery habitats for the endangered Mariana fruit bat, Mariana crow, Guam rail, Mariana eight-spot butterfly, and Guam Micronesian kingfisher, among others. Rare and endangered marine species, including turtles and whales, could also suffer acoustic impacts from military activities such as drilling and sonar in the ocean.<sup>143</sup>

The clear cutting of some 1,000 acres of pristine limestone forest (about 8 percent of the remaining limestone forest)<sup>144</sup> will further strip the land of its resilience and undermine biodiversity-rehabilitation efforts.<sup>145</sup> This includes the forest around Guam's last seeding specimen of an indigenous endangered tree species, the *Serianthes nelsonii*, or *håyun lågu*.<sup>146</sup> Though the military has proposed to establish a buffer zone around the tree for protection, the clear cutting of surrounding forest is likely to leave the tree exposed and susceptible to damage.<sup>147</sup> While the military's mitigation plans include 'enhancing' forests and creating 'newer' refuges elsewhere, such efforts are no guarantee that endangered environments and species (many of which, such as sea turtles, are slow to reproduce) will recover from these harms.<sup>148</sup>

The LFTRC may also pose a potential health and environmental concern to Guam's drinking supply due to its proximity to the Northern Guam Lens Aquifer, Guam's primary source of drinking water.<sup>149</sup> Advocacy groups and opponents of the plan have argued that lead from bullets and other pollutants associated with the firing range complex could further contaminate the aquifer.<sup>150</sup>

In short, the selection of Ritidian for the LFTRC seems ill-conceived at best, if not a direct violation of a slew of environmental, cultural, health, and land rights of the Chamorro people. To be sure, the U.S. military itself recognized as much, when it conceded that "[t]here would be more adverse effects from construction at [Litekyan/Ritidian] than any of the other LFTRC alternatives."<sup>151</sup> Unsurprisingly, construction of the LFTRC has been strongly opposed by community members, including protests by thousands of residents and community groups.<sup>152</sup>

### *3. Other impacts*

The U.S. military itself acknowledged myriad harms stemming from the buildup in its 2015 supplemental environmental impact statement, including significant impacts to seven resource areas: water resources, terrestrial biological resources, marine biological resources, cultural resources, utilities, socioeconomics and general services, and environmental justice.<sup>153</sup> In addition to the aforementioned impacts, there will be, as mentioned, other significant socioeconomic and cultural impacts resulting from the influx of new populations into Guam. To hone in on just one example, the price of housing has risen steeply in the years following the buildup's announcement, with average rents increasing nearly 50% from 2010 to 2019.<sup>154</sup> In addition to this housing crisis, other anticipated impacts include increased noise, traffic congestion, and potential crime and prostitution.<sup>155</sup>

Moreover, the Mariana Island Training and Testing Area (MITT), while assessed separate from the buildup, increasingly threatens marine habitats and conservation areas surrounding Guam. The MITT's large coverage encompasses portions of the Marianas Trench National Marine Monument, recognized in 2009 by a Presidential Proclamation as a refuge for marine life. While military activities within the Monument are permitted under the Antiquities Act<sup>156</sup> (providing unique exemptions to conservation-oriented goals to activities conducted by the Armed Forces), the use of sonar, explosives, material pollutants, and seafloor devices will harm essential fish habitat and threaten coral, whale, sea turtle and shark species listed under the Endangered Species Act.<sup>157</sup> The damage to the marine environment could affect the food supply and economic livelihoods for many on Guam, including fishermen and those who depend upon the tourist industry for a living.

Moreover, the MITT has proposed an additional surface danger zone at Finegayan, next to the ancient village of Haputo, which covers 252 acres of coral reef and limestone forest designated as an ecological reserve in 1984 by the U.S. Navy.<sup>158</sup> Like Ritidian, the Haputo Ecological Reserve Area will also be at the mercy of potential damage from an adjacent firing range. The proposed surface danger zone goes into effect August 19, 2020, and will restrict public access to the area while the range is in use.<sup>159</sup> The military did not hold public hearings nor draft an environmental impact statement for the danger zone, which will block access to traditional fishing grounds that are still in use by local fishermen and boaters, and will also restrict access to yet another pristine beach and ancient Chamorro village. Despite receiving more than 500 pages of input from local residents, the Navy's plans for the MITT remain largely unchanged.<sup>160</sup>

The sheer scale of the MITT cannot be overstated. In total, some 833,986,973 acres of open ocean around the Marianas will come within it—or an area larger than the U.S. states of Washington, Oregon, California, Idaho, Nevada, Arizona, Montana and New Mexico combined.<sup>161</sup>

There is not sufficient space in this submission to detail the full extent of cultural, ecological, social, health, and other harms posed by the current military buildup on the Chamorro people of Guam.<sup>162</sup> Nevertheless, this sampling aims to provide a snapshot of the extent of current and future harms projected for the island and its inhabitants as a result of ongoing actions by the U.S. government.

#### *D. Regional aggression*

Over the past few years, the world has anxiously observed an escalation of tension and aggressive rhetoric between the United States and China. Significant funding has been allocated to boost U.S. military presence in the region, for instance through the \$6 billion Pacific Deterrence Initiative,<sup>163</sup> which seeks to fund resources on key military capability gaps, reassure U.S. allies, and bolster the credibility of American deterrence in the Indo-Pacific.<sup>164</sup> China has developed a DF-26 ballistic missile, known as the “Guam Killer,” for its striking distance range.<sup>165</sup> Similarly, North Korea raised the possibility of a preemptive strike on Guam in response to President Trump's threats to bring “fire and fury” down on it in 2017.<sup>166</sup> Further rhetoric by Trump led to renewed North Korean

threats to unleash “a salvo of missiles” in Guam’s waters if Trump continued his provocations.<sup>167</sup> Trump’s comments to “see what [North Korean leader Kim Jong Un] does with Guam”<sup>168</sup> are indicative of his attitude that Guam and its peoples are dispensable, defined entirely by their utility, and “can be bargained away or trivialized into meaninglessness” once they no longer prove useful to the colonial power.<sup>169</sup>

Like other Pacific Islanders, Chamorros have continually been asked to sacrifice themselves for the good of “global security”<sup>170</sup> – to serve as the guinea pigs and test subjects of nuclear testing and human experimentation, and as proxy battlegrounds for larger powers. Having already watched military industrialization decimate their health, traditional economies, and environments, Chamorros now face a tidal wave of militarization amidst worsening U.S.-China relations—over which they have no power.

### *E. COVID-19 risks*

To these factors we add one more in the nature of negligence and contagion at the hands of the U.S. military. Although Guam was slated to be hard hit by COVID-19 in the early months of the pandemic, a successful lockdown and community response effectively prevented a surge in deaths (from the projected 3,000 in April, to only six actual deaths by the date of this writing).<sup>171</sup> This was a notable achievement, given Guam’s limited health infrastructure, high-risk population, and heavy tourism from East Asia.

However, Guam’s management of the COVID-19 crisis has been put at risk by the presence and behavior of U.S. servicemen on its soil. After the March 2020 outbreak of the virus could not be contained on board the USS Theodore Roosevelt, the Navy, with acquiescence from the executive branch of the local government, transferred thousands of its sailors to as many as seven civilian hotels on Guam.<sup>172</sup> Although purporting to only house sailors who tested negative for the virus in the hotels, multiple sailors who initially tested negative showed symptoms of COVID-19 several days after being tested (while others who had already had the disease supposedly re-tested positive).<sup>173</sup> Over 1,150 sailors from USS Theodore Roosevelt eventually tested positive, with one death.<sup>174</sup>

In a letter to Guam Governor Lourdes Leon Guerrero, Guam Senator Sabina Perez expressed apprehension regarding the decision to move sailors to Guam’s hotels, noting greater exposure risks for lower-wage employees, many of whom are older with limited to no health benefits for themselves and their families.<sup>175</sup> Indigenous groups such as I Hagan Famalão’an Guåhan stated that the decision to house these sailors within the community was “playing a game of chance with the health of our people.”<sup>176</sup> Others have asked merely that the sailors be housed on the 49,000 acres of land occupied by U.S. military bases on Guam – requests that fell on deaf ears.<sup>177</sup>

The local pandemic response has been further threatened by the violation of Guam’s local ordinances by U.S. service members. Fifteen airmen from an Andersen Air Force Base (AAFB) unit who arrived on Guam in May 2020, and confirmed their first positive case in June 2020, are reported to have violated movement restrictions during their stay at the Guam Reef Hotel.<sup>178</sup> This unit soon had 35 confirmed positive cases, making up 42 percent of the total active cases in Guam as of July 2020 (excluding other military

cases present on island).<sup>179</sup> Approximately 30 local businesses may have been exposed to the virus as a result of the ordinance violations by the AAFB unit members; many of these establishments suffered additional revenue loss as a result.<sup>180</sup> The military did not respond to requests for information on the airmen's activities and whereabouts for contact tracing purposes for ten days, risking further spread and outbreak of the virus.<sup>181</sup> According to Guam's Attorney General, the military has refused to provide information needed by Guam's Department of Public Health and Social Services to determine whether public protocols were followed in this instance.<sup>182</sup> As the Speaker of Guam's legislature put it, "Not only have the livelihoods of [Guam's] residents been jeopardized, and even possibly the reopening date of our economy – but scarce government resources are now being expended to clean up the mess that has been created."<sup>183</sup>

## **V. Prutehi Litekyan: Save Ritidian**

Prutehi Litekyan: Save Ritidian (PLSR) is a community-based organization dedicated to the protection of the natural and cultural resources of Guam, including those located in sites identified for U.S. military live-fire training.

Among PLSR's members are original landowners, and/or their descendants, whose ancestral homelands are located in Litekyan/Ritidian, the same area slated to be impacted by the military activities described in this submission. Moreover, certain group members have ancestors who are buried in the project-affected area and thus will suffer harm as a result of the denial of access to the same.

PLSR members also include many cultural practitioners, including traditional healers and medicine-makers, who will be adversely impacted by the LFTRC. These "yo'amte" gather plants in the project-affected area, some of which grow exclusively in the native limestone forests of Litekyan/Ritidian. These group members will be directly impacted in terms of the denial of access and the practice and transmission of culture.

PLSR draws support from people across many sectors of the island community, including indigenous land defenders, cultural practitioners, fishermen, farmers, teachers, social workers, environmentalists, college students, and others. In February 2017, PLSR launched an online petition protesting the LFTRC, which has garnered 21,450 signatures to date.

Since its inception, PLSR has organized more than 450 different actions, including letter-writing campaigns, meetings with lawmakers, school visits, rallies, comment drives, protests, tours, press conferences, legislative roundtables, meetings with military officials, public hearings, election surveys, media interviews, podcasts, webinars, and other efforts to raise public awareness. They have even been successful in advocating for local legislation in the form of legislative resolutions calling for the halt of military construction activities concerning the LFTRC.

## VI. Recommendations

Guam is suffering under its current situation as a U.S.-administered non-self-governing territory. The United States has shown itself untrustworthy of safeguarding the Chamorro people's permanent sovereignty over their natural resources, incapable of meaningfully consulting them on matters vital to their collective rights and interests, and unwilling to allow them the free exercise of their self-determination. Past and present U.S. acts and omissions constitute violations of several human and indigenous rights of the Chamorro people, including but not limited to the right of free, prior and informed consent, and the rights to life, health, food, culture, and an effective remedy.

International law imposes upon the United States certain duties emanating from the law on self-determination—duties that have been contravened on multiple occasions detailed in this submission: most notably, in the large-scale land grabbing that occurred in the 1900-1960s period; in the lack of consultation in the U.S. military's initial plans to transfer marines from Okinawa to Guam and its development of the buildup blueprint; and in the ongoing failures to adequately consult and act upon the communicated views of the island's civilian population. Failure to provide a mechanism for consultation prior to the execution of the U.S.-FSM maritime treaty also represents a potential violation.

We note that these are basic failures of consultation, but that the standard represented by the norm of free, prior, and informed consent (FPIC), as enshrined in the UN Declaration on the Rights of Indigenous Peoples, is significantly higher and would call for ownership and oversight by Chamorros (e.g., through the ability to veto or consent to such projects), at least with respect to development activity respecting Chamorro lands, territories and resources. FPIC is a core prescription of the international indigenous rights regime that is directly applicable to many of the activities described herein.

Recognizing the immediacy of the harms being inflicted upon the Chamorro people by Guam's administering power, we request the intervention of the Special Rapporteur on the rights of indigenous peoples. Such intervention is timely, as the harms are immediate and ongoing, and could serve to assist the Chamorro people by delaying destructive activities or effectuating policy change through international pressure. We would also refer the Special Rapporteur to the numerous UNGA resolutions specific to Guam, wherein the United States was warned against further militarizing Guam.<sup>184</sup>

Specifically, we ask that the following actions, or any combination of them, be taken:

- A site visit by the Special Rapporteur on the rights of indigenous peoples to Guam to assess the military buildup and associated harms to the Chamorro people;
- A report investigating the harms alleged in this submission;
- A communication to the U.S. government or an international body that focuses on or includes coverage of the human rights violations suffered by the Chamorro people of Guam;
- A public statement about the unlawfulness of the military buildup and the situation of the Chamorro people under international human rights law;

- Recommendations to international bodies (including the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples, also known as the Special Committee on Decolonization, or C-24) regarding actions that could be taken to assist the Chamorro people in their self-determination efforts; and
- Any other actions that the Special Rapporteur on the rights of indigenous peoples may consider appropriate in light of this submission.

The authors of this submission remain at the Special Rapporteur's disposal to provide further information about the facts discussed in this submission and/or to provide a longer international legal analysis of Chamorro self-determination and other rights under international law, though we are well aware of the expertise of the Special Rapporteur in the field.

We hope this submission will result in greater international awareness of the plight of the Chamorro people of Guam, whose self-determination has been too long denied. That denial is as an affront not only to them, but to the whole of the international community.

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<sup>1</sup> LisaLinda Natividad & Gwyn Kirk, *Fortress Guam: Resistance to US Military MegaBuildup*, 8 ASIA-PACIFIC J. 1, 7 (2010).

<sup>2</sup> ROBERT F. ROGERS, *DESTINY'S LANDFALL: A HISTORY OF GUAM* 6-7, 22 (1995). See also Doug Herman, *A Brief, 500-Year History of Guam*, SMITHSONIANMAG.COM (Aug. 15, 2017), <https://www.smithsonianmag.com/smithsonian-institution/brief-500-year-history-guam-180964508/>.

<sup>3</sup> ROGERS, *supra* note 2, at 24.

<sup>4</sup> Anthony (T.J.) F. Quan, "Respeto I Taotao Tano": *The Recognition and Establishment of the Self-Determination and Sovereign Rights of the Indigenous Chamorros of Guam under International, Federal, and Local Law*, 3 ASIAN-PAC. L. & POL'Y J. 56, 63 (2002).

<sup>5</sup> LAURA T. SOUDER, *DAUGHTERS OF THE ISLAND: CONTEMPORARY CHAMORRO WOMEN ORGANIZERS ON GUAM* 224 (1992). See also *RESISTANCE IN PARADISE: RETHINKING 100 YEARS OF U.S. INVOLVEMENT IN THE CARIBBEAN AND THE PACIFIC* 114 (Deborah Wei & Rachael Kamel eds., 1998); ANNE PEREZ HATTORI, *COLONIAL DIS-EASE: US NAVY HEALTH POLICIES AND THE CHAMORROS OF GUAM, 1898-1941*, 11 (2004); James Perez Viernes, *Negotiating Manhood: Chamorro Masculinities and US Military Colonialism in Guam, 1898-1941*, 14-15 (Univ. of Haw. Diss. (2015)).

<sup>6</sup> Herman, *supra* note 2.

<sup>7</sup> Francis X. Hezel & Marjorie C. Driver, *From Conquest to Colonization: Spain in the Mariana Islands*, 23:2 J. PAC. HIST. 137 (1988); HATTORI, *COLONIAL DIS-EASE*, *supra* note 5, at 14.

<sup>8</sup> *Judiciary History – Historical Review: "Justicia para todo"*, JUDICIARY OF GUAM 3, <http://www.guamsupremecourt.com/Judicial-History/Judiciary%20History.pdf>.

<sup>9</sup> Patricia L. G. Taimanglo, *The Chamorro people of Guam*, AMERICAN PSYCHOLOGICAL ASSOCIATION (Aug. 2010), <https://www.apa.org/pi/oema/resources/communique/2010/08/chamorro-people>. See also Richard J. Shell, *The Marianas Population Decline: 17th Century Estimates*, 34 J. PACIFIC HISTORY 291 (1999). It should be noted that there is some inconsistency in these figures in the historical accounts.

<sup>10</sup> See Quan, *supra* note 4, at 65. To be sure, however, "[m]ore than two centuries of Spanish colonization left an 'indelible imprint on the cultural identity of the Chamorros.'" HATTORI, *COLONIAL DIS-EASE*, *supra* note 5, at 15.

<sup>11</sup> Sylvia R. Lazos Vargas, *History, Legal Scholarship, And Latcrit Theory: The Case Of Racial Transformations Circa The Spanish American War, 1896-1900*, 78 DENV. U. L. REV. 921, 927 (2001). The other Mariana Islands were not, however, part of this deal, being sold by Spain to Germany, thereafter dividing the Chamorros between two occupying powers. See DAVID VINE, *BASE NATION: HOW U.S. MILITARY BASES ABROAD HARM AMERICA AND THE WORLD* 87 (2015).

<sup>12</sup> See *Guam v. Guerrero*, 290 F.3d 1210, 1214 (9th Cir. 2002); see also *Gov't of Guam ex rel. Guam Econ. Dev. Auth. v. United States*, 179 F.3d 630, 632 (9th Cir. 1999).

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- <sup>13</sup> See HATTORI, COLONIAL DIS-EASE, *supra* note 5, at 39-60, 193-95; see also Quan, *supra* note 4, at 66.
- <sup>14</sup> VINE, *supra* note 11, at 87. See also Frank Quimby, *Guam Commonwealth Act*, GUAMPEDIA (Oct. 11, 2019), <https://www.guampedia.com/guam-commonwealth-act/> (last visited Jul. 27, 2020).
- <sup>15</sup> Catherine Lutz, *Bureaucratic Weaponry and the Production of Ignorance in Military Operations on Guam*, 60 CURRENT ANTHROPOLOGY 108, 110 (2019).
- <sup>16</sup> Natividad & Kirk, *supra* note 1, at 4; see also HATTORI, COLONIAL DIS-EASE, *supra* note 5, at 18-19 (“For half a century the Chamorro people were subjected to the whims and dictates of a rapidly revolving procession of military officers . . . Despite consistent appeals by Chamorro leaders for a formal expression of the civil and political rights of the people of Guam, few governors acted to implement anything resembling a democratic form of government.”).
- <sup>17</sup> Downes v. Bidwell, 182 U.S. 244, 280-81 (1901).
- <sup>18</sup> Quan, *supra* note 4, at 68.
- <sup>19</sup> Guam Congress Walkout, GUAMPEDIA, <https://www.guampedia.com/guam-congress-walkout/>.
- <sup>20</sup> Collier Nogues, “With [Our] Entire Breath”: The US Military Buildup on Guåhan (Guam) and Craig Santos Perez’s Literature of Resistance, 12 INT’L J OF RESEARCH 21, 24 (2018).
- <sup>21</sup> ROGERS, *supra* note 2, at 194. Unlike Guam, the Northern Mariana Islands had become a League of Nations mandate assigned to Japan in 1919, pursuant to the 1919 Treaty of Versailles. Treaty of Versailles, art. 26, Washington Govt. print (1991).
- <sup>22</sup> VINE, *supra* note 11, at 88; see also Keith L. Camacho, SACRED MEN: LAW, TORTURE, AND RETRIBUTION IN GUAM 60-86 (2019).
- <sup>23</sup> Lutz, *supra* note 15, at 110 (“[US] reinvasion scorched the landscape of much of the island, displaced the entire population, and reduced its capital to rubble. That mountain of debris was bulldozed into the sea and now forms an (in)visible peninsula jutting improbably into the sea from the modern capital’s coastline.”).
- <sup>24</sup> VINE, *supra* note 11, at 88.
- <sup>25</sup> Some scholars suggest that the U.S. liberation of Guam cultivated the island’s people with a mentality of reciprocity to the United States for a high level of “colonial debt,” leading to feelings of obligation and ongoing desire to serve in the U.S. military. See, e.g., Francis Dalisay, *Colonial Debt, Resistance to U.S. Military Presence, Trustworthiness of Pro-U.S. Military Information Sources, and Support for the Military Buildup on Guam*, 8 J. OF PAC RIM PSYCH, 11, 12 (2014). Dalisay’s study finds that higher levels of feelings of colonial debt among respondents were associated with greater personal support for the military buildup and more trust in pro-military/buildup news sources. See *id.* at 15; see also Ronni Alexander, *Living with the fence: militarization and military spaces on Guahan/Guam*, 23 GENDER, PLACE & CULTURE 869 (2015). This particular issue is, of course, quite complex.
- <sup>26</sup> Natividad & Kirk, *supra* note 1, at 5 (“[T]he military took a large portion of arable land to build bases and other installations, equivalent to nearly 50 percent of the island’s landmass, including some of the most fertile land near popular fishing grounds.”). See also Crawford v. Antonio B. Won Pat Int’l Airport Auth., 917 F.3d 1081, 1086–88 (9th Cir. 2019).
- <sup>27</sup> T.P. Maga, *The Citizenship Movement in Guam, 1946-1950*, 53 PACIFIC HISTORICAL REV 59–77 (1984).
- <sup>28</sup> VINE, *supra* note 11, at 88. Compensation that was provided to many Chamorro landowners over the years has been pitifully insufficient, with compensation for certain landholders in Ritidian ranging, for instance, between \$10,000 - \$25,000 for 10 to 30-acre parcels of prized coastal land. See John I Borja, *Generations of protest: Former Ritidian landowners want their land back*, PACIFIC DAILY NEWS (Sept. 4, 2017), <https://www.guampdn.com/story/news/2017/09/04/generations-protest-former-ritidian-landowners-want-their-land-back/624063001/>.
- <sup>29</sup> Quimby, *supra* note 14. It should be noted that there would be some later partial returns of land, bringing down the quoted figure. See Crawford v. Antonio B. Won Pat Int’l Airport Auth., 917 F.3d 1081, 1087 (9th Cir. 2019) (“In 1994, Congress enacted the Guam Excess Lands Act, authorizing the transfer of land in Guam from the United States to the government of Guam, with the requirement that the government of Guam develop a plan to use the land for public benefit.”).
- <sup>30</sup> See, e.g. Natividad & Kirk, *supra* note 1, at 5 (“Prior to WWII, Guam was self-sufficient in agriculture, fishing, hunting, and husbandry. Nearly every family grew vegetables and produced meat; some specialized in fishing; and there was a viable copra industry.”).
- <sup>31</sup> *Id.* at 9 (“Chamorros living on Guam also have the highest incidence of diabetes compared to other ethnic groups, at about five times the overall U.S. rate.”). The indigenous diet was replaced with a more Westernized diet, high in trans fats, refined sugar, and salt, and low in fiber and micronutrients. See Christie Nicoson, *Positive Peace and Food Security*, WORLD WITHOUT GENOCIDE 10-13 (Nov. 2016),



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<http://worldwithoutgenocide.org/wp-content/uploads/2016/09/Food-Security-in-Guam-2016.pdf>

(“People in Guam die from life-style and preventable diseases such as hypertension, strokes, heart disease, and diabetes at much greater rates than people in the continental US.”).

<sup>32</sup> Organic Act of Guam, 48 U.S.C. §§ 1421-1424(b) (1950).

<sup>33</sup> *Id.* at § 1423(i).

<sup>34</sup> See *Dorr v. United States*, 195 U.S. 138, 149 (1904) (“[T]he Constitution does not, without legislation, and of its own force, carry such right to territory so situated.”).

<sup>35</sup> See, e.g., *Att’y Gen. of Guam v. United States*, 738 F.2d 1017 (9th Cir. 1984); VINE, *supra* note 11, at 86.

<sup>36</sup> See *Gov’t of Guam ex rel. Guam Econ. Dev. Auth. v. United States*, 179 F.3d 630, 632 (9th Cir. 1999); War Claims Act of 1948, 50 U.S.C. § 4132(a) as added PL 87-846, title 1, § 103, 76 Stat. 1107 (1962).

<sup>37</sup> Lutz, *supra* note 15, at 110.

<sup>38</sup> *Id.* Today, two-thirds of Guam’s population are immigrants and their descendants, from the Philippines (the second largest ethnic group on Guam comprising 26% of the population), U.S. states, and other Asian and Pacific nations, including a recent wave of more than 35,000 citizens from the Freely Associated States (the Federated States of Micronesia, Palau and the Marshall Islands).

<sup>39</sup> Jon M. Van Dyke, Carmen Di Amore-Siah & Gerald W. Berkley-Coats, *Self-Determination for Non-Self Governing Peoples and for Indigenous Peoples: The Cases of Guam and Hawai’i*, UNIV. OF HAWAI’I LAW REVIEW 57 (1996).

<sup>40</sup> *Id.*

<sup>41</sup> Guam Commonwealth Act, GUAMPEDIA, <https://www.guampedia.com/guam-commonwealth-act/>.

<sup>42</sup> Nicoson, *supra* note 31, at 6.

<sup>43</sup> Resolution No. 55-BOD-11, CDI, Association of Pacific Island Legislatures, Dec. 5 2014, <http://apilpacific.com/files/55thBODMeeting/55-BOD-11,%20CD1%20clr.pdf>; see also Louella Losinio, *Guam Not Consulted By US Over FSM Maritime Boundary Treaty*, PACIFIC ISLANDS REPORT, Oct. 10, 2014, <http://www.pireport.org/articles/2014/10/10/guam-not-consulted-us-over-fsm-maritime-boundary-treaty>. See also Treaty between the Government of the United States of America and the Government of the Federated States of Micronesia on the Delimitation of a Maritime Boundary, signed at Koror on August 1, 2014, <https://www.congress.gov/treaty-document/114th-congress/13/document-text>.

<sup>44</sup> *Id.* That Challenger Deep is in Guam’s EEZ has been the longstanding assumption of Guam residents. Under international law, the United States, as Guam’s Administering Power, was obligated to engage in meaningful consultation with the people of Guam well in advance of the 45th meeting of the Pacific Islands Forum, at which the treaty was signed. While there is some ambiguity as to the exact location of Challenger Deep, a 2005 U.S. Geological Survey publication indicates that it falls on the Guam side of the boundary identified in the U.S.-FSM treaty.

<sup>45</sup> Guam Decolonization Registry Law, 3 Guam Code Ann. § 21001(e).

<sup>46</sup> Susan K. Serrano, *A Reparative Justice Approach to Assessing Ancestral Classifications Aimed at Colonization’s Harms*, 27 WILLIAM & MARY BILL OF RIGHTS J, 501, 503 (2018).

<sup>47</sup> See Serrano, *A Reparative Justice Approach*, *supra* note 46, at 503. Apart from its immediate consequences for Guam, the *Davis* decision should also be read in the broader context of the United States’ ongoing denial of civil and political rights in its other “unincorporated territories” and its ugly, unresolved history of racial discrimination. See generally Unrepresented Nations and Peoples Organization, Submission to the Office of the United Nations High Commissioner for Human Rights, Universal Periodic Review (U.S.), 36<sup>th</sup> session, <https://unpo.org/downloads/2573.pdf>.

<sup>48</sup> Mindy Aguon, *Bias suit costs GovGuam almost \$1M in fees*, THE GUAM DAILY POST, Apr. 9, 2019, [https://www.postguam.com/news/local/bias-suit-costs-govguam-almost-m-in-fees/article\\_8e34ea48-59d4-11e9-a374-774e1bcefc03.html](https://www.postguam.com/news/local/bias-suit-costs-govguam-almost-m-in-fees/article_8e34ea48-59d4-11e9-a374-774e1bcefc03.html).

<sup>49</sup> VINE, *supra* note 11, at 84, 86 (“At one point, [U.S.] military facilities took up nearly 60 percent of the island.”). See also Alexandra Ossola, *Guam’s ecological fate is in the hands of the U.S. military*, NATIONAL GEOGRAPHIC (Dec. 27, 2018), <https://www.nationalgeographic.com/environment/2018/12/guam-endangered-species-ecology-threatened-us-military-base-expansion/#close>. The Naval Computer and Telecommunications Station and Joint Region Marianas headquarters is also stationed in Guam, and oversees a 984,000-square-mile testing and live-fire training area in and around the Mariana Islands. Jon Letman, *Proposed US military buildup on Guam angers locals who liken it to colonization*, THE GUARDIAN (Aug. 1, 2016), <https://www.theguardian.com/us-news/2016/aug/01/guam-us-military-marines-deployment> [hereinafter Letman, GUARDIAN].

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<sup>50</sup> See 48 U.S.C.A. § 1424c; see generally also *See* Gov't of Guam ex rel. Guam Econ. Dev. Auth. v. United States, 179 F.3d 630 (9th Cir. 1999) (finding Guam's various arguments as to its claims over certain real property in the territory unavailing).

<sup>51</sup> VINE, *supra* note 11, at 88.

<sup>52</sup> See Calin Georgescu, Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, ¶ 10, A/HRC/21/48/Add.1 (Sept. 3, 2012), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-48-Add1\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-48-Add1_en.pdf); see also Barbara Rose Johnston & Holly M. Barker, THE CONSEQUENTIAL DAMAGES OF NUCLEAR WAR: THE RONGELAP REPORT 92 (2008); S.L. Simon & W.L. Robison, *A Compilation of Nuclear Weapons Test Detonation Data for U.S. Pacific Ocean Tests*, 73 HEALTH PHYS. 258 (1997); Davor Pevec, *The Marshall Islands Nuclear Claims Tribunal: The Claims of the Enewetak People*, 35 DENV. J. INT'L L. & POL'Y 221 (2006); Radiochemistry Society, U.S. Nuclear Tests, Operation Castle, Pacific Proving Ground, [http://www.radiochemistry.org/history/nuke\\_tests/castle/index.html](http://www.radiochemistry.org/history/nuke_tests/castle/index.html); National Research Council, RADIATION DOSE RECONSTRUCTION FOR EPIDEMIOLOGIC USES 105 (1995).

<sup>53</sup> Appendix C: *Radioactivity in Guam After Nuclear-Weapons Testing in the Pacific* in ASSESSMENT OF THE SCIENTIFIC INFORMATION FOR THE RADIATION EXPOSURE SCREENING AND EDUCATION PROGRAM 362 (2005) [hereinafter *Radioactivity in Guam*].

<sup>54</sup> *Id.* at 363. See also Mar-Vic Cagurangan, *Radioactive fallout alert*, PACIFIC ISLANDS TIMES (Dec. 31 2017), <https://www.pacificislandtimes.com/single-post/2018/01/02/Radioactive-fallout-alert>; Michael Lujan Bevacqua, *Guam: Protests at the Tip of America's Spear*, 116 THE SOUTH ATLANTIC QUARTERLY 174, 178 (2017) (“[S]omeone in Guam is 2,000 percent more likely to get nasopharynx cancer than the average resident of the United States.”) [hereinafter *Bevacqua, Tip of Spear*].

<sup>55</sup> *Radioactivity in Guam*, *supra* note 53, at 363-65.

<sup>56</sup> CHARLES L.S. BRISCOE, BLUE RIBBON PANEL ACTION REPORT ON RADIOACTIVE CONTAMINATION IN GUAM BETWEEN 1946-1958 (William M. Castro & Robert N. Celestial eds., 2002).

<sup>57</sup> *Id.*

<sup>58</sup> Cagurangan, *supra* note 54. There is currently a bill before Congress that will allow compensation for residents of Guam, however this bill has yet to pass and it is uncertain if it will. Radiation Exposure Compensation Act Amendments of 2019, S. 947, 116<sup>th</sup> Congress (2019). The Department of Justice has awarded over \$2 billion in “compassionate compensation” under RECA. However, residents from Guam have yet to receive any compensation under this program. See Mar-Vic Cagurangan, *Guam included in RECA expansion bill*, PACIFIC ISLAND TIMES (Mar. 29, 2019), <https://www.pacificislandtimes.com/single-post/2019/03/29/Guam-included-in-RECA-expansion-bill>.

<sup>59</sup> Bevacqua, *Tip of Spear*, *supra* note 54, at 178. See also Natividad & Kirk, *supra* note 1, at 9 (“Two dumpsites just outside the base at Urunao were found to contain antimony, arsenic, barium, cadmium, lead, manganese, dioxin, deteriorated ordnance and explosive, and PCBs.”). Other chemicals include the components of petroleum fuels; strong solvents used to wash down military equipment, including trichloroethylene and perchloroethylene; and radioactive materials. See Lutz, *supra* note 15, at 118.

<sup>60</sup> Jon Mitchell, *Poisons in the Pacific: Guam, Okinawa and Agent Orange*, JAPAN TIMES (Aug. 7, 2012), [www.japantimes.co.jp/community/2012/08/07/issues/poisons-in-the-pacific-guam-okinawa-and-agent-orange/](http://www.japantimes.co.jp/community/2012/08/07/issues/poisons-in-the-pacific-guam-okinawa-and-agent-orange/). Direct testimony of service members who have suffered severe physical disabilities and illnesses attests to the spraying, dumping, and storage of significant amounts of Agent Orange, Agent Purple, and other highly toxic “rainbow” military herbicides and pesticides on Guam. The U.S. Government Accountability Office, after investigating Agent Orange use on Guam, acknowledges through various military records that Agent Orange components 2,4-D and 2,4,5-T were used on Guam in commercial herbicides. This is corroborated by recent soil sampling results that found traces of these elements, suggesting that Agent Orange was among the herbicides used on and around military bases on Guam. Despite the evidence, the military continues to deny that Agent Orange was ever stored or used on Guam. See, e.g., Mai Habib, *New report shows evidence of Agent Orange in Guam soil*, PNC GUAM (Jul. 21, 2020), <https://www.pncguam.com/new-report-shows-evidence-of-agent-orange-in-guam-soil/>.

<sup>61</sup> Steven C. Hess and Linda W. Pratt, *Final Integrated Trip Report—Site Visits to Area 50, Andersen Air Force Base, Guam National Wildlife Refuge, War in the Pacific National Historical Park, Guam, Rota and Saipan*, CNMI, 2004–2005, USGS 1 (2006), <https://pubs.usgs.gov/of/2005/1299/of2005-1299.pdf>. See also *Case Study: Brown Tree Snake*, U.S. DEP'T OF STATE (2001), <https://2001-2009.state.gov/g/oes/ocns/inv/cs/2309.htm#:~:text=The%20brown%20tree%20snake%2C%20which,itself%20throughout%20the%20entire%20island> (last visited on Jul. 27, 2020); see also Sarah Zhang,

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*When the U.S. Military Came to Guam: The island's wildlife has been a casualty of the military presence*, THE ATLANTIC (Aug. 12 2017), <https://www.theatlantic.com/science/archive/2017/08/guam-military-wildlife/536622/>.

<sup>62</sup> A study by NOAA and academic scientists found that three stranding events of Cuvier's beaked whales in the Mariana Archipelago since 2007 occurred either during or within 6 days after naval anti-submarine sonar operations. See *Beaked Whale Strandings in the Mariana Archipelago May Be Associated with Sonar*, NOAA FISHERIES (Feb. 19, 2020), <https://www.fisheries.noaa.gov/feature-story/beaked-whale-strandings-mariana-archipelago-may-be-associated-sonar>. See also Anne E. Simonis et al, *Co-occurrence of beaked whale strandings and naval sonar in the Mariana Islands, Western Pacific*, 287 PROC. R. SOC. BIOL. SCI. (2020); Anumita Kaur, *Military proposes continued sonar use as more whales wash up on Guam's shores*, PACIFIC DAILY NEWS (Mar. 3, 2019), <https://www.guampdn.com/story/news/2019/03/03/military-proposes-sonar-use-more-whales-wash-up-guams-shores/2865769002/>.

<sup>63</sup> LisaLinda Natividad & Victoria-Lola Leon Guerrero, *The Explosive Growth of U.S. Military Power on Guam Confronts People Power: Experience of an Island People Under Spanish, Japanese and American Colonial Rule*, 3 ASIA-PACIFIC J. 1, 6 (2010). Prutehi Litekyan has also shed light on the present legacy of the military's harms on Guam, highlighting over 80 existing dumpsites, unexploded ordinances from WWII, and community exposure to radiation from regional nuclear testing and submarine vessels. Interview with Monaeka Flores, Member, Prutehi Litekyan: Save Ritidian, in Hagåtña, Guam (July 31, 2020) [hereinafter Flores interview].

<sup>64</sup> *Toxic bases in the Pacific*, APSNET SPECIAL REPORTS, NAUTILUS INSTITUTE (Nov 25, 2005), <https://nautilus.org/apsnet/toxic-bases-in-the-pacific/> [hereinafter APSNet Report].

<sup>65</sup> *Id.*

<sup>66</sup> See Leilani Rania Ganser, *In Guam, the Gravest Threat Isn't North Korea—It's the United States*, INSTITUTE FOR POLICY STUDIES (Aug 1., 2017), <https://ips-dc.org/in-guam-the-gravest-threat-isnt-north-korea-its-the-united-states/>.

<sup>67</sup> *Id.*

<sup>68</sup> Bevacqua, *Tip of Spear*, *supra* note 54, at 178. For more see, Mariana Islands Training and Testing, Supplemental Environmental Impact Statement / Overseas Environmental Impact Statement, U.S. PACIFIC FLEET, <https://mitt-eis.com/> [hereinafter, MITT SEIS].

<sup>69</sup> The exercise included the observation and participation of multiple other countries' navies. Allison Batdorff, *Massive Armada Taking Part in Carrier Exercise near Guam*, STARS AND STRIPES (Jun. 21, 2006), [www.stripes.com/news/massive-armada-taking-part-in-carrier-exercise-near-guam-1.50626](http://www.stripes.com/news/massive-armada-taking-part-in-carrier-exercise-near-guam-1.50626).

<sup>70</sup> Bevacqua, *Tip of Spear*, *supra* note 54, at 178.

<sup>71</sup> Jon Letman, *Guam: Where the US Military Is Revered and Reviled*, THE DIPLOMAT (Aug. 29 2016), <https://thediplomat.com/2016/08/guam-where-the-us-military-is-revered-and-reviled/> [hereinafter Letman, DIPLOMAT].

<sup>72</sup> Natividad & Kirk, *supra* note 1, at 5 ("There are three JROTC programs in the island's public high schools, as well as an ROTC program at the University of Guam.").

<sup>73</sup> Letman, DIPLOMAT *supra* note 71.

<sup>74</sup> Michael Lujan Bevacqua, *The Exceptional Life and Death of a Chamorro Soldier: Tracing the Militarization of Desire in Guam, USA*, in MILITARIZED CURRENTS: TOWARD A DECOLONIZED FUTURE IN ASIA AND THE PACIFIC 43-44 (Setsu Shigematsu & Keith L. Camacho eds., 2010).

<sup>75</sup> Emma Moore & Brent Peabody, *Veteran Benefits in U.S. Territories*, CENTER FOR NEW AMERICAN SECURITY (Feb. 25, 2020), <https://www.cnas.org/publications/commentary/state-level-veteran-benefits-in-u-s-territories>.

<sup>76</sup> Lutz, *supra* note 15, at 110.

<sup>77</sup> U.S.-Japan Security Consultative Committee, *United States-Japan Roadmap for Realignment Implementation*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (May 1, 2016), <http://www.mofa.go.jp/region/n-america/us/security/scc/doc0605.html>.

<sup>78</sup> See *US Military Presence on Okinawa and Realignment to Guam*, CONGRESSIONAL RESEARCH SERVICE 1 (Apr. 9, 2019); *Military Buildup on Guam: Costs and Challenges in Meeting Construction Timelines*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE 1 (Jun. 27, 2011) [hereinafter *Military Buildup*]. The island prefecture of Okinawa hosts a large installment of US troops and dependents, who occupy about a fifth of the island. Mayuko Ono & Tim Kelly, *Outnumbered and elderly, Okinawa protesters oppose U.S. military runway*, REUTERS (Apr. 3, 2019), <https://www.reuters.com/article/us-japan-okinawa-henoko/outnumbered-and-elderly-okinawa-protesters-oppose-u-s-military-runway-idUSKCN1RFoKC>.

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Okinawan resentment toward the US presence erupted in a fury of protests over the 1995 gang-rape of a 12-year-old Okinawan girl by US troops. See *Okinawa: Tokyo to overrule referendum on US base*, BBC NEWS (Feb. 25, 2019), <https://www.bbc.com/news/world-asia-47353504>.

<sup>79</sup> *Tiny Guam Key to US Pacific Military Strategy*, VOICE OF AM. NEWS (Aug. 23, 2006), <https://www.voanews.com/archive/tiny-guam-key-us-pacific-military-strategy>. Letman, GUARDIAN, *supra* note 49.

<sup>80</sup> As stated by Major General Dennis Larsen to a report at Guam's Andersen Air Force Base. VINE, *supra* note 11, at 84.

<sup>81</sup> U.S. DEP'T OF THE NAVY, *Final Environmental Impact Statement: Guam and CNMI Military Relocation, Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Army Air and Missile Defense Task Force, Executive Summary*, 8 (Jul. 2010), [http://www.guambuildupeis.us/documents/final/summary/Executive\\_Summary.pdf](http://www.guambuildupeis.us/documents/final/summary/Executive_Summary.pdf). See also VINE, *supra* note 11, at 89; Natividad & Kirk, *supra* note 1, at 10.

<sup>82</sup> VINE, *supra* note 11, at 90. Additionally, Guam's school system struggles to meet payroll, while the island's water supply is barely adequate to sustain the current population and the only civilian landfill for trash disposal is nearly at full capacity. See Natividad & Kirk, *supra* note 1, at 6.

<sup>83</sup> *EPA comments on the Draft Environmental Impact Statement (DEIS) for the Guam and CNMI Military Relocation*, EPA, Nov 2009, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Feb. 17, 2020), <https://archive.epa.gov/region9/nepa/web/pdf/guam-cnmi-military-reloc-deis.pdf>.

<sup>84</sup> *Id.*

<sup>85</sup> VINE, *supra* note 11, at 90-91.

<sup>86</sup> Ronni Alexander, *Militarization and Identity on Guahan/Guam: Exploring Intersections of Indigeneity, Gender and Security*, 21 J. OF INT'L COOPERATION STUDIES, 1, 12 (2013).

<sup>87</sup> *Military Buildup*, *supra* note 78, at 6.

<sup>88</sup> See VINE, *supra* note 11, at 89.

<sup>89</sup> *Id.* See also Brian J. Lepore, *Defense Infrastructure: Planning Efforts for the Proposed Military Buildup on Guam are in Their Initial Stages, with Many Challenges Yet to be Addressed*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE 1 (May 1, 2008), [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=A5EDooDo-E527-oBE6-892E-3C161E77D141](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=A5EDooDo-E527-oBE6-892E-3C161E77D141).

<sup>90</sup> See Natividad & Leon Guerrero, *supra* note 63, at 9. See also *Final Environmental Impact Statement Guam and CNMI Military Relocation*, Naval Facilities Engineering Command, Pacific, 3-61 (2010) ("[D]ue to the extent of the proposed land acquisition would mean an increase in federally owned or controlled land on Guam, and a reduction in access to lands of sociocultural and recreational importance, the overall socioeconomic impacts of land acquisition would be significant.").

<sup>91</sup> Natividad & Leon Guerrero, *supra* note 63, at 9.

<sup>92</sup> *Id.* See also VINE, *supra* note 11, at 91. Chamorros have compared this proposed construction with building a firing range over historic Arlington Cemetery in Virginia. Lutz, *supra* note 15, at 119.

<sup>93</sup> Bevacqua, *Tip of Spear*, *supra* note 54, at 176-77.

<sup>94</sup> Two-thirds of Tinian is currently leased by the US military as part of the CNMI commonwealth negotiations. Many community members argue that the military, rather than expanding, should stay within its existing "footprint." Natividad & Kirk, *supra* note 1, at 10.

<sup>95</sup> Natividad & Kirk, *supra* note 1, at 2.

<sup>96</sup> Natividad & Leon Guerrero, *supra* note 63, at 15. Chamorro scholar Michael Lujan Bevacqua notes, "When the possibility of moving Marines from Okinawa to Guam was first discussed, representatives of Japan and the United States met, but no one from Guam sat at the negotiation table. Although the people of Guam are occasionally asked to comment on DOD plans for their islands, as a colony, they have no real role in determining their destiny and whether it lies toward peace or war." Bevacqua, *Tip of Spear*, *supra* note 54, at 181.

<sup>97</sup> Department of Defense Public Affairs, *Navy Announces Draft EIS for Military Relocations to Guam*, U.S. Navy NEPA Projects, 20 Nov 2009, <https://www.nepa.navy.mil/About-NEPA-Website/Media-Resources/News/NewsArticleView/Article/1807248/navy-announces-draft-eis-for-military-relocations-to-guam/>. See also Julian Aguon, *On Loving the Maps our Hands Cannot Hold: Self-Determination of Colonized and Indigenous Peoples in International Law*, 16 ASIAN PAC. AM. L.J. 47, 70 (2013). See also Lutz, *supra* note 15, at 116 (noting how the flooding of technocratic pages was meant to overwhelm the local population with incomprehensible, sophisticated-looking technobabble, in itself causing significant stress and strain on local resources).



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<sup>98</sup> Aguon, *supra* note 97, at 70.

<sup>99</sup> VINE, *supra* note 11, at 92.

<sup>100</sup> *Id.* at 92-93; Interview with Cara Flores Mays, Director of Nihi!, an indigenous media group, in Hagåtña, Guam (July 31, 2020).

<sup>101</sup> VINE, *supra* note 11, at 92-93; Jeffrey W. Hornung, U.S. MILITARY LAYDOWN ON GUAM: PROGRESS AMID CHALLENGES 27-29 (2017); Kevin Kerrigan, “Navy Decides to Conduct a Supplemental EIS for Proposed Firing Range Complex,” PACIFIC NEWS CENTER (Nov. 16, 2011), <https://www.pncguam.com/court-orders-supplemental-environmental-impact-statement-for-proposed-pagat-range>.

<sup>102</sup> Chris Gelardi & Sophia Perez, *Biba Guåhan!': How Guam's Indigenous Activists Are Confronting Military Colonialism*, THE NATION (Oct. 21, 2019), <https://www.thenation.com/article/archive/guam-colonialism/>.

<sup>103</sup> Shirley A. Kan, *Guam: U.S. Defense Deployments*, CONGRESSIONAL RESEARCH SERVICE (Nov. 26 2014), <https://fas.org/sgp/crs/row/RS22570.pdf>.

<sup>104</sup> Ossola, *supra* note 49. (“The facilities that could house and train more than 5,000 Marines and their families are slated to occupy more than 2,000 acres.”).

<sup>105</sup> Bevacqua, Tip of Spear, *supra* note 54, at 180.

<sup>106</sup> See Adam Ashton, *Military buildup in Guam creating tension*, THE NEWS TRIBUNE (Nov. 21 2015), <https://www.thenewstribune.com/news/local/military/article45825665.html>; see also Chris Gelardi & Sophia Perez, ‘This Isn’t Your Island’: Why Northern Mariana Islanders Are Facing Down the US Military, THE NATION, (June 12, 2019) <https://www.thenation.com/article/archive/northern-mariana-islands-military-bases-tinian/>.

<sup>107</sup> Gelardi & Perez, *supra* note 102. In fact, community-based organizations in the Northern Marianas likewise sued the U.S. military in federal court over U.S. plans to build live-fire training ranges in Tinian and Pagan, alleging violations of the National Environmental Policy Act. See *Tinian Women Association v. U.S. Dep’t of the Navy*, 2017 WL 4564188, \*4 (D. Mar. Is., Oct. 13, 2017).

<sup>108</sup> Anne P. Brooke et al., *Final environmental impact statement, overseas environmental impact statement for Mariana Island Training and Testing (FEIS/OEIS)*, U.S. DEP’T OF THE NAVY (2015).

<sup>109</sup> See Anumita Kaur, *Human bone fragments found on firing range construction site*, PACIFIC DAILY NEWS, (Sept. 26, 2019) <https://www.guampdn.com/story/news/local/2019/09/26/human-bone-fragments-found-firing-range-construction-site/2449262001/>; Haidee Eugenio Gilbert, *More human bone fragments found on firing range construction site*, PACIFIC DAILY NEWS, (Oct. 2, 2019) <https://www.argusleader.com/story/news/2019/10/02/more-human-bone-fragments-found-firing-range-construction-site/3838654002/>; Gerry Partido, *More human fragments found at firing range site*, PACIFIC NEWS CENTER, (Oct. 3, 2019) <https://www.pncguam.com/more-human-fragments-found-at-firing-range-site/>; Anumita Kaur, *Human remains, cultural artifacts found in military buildup construction*, PACIFIC DAILY NEWS (Oct. 28, 2019), <https://www.guampdn.com/story/news/2019/10/27/human-remains-cultural-artifacts-found-military-construction/2452574001/>.

<sup>110</sup> Anumita Kaur, *Marine base, live-firing training range halfway complete; 43 historic sites discovered*, PACIFIC DAILY NEWS (Jul. 13, 2020), <https://www.guampdn.com/story/news/local/2020/07/12/military-buildup-guam-dededo-marine-base-training-range-near-completion/5422669002/> [hereinafter Kaur, Marine base].

<sup>111</sup> Gelardi & Perez, *supra* note 102.

<sup>112</sup> Kaur, Marine base, *supra* note 110.

<sup>113</sup> Anumita Kaur, *Lusong, ceramics found at Northwest Field: ‘We can’t afford to take this lightly’*, PACIFIC DAILY NEWS (Jun. 18, 2019), <https://www.guampdn.com/story/news/local/2019/06/17/lusong-found-northwest-field/1474036001/>.

<sup>114</sup> Chloe Babauta, *Ancient village at military base not fully surveyed, more human remains may be undiscovered*, PACIFIC DAILY NEWS (Nov. 27, 2018), <https://www.guampdn.com/story/news/2018/11/27/ancient-village-military-base-not-fully-surveyed-preservation-officer-says/1925172002/>.

<sup>115</sup> *Id.*

<sup>116</sup> Chloe Babauta, *Peaceful demonstration to protest military bulldozing ancient Chamoru village*, PACIFIC DAILY NEWS (Oct. 31, 2018), <https://www.guampdn.com/story/news/2018/10/31/peaceful-demonstration-protest-military-bulldozing-ancient-village/1829904002/>. In 2011, the military agreed to build a repository to house Chamorro artifacts; funds were not actually appropriated until 2017, in the amount of \$12 million, a few million more than the amount the military budgeted for building a dog

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kennel on Guam as part of the buildup. *See, e.g.,* Jerick Sablan, *Repository to be built after funding awarded*, PACIFIC DAILY NEWS (Nov. 12, 2017),

<https://www.guampdn.com/story/news/2017/11/12/repository-built-after-funding-awarded/850773001/>, and Stars and Stripes, *Contract awarded to relocate military dog kennel on Guam*, STARS AND STRIPES (Sept. 29, 2010), <https://www.stripes.com/news/pacific/guam/contract-awarded-to-relocate-military-dog-kennel-on-guam-1.120118>.

<sup>117</sup> Anumita Kaur, *Marine base, live-fire training range halfway complete; 43 historic sites discovered*, PACIFIC DAILY NEWS (Jul. 13, 2020), <https://www.guampdn.com/story/news/local/2020/07/12/military-buildup-guam-dededo-marine-base-training-range-near-completion/5422669002/>.

<sup>118</sup> Scott Russell, TIEMPON I MANMOFO'NA: ANCIENT CHAMORRO CULTURE AND HISTORY OF THE NORTHERN MARIANA ISLANDS 152-56 (1998).

<sup>119</sup> Aguon, *supra* note 97, at 71.

<sup>120</sup> Reclaiming Identity: The Repatriation of Native Remains and Culture, FRIENDS COMMITTEE ON NATIONAL LEGISLATION (Mar. 7, 2008), <https://www.fcnl.org/updates/reclaiming-identity-the-repatriation-of-native-remains-and-culture-137#:~:text=Legal%20Protections&text=In%201990%2C%20Congress%20passed%20the,university%2C%20government%2C%20etc>.

<sup>121</sup> *See* Guam Legislative Resolution No. 228-34 (2017), [http://www.guamlegislature.com/COR\\_Res\\_34th/Res.%20No.%20228-34%20\(COR\).pdf](http://www.guamlegislature.com/COR_Res_34th/Res.%20No.%20228-34%20(COR).pdf). Additionally, while no case has squarely addressed the issue of whether the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 (1994) (NAGPRA) applies to the Chamorro people of Guam, the U.S. Department of the Interior has adopted rules stating that NAGPRA protection shall “not [apply] to territories of the United States.” 43 C.F.R. § 10.1(b)(2) (2008).

<sup>122</sup> Anumita Kaur, ‘Sanctioned Destruction’: Preservation office seeks to amend agreement with military, PACIFIC DAILY NEWS (July 14, 2020), <https://www.guampdn.com/story/news/local/2020/07/13/guam-preservation-office-amend-military-agreement/5425446002/>.

<sup>123</sup> *See* Lynda Aguon, State Historic Preservation Officer, Statement before the 34<sup>th</sup> Guam Legislature (Sept. 7, 2017), <http://senatorterlaje.com/category/historic-preservation/>.

<sup>124</sup> Guam National Wildlife Refuge and U.S. Fish and Wildlife Service, *GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN* (Sept. 2009), <https://www.fws.gov/pacific/planning/main/docs/HI-PI/Guam/GuamFinalCCP%20for%20web.pdf>.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Ancient CHamoru Cave Art*, GUAMPEDIA, <https://www.guampedia.com/chamorro-cave-art/>.

<sup>128</sup> *The Guam Military Training and Readiness Act of 2014*, Hearing on H.R. 4402 Before Subcomm. on Fisheries, Wildlife, Oceans and Insular Affairs on the H. Comm. on Natural Resources, 113<sup>th</sup> Cong. (2014) (statement of Jim Kurth, Chief, National Wildlife Refuge System U.S. Fish and Wildlife Service).

<sup>129</sup> John I Borja, *Generations of protest: Former Ritidian landowners want their land back*, PACIFIC DAILY NEWS, 4 Sept 2017, <https://www.guampdn.com/story/news/2017/09/04/generations-protest-former-ritidian-landowners-want-their-land-back/624063001/>.

<sup>130</sup> *Id.*; but *see infra* note 132.

<sup>131</sup> *See* Gov’t of Guam ex rel. Guam Econ. Dev. Auth. v. United States, 179 F.3d 630, 632 (9<sup>th</sup> Cir. 1999).

<sup>132</sup> *Id.* To be sure, many of the Chamorro families from Litekyan/Ritidian have maintained that both the original taking of their ancestral lands and the subsequent transfer to U.S. Fish and Wildlife were wrongful; these families were supported by the 23<sup>rd</sup> Guam Legislature, which denounced the actions taken by the U.S. federal government. *See* Guam Public Law No. 23-25 (1995).

<sup>133</sup> Dep’t of the Navy, SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT GUAM AND COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS MILITARY RELOCATION (2012 ROADMAP ADJUSTMENTS) (2015) at ES-9 [hereinafter Navy, 2012 Roadmap Adjustments].

<sup>134</sup> Gaynor Dumat-ol Danelo, *Researchers rediscover ancient Chamorro village at Ritidian*, PACIFIC DAILY NEWS (June 19, 2015), <https://www.guampdn.com/story/news/2015/06/19/researchers-rediscover-ancient-chamorro-village-at-ritidian-0620/28972905/>.

<sup>135</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 5-428.

<sup>136</sup> Flores interview, *supra* note 63.

<sup>137</sup> *Id.*

<sup>138</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 3-12-35.

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<sup>139</sup> Flores interview, *supra* note 63.

<sup>140</sup> *Id.*

<sup>141</sup> See Navy, 2012 Roadmap Adjustments, *supra* note 133, at ES-36 (acknowledging that the construction of the live-fire training range complex would result in impacts to 215 acres (87 ha) of Mariana fruit bat recovery habitat, Mariana crow recovery habitat, and Guam Micronesian kingfisher recovery habitat); see also GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN, *supra* note 124, at 3-17 (“The Ritidian Unit has been designated as Critical Habitat for three listed species: the threatened Mariana fruit bat and endangered Micronesian kingfisher and Mariana crow. Green turtles nest and hawksbill turtles are suspected to nest on the Ritidian Unit.”).

<sup>142</sup> GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN, *supra* note 124, at 1-19 (noting that the purpose of the Ritidian Unit was to conserve ESA-listed species and to restore, protect and maintain the health of its terrestrial and marine environment).

<sup>143</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 4-479-80, 5-428-30.

<sup>144</sup> Ossola, *supra* note 49.

[http://piccc.net/piccc/wpcontent/uploads/2015/05/MI\\_Veg\\_Final\\_November2017.pdf](http://piccc.net/piccc/wpcontent/uploads/2015/05/MI_Veg_Final_November2017.pdf)

<sup>145</sup> Gelardi & Perez, *supra* note 102; GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN, *supra* note 124, at 3-11. (One of the refuge’s goals is to “[r]estore, protect, and maintain native limestone forest representative of historic Guam and other Mariana Islands.”).

<sup>146</sup> Anumita Kaur, Marine base, live-fire training range halfway complete; 43 historic sites discovered, PACIFIC DAILY NEWS (Jul.13 2020), <https://www.guampdn.com/story/news/local/2020/07/12/military-buildup-guam-dededo-marine-base-training-range-near-completion/5422669002/>.

<sup>147</sup> Ossola, *supra* note 49; John I Borja, *No common ground: Save Ritidian group, military at odds over firing ranges*, PACIFIC DAILY NEWS (Aug. 29, 2017), <https://www.guampdn.com/story/news/2017/08/29/no-common-ground-save-ritidian-group-military-odds-over-firing-ranges/610692001/>. The U.S. Fish and Wildlife Service released a 5-Year Review of the *Serianthes nelsonii* species and found hurricanes threaten its continued survival. A consequence of the military clear-cutting around the lone tree may leave it increasingly vulnerable to hurricane damage. U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office, *SERIANTHES NELSONII* (HAYUN LAGU) 5-YEAR REVIEW SUMMARY AND EVALUATION (2010), [https://esadocs.defenders-cci.org/ESAdocs/five\\_year\\_review/doc4060.pdf](https://esadocs.defenders-cci.org/ESAdocs/five_year_review/doc4060.pdf).

<sup>148</sup> Lutz, *supra* note 15, at 117.

<sup>149</sup> John I Borja, *No common ground: Save Ritidian group, military at odds over firing ranges*, PACIFIC DAILY NEWS (Aug. 29, 2017), <https://www.guampdn.com/story/news/2017/08/29/no-common-ground-save-ritidian-group-military-odds-over-firing-ranges/610692001/>.

<sup>150</sup> See John I Borja, *25 years later, Andersen Air Force Base still cleaning up contamination, EPA says*, PACIFIC DAILY NEWS (Sept. 4, 2017), <https://www.guampdn.com/story/news/2017/10/15/25-years-later-andersen-air-force-base-still-cleaning-up-contamination-epa-says/764211001/>; see also University of Guam, REPORT 144 WATER AND ENVIRONMENTAL RESEARCH INSTITUTE OF THE WESTERN PACIFIC (2013) (noting that the Northern Guam Lens Aquifer supplies 80% of the island’s drinking water), <http://www.weriguam.org/reports/item/the-northern-guam-lens-aquifer-database.html>.

<sup>151</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 5-393.

<sup>152</sup> Johnny Blades, *Chamorros push for pause to US military plans on Guam*, RADIO NZ (July 8, 2019), <https://www.rnz.co.nz/international/pacific-news/393909/chamorros-push-for-pause-to-us-military-plans-on-guam>; Anumita Kaur, *Community protests after Navy denies request to pause military construction at firing range*, PACIFIC DAILY NEWS (July 11, 2019), <https://www.guampdn.com/story/news/local/2019/07/10/guam-protests-military-construction-preserve-history/1680595001/>; see also Gelardi & Perez, *supra* note 102.

<sup>153</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at ES-25.

<sup>154</sup> Gaynor D. Daleno, *Study: Guam homebuyers, renters up against skyrocketing prices*, THE GUAM DAILY POST (Feb 22, 2020), [https://www.postguam.com/business/local/study-guam-homebuyers-renters-up-against-skyrocketing-prices/article\\_0599df26-5470-11ea-8e81-87fa0a2e41fc.html](https://www.postguam.com/business/local/study-guam-homebuyers-renters-up-against-skyrocketing-prices/article_0599df26-5470-11ea-8e81-87fa0a2e41fc.html).

<sup>155</sup> Natividad & Kirk, *supra* note 1.

<sup>156</sup> 16 U.S.C. § 431-433.

<sup>157</sup> This includes endangered marine species such as the humpback whale, sei whale, fin whale, blue whale, sperm whale, hammerhead shark, as well as the green, hawksbill, loggerhead, and leatherback sea turtles. See MITT SEIS, *supra* note 68, at 3.4-133, 3.9-1, 3.8-1, 3.5-1.

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- <sup>158</sup> Anumita Kaur, *Military establishes Finegayan danger zone, restricting local access to the area*, PACIFIC DAILY NEWS (July 22, 2020), <https://www.guampdn.com/story/news/local/2020/07/21/guam-navy-military-danger-zone-finegayan-restricting-access-area/5469632002/>.
- <sup>159</sup> *Id.*
- <sup>160</sup> Anumita Kaur, *Despite public comments, Navy's testing plans are largely unchanged*, PACIFIC DAILY NEWS (June 16, 2020), <https://www.guampdn.com/story/news/local/2020/06/15/guam-navy-testing-plans-marine-whale-sonar-concerns/3172567001/>.
- <sup>161</sup> See Leevin Camacho, *Poison in our Waters: A Brief Overview of the Proposed Militarization Guam and the Commonwealth of the Northern Mariana Islands*, in THE ASIA-PACIFIC JOURNAL: JAPAN FOCUS, <https://apijf.org/2013/11/51/Leevin-Camacho/4050/article.html>.
- <sup>162</sup> This, if anything, should be evidenced by the length of the military's buildup plans and EIS documents (e.g. the supplemental EIS being almost 1,600 pages).
- <sup>163</sup> Joe Gould, *Senate panel OKs \$6 billion military fund to confront China*, DEFENSE NEWS (June 11, 2020), <https://www.defensenews.com/congress/2020/06/11/senate-panel-oks-6-billion-military-fund-to-confront-china/>.
- <sup>164</sup> Kenneth G. Kuper, *Living at the tip of the spear: Guam and restraint*, RESPONSIBLE STATECRAFT (July 20, 2020), <https://responsiblestatecraft.org/2020/07/20/living-at-the-tip-of-the-spear-guam-and-restraint/>.
- <sup>165</sup> Lee Jeong-ho, *China releases footage of 'Guam killer' DF-26 ballistic missile in 'clear message to the US'*, SOUTH CHINA MORNING POST (Jan. 28, 2019), <https://www.scmp.com/news/china/military/article/2183972/china-releases-footage-guam-killer-df-26-ballistic-missile-clear>.
- <sup>166</sup> Camila Domonoske, *Why Is North Korea Threatening Guam?*, NATIONAL PUBLIC RADIO (Aug. 9, 2017), <https://www.npr.org/sections/thetwo-way/2017/08/09/542384201/why-is-north-korea-threatening-guam>.
- <sup>167</sup> Will Worley, *North Korea threatens Guam with 'salvo of missiles' if Donald Trump keeps up provocations*, THE INDEPENDENT (Oct. 14, 2017), <https://www.independent.co.uk/news/world/asia/north-korea-guam-missiles-threat-donald-trump-twitter-a8000276.html>.
- <sup>168</sup> Elise Hu, *Trump's Rhetoric Renews Debate In Guam: Is Being 'Tip Of The Spear' Worth It?*, NATIONAL PUBLIC RADIO (Aug. 12, 2017), <https://www.npr.org/sections/parallels/2017/08/12/542998601/trumps-rhetoric-renews-debate-in-guam-is-being-tip-of-the-spear-worth-it>.
- <sup>169</sup> As stated by Robert Underwood, Former Guam Delegate to the U.S. House of Representatives, in *Trump's world view not good for Guam*, Op-Ed FOR PACIFIC DAILY NEWS (June 15, 2018), <https://www.guampdn.com/story/opinion/columnists/2018/06/15/trumps-world-view-not-good-guam-underwood/697142002/>.
- <sup>170</sup> See, e.g., The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands, U.S. Embassy in the Republic of the Marshall Islands, <https://mh.usembassy.gov/the-legacy-of-u-s-nuclear-testing-and-radiation-exposure-in-the-marshall-islands/>, honoring “the contribution the people of the Marshall Islands made to America’s international security goals”; see also Dan Zak, *A ground zero forgotten: The Marshall Islands, once a U.S. nuclear test site, face oblivion again*, THE WASHINGTON POST (Nov. 27, 2015), <https://www.washingtonpost.com/sf/national/2015/11/27/a-ground-zero-forgotten/>; and Susanne Rust, *How the U.S. betrayed the Marshall Islands, kindling the next nuclear disaster*, LOS ANGELES TIMES (Nov. 10, 2019), <https://www.latimes.com/projects/marshall-islands-nuclear-testing-sea-level-rise/>.
- <sup>171</sup> In April 2020, the government of Guam was projecting 3,000 deaths from COVID-19 within five months. Jerick Sablan, *Governor announces stricter COVID-19 measures to enforce stay home orders*, PACIFIC DAILY NEWS (Apr. 3, 2020), <https://www.guampdn.com/story/news/local/2020/04/03/governor-announces-stricter-measures-enforce-stay-home-orders/5119099002/>; see also COVID-19, Guam DPHSS, <http://dphss.guam.gov/covid-19/>.
- <sup>172</sup> Jasmine Stole Weiss, *First batch of USS Theodore Roosevelt sailors to move into Guam hotels for quarantine*, PACIFIC DAILY NEWS (Apr. 3, 2020), <https://www.guampdn.com/story/news/local/2020/04/02/first-batch-uss-roosevelt-sailors-move-into-guam-hotels/5107795002/>.



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<sup>173</sup> Geoff Ziezulewicz, *13 Theodore Roosevelt sailors re-test positive for coronavirus*, NAVY TIMES (Apr. 2, 2020), <https://www.navytimes.com/news/your-navy/2020/05/15/five-theodore-roosevelt-sailors-re-test-positive-for-covid-19/>.

<sup>174</sup> Caitlin Doornbos, *USS Theodore Roosevelt sets sail after battling coronavirus for nearly two months on Guam*, STARS AND STRIPES (May 15, 2020), <https://www.stripes.com/news/pacific/uss-theodore-roosevelt-sets-sail-after-battling-coronavirus-for-nearly-two-months-on-guam-1.630583>.

<sup>175</sup> Senator Sabina Flores Perez. Letter to Governor Lourdes Leon Guerrero. Apr. 1, 2020. See also David Welna, *Guam Locals Unhappy With Housing U.S. Sailors From Coronavirus-Hit Aircraft Carrier*, NATIONAL PUBLIC RADIO (April 2, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/02/826262256/guam-locals-unhappy-with-housing-u-s-sailors-from-coronavirus-hit-aircraft-carri>.

<sup>176</sup> Welna, *supra* note 175.

<sup>177</sup> *Id.*

<sup>178</sup> DPHSS: *Airmen violated orders; Contact tracing underway*, THE GUAM DAILY POST (June 22, 2020), [https://www.postguam.com/news/local/dphss-airmen-violated-orders-contact-tracing-underway/article\\_80bboe1e-b2d5-11ea-a9da-bb4ffb4424a.html](https://www.postguam.com/news/local/dphss-airmen-violated-orders-contact-tracing-underway/article_80bboe1e-b2d5-11ea-a9da-bb4ffb4424a.html); see also Kevin Kerrigan, *Despite AAFB outbreak, plan to reopen Guam to tourism still on*, PACIFIC NEWS CENTER (June 22, 2020), <https://www.pncguam.com/despite-aafb-outbreak-plan-to-reopen-guam-still-on-7-reef-employees-considered-high-risk/>.

<sup>179</sup> Dep't of Public Health and Social Services, *Coronavirus Disease (COVID-19) Dashboard and Situation Report* (July 1, 2020), <http://dphss.guam.gov/covid-19/>.

<sup>180</sup> John O'Connor, *DPHSS names 30 businesses airmen visited*, THE GUAM DAILY POST (June 25 2020), [https://www.postguam.com/news/local/dphss-names-30-businesses-airmen-visited/article\\_e436ef7e-b5c0-11ea-8d5a-2fc7c515351b.html](https://www.postguam.com/news/local/dphss-names-30-businesses-airmen-visited/article_e436ef7e-b5c0-11ea-8d5a-2fc7c515351b.html); see also Joint Information Center, JIC Release No. 196 (June 24, 2020), <https://www.pncguam.com/wp-content/uploads/2020/06/JIC-Release-No.-196-Update-on-AAFB-Cluster.pdf>.

<sup>181</sup> O'Connor, *supra* note 180.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> See, e.g., G.A. Res. 44/98, ¶ 5, A/RES/44/98 (Dec. 11, 1989) (“Reaffirm[ing] its strong conviction that the presence of military bases and installations in the Territory [of Guam] could constitute a major obstacle to the implementation of the Declaration [on the Granting of Independence to Colonial Countries and Peoples] . . .”), <https://www.refworld.org/docid/3b00efea6b.html>.

## **ANNEX B:**

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Joint Allegation Letter, AL USA 7/2021 (29 Jan. 2021)**

**Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

REFERENCE:  
AL USA 7/2021

29 January 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights of indigenous peoples; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 37/8, 42/20 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding **the impacts of the United States of America's increased military presence in Guam and the failure to protect the indigenous Chamorro people from the loss of their traditional lands, territories, and resources; serious adverse environmental impacts; the loss of cultural artifacts and human remains; as well as the denial of the right to free, prior and informed consent and self-determination.**

According to the information received:

The island of Guam is the traditional homeland of the indigenous Chamorro people, who are known for advanced seafaring, horticulture, hunting and fishing, and distinct architecture. The Chamorro have inhabited Guam for some 3500 years and possess a continuity of existence with their ancestral past and an intention to transmit their lands, resources and culture to future generations. The Chamorro represent around 37% of Guam's total population of approximately 167'000 inhabitants.

The information received relates to the United States' current increase in its military presence in Guam by deploying thousands of personnel, constructing a live-fire training range complex at Ritidian, and intensified military operations at the Mariana Island Training and Testing Area. The U.S. military currently occupies about 30% of the island of Guam.

Reportedly, the Chamorro people were not consulted about the enhanced militarization of Guam and the United States did not adequately seek or obtain their free, prior and informed consent. The military build-up directly impairs the ability of the indigenous Chamorro to self-govern and threatens to cause additional and irreparable harm to the land and sea environments on and around Guam. In addition to current threats, residual nuclear contamination from historical U.S. weapons testing has not been effectively remedied and continues to threaten the rights of the Chamorro.

The United States' territorial control over Guam as a U.S.-administered, non-self-governing territory has had significant consequences for the Chamorro people including the denial of adequate political representation and authority and the loss of traditional lands, ancestral remains and cultural artifacts. The Chamorro (and others in Guam) cannot vote for the U.S. presidency, have no U.S. Senate representation and can only elect one non-voting member of the U.S. House of Representatives. In 2019, the United States Ninth Circuit Court in *Davis v Guam*, invalidated an effort by the government of Guam to hold a non-binding plebiscite. The referendum would have allowed native inhabitants to express their opinion about Guam's political status *vis-a-vis* the United States as either independent, free association or statehood.

#### *Impact of increased militarization on Chamorro cultural property and sacred places*

In 2006, the Department of Defense commenced plans for an extensive military expansion in Guam. Despite widespread local opposition and concerns by the Environmental Protection Agency, the transfer of thousands of military personnel and associated workforce to the island have taken place.

The military expansion has entailed the construction of live-fire training ranges and other installations around sites of great cultural and spiritual significance to the Chamorro. A Live Fire Training Range Complex is being built adjacent to Ritidian and threatens access to a significant indigenous site, home to 3,000 year old villages, ancient cave art, and traditional medicine-gathering and fishing grounds

Additionally, on 2015 the United States Department of Defense announced plans to construct a Marine base on Guam. The military awarded the first construction contracts in 2017 and crews began bulldozing in 2018. By July 2020, the US military identified a total of 15 construction sites containing human remains and 28 sites with ancient artifacts including ceramics, stone tools, and *lusong* (mortar and pestles).

The concentration of millennia-old artifacts and human remains are indicative of entire historic villages and burial sites located in and around land that the military seized from the indigenous Chamorro people. Remnants of the ancient village Magua' were discovered on the future Marine Corps base in Dededo in May and June of 2020. According to reports, a total of 269 historic properties stand to be adversely impacted by the current military buildup, 63 of which are eligible for listing on the U.S. National Registry for Historic Places.

The demolishing and military expansion by the Department of Defense of the several sites of great historical and cultural significance to the Chamorro people risks irreversibly damaging and further disturbing of ancestral burial grounds.

#### *Toxic pollution and impacts on the environment*

In a direct risk to the health of local populations, the Live Fire Training Range Complex's proximity to the Northern Guam Lens Aquifer may have adverse effects on Guam's main source of drinking water.

The expansion of U.S. armed forces and military bases in Guam has furthermore resulted in clearing broad swaths of native forests. The military's plans entail the cutting down of some 1,000 acres of limestone forest, where the last seeding specimen of an indigenous endangered tree species resides.

Construction has also begun in the Litekyan/Ritidian area, a protected wildlife refuge and critical habitat for numerous endangered, endemic wildlife species, including the Mariana fruit bat, Mariana crow, Guam rail, Mariana eight-spot butterfly, and Guam Micronesian kingfisher.

According to information received, the increased United States military presence on Guam is also due to the establishment of the Mariana Island Training and Testing Area, which includes 833,986,973 acres of the ocean surrounding Guam. The United States military use of sonar, explosives, material pollutants, and seafloor devices in this area pose a threat to essential coral, fish, whale, sea turtle, and shark species listed under the Endangered Species Act. Whale beachings and deaths have reportedly occurred due to the military's use of sonar.

The damage to the environment risks adversely affecting the food supply and economic livelihood for the indigenous Chamorro people.

The Mariana Island Training and Testing Area proposed surface danger zone for weapons testing is located adjacent to the ancient village of Haputo. According to reports from August 2020, the Haputo Reserve Area will be exposed to the threat of damage from a live firing range. Allegedly, the United States military did not hold public hearings, nor draft an environmental impact statement for the danger zone, which blocks access to traditional fishing grounds still used by local indigenous fishermen and restricts access to an ancestral Chamorro village.

### *Impacts on health*

The United States tested nuclear weapons in the Pacific during the second half of the twentieth century leaving behind significant radioactive debris in Guam. Increased levels of radiation are suspected to have caused serious health and environmental concerns for the Chamorro people including high incidences of cancer, the second leading cause of death locally. According to a congressional panel formed to study radioactive contamination in Guam, the U.S. military "put the population of Guam in harm's way knowingly and with total disregard for their well-being" causing "the largest ecological disaster in human history." To date, the Chamorro people have reportedly not received any compensation for the health effects suffered from radioactive exposure.

Guam has 19 Superfund sites (sites containing substances so hazardous they require a long-term clean-up response), and at least another 70 other toxic sites

from U.S. storage of nuclear weapons, Agent Orange, mustard gas, and other carcinogens. Multiple production wells accessing the island's sole-source aquifer have been shut down due to U.S. chemical contamination. In 2017, the U.S. Environmental Protection Agency noted the lack of a specific water treatment plant and "substandard drinking water and wastewater infrastructure."

The loss of a traditional agricultural economy on Guam has had significant health impacts on the Chamorro people. The Chamorro must import 90 percent of their food. In addition, U.S. control of the island's commerce limits the choice of food brought to Guam. Consequently, non-traditional processed foods have replaced cultural staples and have led to a high prevalence of diseases like diabetes and cardiovascular disease. U.S. policies have therefore increased food insecurity and economic hardship for Chamorro families.

It is alleged that Guam's management of the COVID-19 crisis has been put at risk by the actions of the U.S. military. Although Guam was slated to be hard hit by COVID-19 in the early months of the pandemic, a successful lockdown and community response effectively prevented a surge in deaths. However, thousands of US sailors were transferred to as many as seven civilian hotels on Guam following a COVID-19 outbreak on the naval ship USS Theodore Roosevelt in March 2020. At least 1,150 sailors from the USS Theodore Roosevelt eventually tested positive for the virus, and while not all were moved to the island, there was the potential to overwhelm local hospitals.

Guam's response to the pandemic was also threatened by alleged violations of local ordinances by U.S. service members. Airmen from an Andersen Air Force Base who arrived on Guam in May 2020 are reported to have violated movement restrictions during their stay at a Guam Hotel. The unit confirmed 35 COVID-19 positive cases, making up 42 percent of the total active cases in Guam as of July 2020 (excluding other military cases present on island). About 30 local businesses may have further been exposed to the virus as a result suffering additional revenue loss. Reportedly, the military did not respond to requests for information on the airmen's activities and whereabouts for contact tracing purposes for ten days, risking further spread of the virus. It is also reported that the military has refused to provide information requested by Guam's Attorney General to determine whether public protocols were followed in this instance. The increase in military personnel brings concern that the outbreak in Guam will become more severe.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern over the U.S. military buildup in the absence of adequate consultation with the Chamorro people and the associated threats to indigenous lands, resources, environmental and cultural rights.

Notably, the Chamorro people have not provided their free, prior and informed consent in connection with the ongoing expansion of U.S. military bases and its accompanying increase in personnel on Guam. The military escalation risks increased contamination to the drinking water, loss of wildlife and biodiversity, irreversible damage of their traditional lands, territories, and resources; loss of traditional

livelihoods, cultural sites and heritage and threatens the physical and cultural survival of the Chamorro.

We are also extremely concerned over the impacts on the life and health of the Chamorro people due to potential and existing risks posed to their health and wellbeing resulting from toxic pollutants surrounding them and the lack of food and water security also due to alarming levels of toxic pollution present in their environment. The situation is aggravated by the impact of COVID19, which has disproportionately affected indigenous peoples across the United States.

We would like to refer your Excellency's Government to the communication ([USA 21/2020](#)) sent by special procedures on 5 August 2020 regarding the disproportionate and differentiated impacts of COVID-19 on indigenous communities in the United States, the inadequacy of State measures taken to mitigate the impacts COVID-19 on indigenous peoples, as well as the lack of State recognition and support for the free exercise of self-determination. We furthermore draw your attention to the Special Rapporteur on the rights of indigenous peoples' report to the General Assembly on 'Impacts of the coronavirus disease on the individual and collective rights of indigenous peoples' of 12 October 2020. The report concludes by urging States to respect indigenous peoples' rights to self-determination and self-governance; to prepare healthcare and prevention protocols and virus containment measures with indigenous representatives; and to first obtain their free prior and informed consent before taking any emergency or unplanned measures that could impact their rights.

We express additional concerns that the Government of the United States of America has not supported self-determination for the Chamorro people of Guam.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide information or comments you may have on the above-mentioned allegations regarding military build-up in Guam; destruction of indigenous Chamorro sacred sites and cultural resources; and associated environmental impacts.
2. What measures have been taken to ensure that the Chamorro can engage in their cultural and religious practices and protect their cultural heritage in view of the growing militarization?
3. Please provide information on steps taken to respect, protect and fulfil the rights of indigenous peoples to life, health, food, safe drinking water, their right to a safe, clean, healthy and sustainable environment in Guam.
4. Please provide information on current or planned measures to ensure the

participation of the Chamorro people in all decision-making affecting them, to obtain their free prior informed consent to projects that affect their lands and territories, and to support and promote the Chamorro peoples' right to self-determination.

5. We would also be interested to receive information on progress achieved in the clean-up of Superfund sites. Are there other sites in the process of being identified as Superfund?
6. Please provide information on any measures taken by the State to initiate a dialogue with the Chamorro people for the resolution of past human rights violations and to prevent further violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment  
of a safe, clean, healthy and sustainable environment

José Francisco Cali Tzay  
Special Rapporteur on the rights of indigenous peoples

Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally sound  
management and disposal of hazardous substances and wastes



## **Annex**

### **Reference to international human rights law**

In relation to the above-mentioned facts and concerns, I would like to draw the attention of your Excellency's Government to its obligations under **binding international human rights treaties** including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the International Covenant on Civil and Political Rights (ICCPR).

The International Convention on the Elimination of All Forms of Racial Discrimination, Article 5, commits State parties to guarantee the right of everyone to enjoy their political rights and to participate in the conduct of public affairs by giving significant importance to the right to own property alone or in association. Article 7 positively outlines the obligation of State parties to adopt effective measures in the field of culture to promote understanding, tolerance, and friendship among racial and ethnic groups in line with the purpose outlined in the Charter of the United Nations. The International Committee on the Elimination of All Forms of Racial Discrimination has consistently called upon the United States to "Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them, based on their free, prior and informed consent."

The International Covenant on Civil and Political Rights, Article 1 mandates all peoples have a right to self-determination and to freely determine their political status and pursue their own economic, social, and cultural development. All peoples may freely dispose of their natural wealth and resources, and in no situation may a people be deprived of a means for subsistence. States shall promote the realization of the right of self-determination and respect the right in agreement with the Charter of the United Nations. Article 25 positively affirms that every citizen shall have the right to take part in the conduct of public affairs, either directly or through freely chosen representatives. Article 27 notes that States may not deny ethnic and religious minorities the right to enjoy their culture.

We furthermore wish to draw attention to Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. As highlighted by the Human Rights Committee in General Comment no. 36, duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para. 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para. 62).

Your Excellency's government has endorsed, on 16 December 2010, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). By its very nature, the Declaration on the Rights of Indigenous Peoples is not legally binding, but it is

nonetheless an extension of the commitment assumed by United Nations Member States – including the United States – to promote and respect human rights under the United Nations Charter, customary international law, and multilateral human rights treaties to which the United States is a Party.

As a universal framework setting out the minimum standards of protection of indigenous peoples' rights, UNDRIP establishes, at Article 3, indigenous peoples have the right to self-determination and freely determine their own political status, and at Article 8, indigenous peoples have the right to not be subjected to forced assimilation or destruction of their culture. Indigenous people also have the right to resist any population transfer which has the effect of violating or undermining their rights.

Article 19 of UNDRIP affirms that States shall consult and cooperate in good faith with indigenous peoples' representatives to obtain their free, prior and informed consent before implementing measures that affect them. Article 20 of UNDRIP provides the right of indigenous peoples to 'maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.'

UNDRIP sets out in Article 24 (2) that indigenous peoples have an equal right to the enjoyment of the highest attainable standard of physical and mental health and in Article 21 stipulates that indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including in the area of health.

UNDRIP asserts in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. UNDRIP furthermore underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 29 of UNDRIP affirms that indigenous peoples have the right to conserve and protect the environment and productive capacity of their land, territories and resources and that States shall not store or dispose of hazardous materials on the land or territories of indigenous peoples without their free, prior and informed consent.

UNDRIP furthermore provides in Article 30 that military activities shall not take place in the lands and territories of indigenous peoples unless justified by public necessity or freely agreed with or requested by the indigenous peoples concerned. States shall undertake effective consultation with indigenous peoples through appropriate procedures and through their representatives prior to using their lands for and territories for military activities.

Finally, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. The Principles state that States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights (Principle 1); States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment (Principle 2); and States should ensure the effective enforcement of their environmental standards against public and private actors (Principle 12).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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## **ANNEX C:**

**United States' response to the Joint Allegation Letter of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes regarding Chamorro indigenous people in Guam (21 Oct. 2021).**

Daniel A. Kronenfeld  
Deputy Permanent Representative, Human Rights  
Permanent Mission of the United States of America to the United Nations and  
Other International Organizations in Geneva  
Geneva, Switzerland

October 21, 2021

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the  
enjoyment of a safe, clean, healthy and sustainable environment  
Geneva, Switzerland

José Francisco Cali Tzay  
Special Rapporteur on the rights of indigenous peoples  
Geneva, Switzerland

Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally  
sound management and disposal of hazardous substances and wastes  
Geneva, Switzerland

Dear Special Rapporteurs:

The United States thanks the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment; the Special Rapporteur on the rights of indigenous peoples; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes for their January 29, 2021 letter regarding Chamorro indigenous people in Guam.

The Biden-Harris Administration has policies that recognize and seek pathways to greater remediation of racial and ethnic injustice. The United States acknowledges past and present Federal actions and institutionalized practices that, in some cases and circumstances, have not been consistent with protection of equal rights and opportunities for Americans in Guam's diverse communities, including indigenous individuals in the territory.

Every person born on Guam, including Chamorros, is an United States citizen at birth. The strong relationship among Guamanians and the rest of the nation was demonstrated by the inclusion of Guam's communities in the same Federal pandemic relief, recovery, and Build Back Better programs provided to states and other territories, as well as measures taken by the local government, first responders and the island community to aid, assist and support U.S. military personnel in Guam during a significant COVID infection incident aboard Navy vessels and at bases in the territory during 2020.

Guam's special status as a U.S.-administered, non-self-governing territory imposes certain conditions on its inhabitants. Guam is locally self-governing under federal and local law establishing democratic political institutions and strong private led sector. This is why the United States recognizes its commitments under Article 73(e) of the U.N. Charter to promote the right to self-determination of the people of Guam. Although the United Nations lists Guam as a Non-Self-Governing Territory, Guam is governed by Guamanians. This includes indigenous Chamorro, who make up the majority of the population of Guam and who Guamanians have freely elected to positions of political leadership in the territory. The people of Guam, including Chamorros, are responsible for establishing their priorities; deciding how their resources are shared and expended; and determining their path to honor their identity and foster the relationships necessary to nurture it. The United States will continue to stand by Guam in its endeavors to improve the quality of life of its people, as it does all communities under the U.S. flag.

The right of self-determination of the people of Guam must be exercised by the people of Guam, not just one portion of the population; it cannot endorse a process under which the rights of some groups are held to take precedence over the rights of others based on their ethnicity or ancestry; the Government of the United States is committed to working with all the people of Guam towards a resolution of the current political status of Guam; and the ultimate outcome of this process must be reached in accordance with the laws of the United States and the principle that self-determination must be exercised by the citizenry as a whole.

In contrast with states or territories that have been fully integrated into the United States, territories that have not been joined in permanent union under the U.S. Constitution hold a unique position under the American system of constitutional federalism. For example, voting rights in federal elections for full and equal representation in the U.S. Congress and Electoral College that chooses the President of the United States are allocated only to states of the union. Citizens

not eligible to vote in a state cannot vote in federal elections for those purposes. Under the legal framework for administration of Guam and other territories not within a state, Congress and the Federal courts determine the application of Federal territorial statute law defining the rights and duties of U.S. nationality and citizenship, rather than direct application of the U.S. Constitution as in the states and territories incorporated into the union.

The military augmentation in Guam referred to as a “build-up” is a strategic realignment representing an essential component of U.S. leadership maintaining peace in a strategic region. This strategic realignment helps keep America and our allies safe. All activities by U.S. military forces in Guam that impact human rights relating to the environment, indigenous peoples, and military-use related waste and hazardous waste are carried out in accordance with local laws and U.S. law as applicable in the territory. In addition, military augmentation in Guam is conducted consistent with applicable local law and Federal law regarding environmental safety and protection, again according to legal and operational standards unsurpassed by the nations of the world. Accordingly, military build out impacts that affect the cultural and historical interests of indigenous populations, or which affect environmental stewardship and waste management impacting indigenous peoples and all other persons in Guam are subject to administrative as well as judicial procedures, as the case may be, for adjudication of legal claims for loss, damage, or injury that may occur.

Regarding the specifics in the letter, we are pleased to provide the following information.

(a) Measures taken to ensure that Chamorro can engage in their cultural and religious practices and protect their cultural heritage in view of the growing militarization.

- All residents of the United State benefit from the protections of Federal law in their pursuit of engaging in religious and cultural practices.
- Guam has established the Department of Chamorro Affairs, the Guam Ancestral Lands Commission, the Guam Council on the Arts and Humanity and other institutions within its government structure that can develop, support, and promote Chamorro heritage independent of the Federal government.
- Guamanian institutions have access to Federal grants and programs that can provide funding and technical assistance to support their missions.

(b) Steps taken to respect, protect and fulfil the rights of indigenous peoples to life, health, food, safe drinking water, their right to a safe, clean, healthy, and sustainable environment in Guam.

- The Federal government takes seriously its human rights obligations.
- The Federal government includes Guam and the other Territories in most laws and regulations that protect life and promote health and safety in food production, housing, workplaces, and the natural environment.
- Guam is governed by Guamanians who are freely elected by Guamanians to establish their priorities and to decide how their resources are shared and expended.
- Guam has the authority to establish its own laws and regulations to enhance federal law or to address gaps in the federal regulatory framework.

(c) Information on current or planned measures to ensure the participation of Chamorros in all decision-making affecting them, their lands and territories, and to support and promote Chamorros' right to indigenous self-determination.

- Developments on Federal land mandate various phases of evaluation of the impact to the environment and natural and cultural resources and require input from effected parties and the public.
- Guam's land use laws and regulations govern territorial land and interface with federal law.

(d) Information on progress achieved in the clean-up of Superfund sites. Are there other sites in the process of being identified as Superfund?

- There are only 2 sites designated as National Priorities List (NPL)/Superfund sites on Guam, Ordot Dump and Andersen Air Force Base, and no other sites have been proposed for the NPL.
- With regard to the Ordot Dump site, on May 24, 2021, the U.S. Supreme Court unanimously decided that the Government of Guam is not time-barred from suing the Federal Government for response costs incurred for a cleanup at a waste disposal site allegedly associated with the U.S. Navy.
- The Supreme Court decision described above derived from a legal dispute between the United States and Guam related to a 2004 settlement agreement under the federal Clean Water Act. Pursuant to that 2004 settlement, Guam agreed to conduct a cleanup of a waste disposal site. Thirteen years later, Guam sought costs from the United States for the cleanup. The U.S. Court of Appeals for the D.C. Circuit previously ruled that Guam was not entitled to recover those costs from the United States because the 2004 settlement also gave rise to a particular kind of claim under the federal Superfund law, which that law requires be brought within a three-year statute of



limitations. In its May 2021 decision, the Supreme Court held that the 2004 settlement did not give rise to the particular kind of claim to which the statute of limitations applies. Guam may now attempt to pursue a different kind of claim under the Superfund law.

(e) Information on any measures taken by the State to initiate a dialogue with Chamorros people for the resolution of past human rights violations and to prevent further violations.

- World War II ended for the people of Guam in 1944, when the United States military liberated the island from nearly three years of Japanese occupation. In 1945, the Guam Meritorious Claims Act was signed into law to provide “immediate relief” to people in Guam by the prompt settlement of meritorious claims for damages to real and personal property and for death and personal injury incident to the combat and non-combat operations of the armed forces of the United States and Japan.
- The war remains a sensitive issue for Chamorros. For decades, many on Guam believed that a lack of parity existed between war claims paid to the residents of Guam under the Guam Meritorious Claims Act and awards made to other similarly affected U.S. citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II. U.S. payment of supplemental war reparations for wartime atrocities committed by the Imperial Japanese Forces was delayed, and the number of Chamorro survivors from the war continued to diminish.
- In 2016, the Guam World War II Loyalty Recognition Act was signed into law, clearing the way for a supplemental program for federal payment of compensation.
- In 2019, while a correction to that law made its way through Congress, the governments of the United States and Guam agreed to let the Government of Guam make payments to war survivors, later to be reimbursed by the federal government. Those Government of Guam payments to war survivors began in January 2020.
- The U.S. government subsequently assumed the process of paying adjudicated claims directly. To date, the Foreign Claims Settlement Commission, U.S. Department of Justice has issued Final Decisions in 2,823 claims with awards totaling \$29,879,457.97. The estimated total of all awards will range between \$35 – \$43 million.

(f) Measures taken by the United States to initiate a dialogue with the Chamorro people for the resolution of past human rights violations and to prevent further violations.

- The Biden-Harris Administration welcomes and initiates discussions with indigenous peoples. Over the years, indigenous peoples have engaged in dialogue with U.S. government representatives about specific human rights issues. Considering indigenous peoples' perspectives leads to more informed decisions.
- The United States is committed to preventing future human rights abuses against the Chamorro people. We are also committed to taking actions, as appropriate, to address past wrongs.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a series of loops and a final flourish.

Daniel A. Kronenfeld