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**Towards Decolonization & Repair:
*U.S. territories, self-determination, and the
incompatibility of colonialism and human rights***

***NGO Shadow Report before the United Nations Human Rights Committee
139th Session, Geneva, 9 October - 3 November 2023***

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This report is being submitted by the following human rights and community organizations: Blue Ocean Law, the Center for Constitutional Rights, and the American Civil Liberties Union - Puerto Rico. (See Appendix 1). The partners welcome the opportunity to contribute to the UN Human Rights Committee's review of the United States' compliance with the International Covenant on Civil and Political Rights.

ISSUE SUMMARY:

The United States holds itself out as a global leader committed to liberty, justice, and the rule of law. Yet in this, the fourth decade for the eradication of colonialism, the United States continues to hold unambiguous colonial possessions—the five unincorporated U.S. territories of Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, the U.S. Virgin Islands, and Puerto Rico.¹ These island jurisdictions have no meaningful representation within the United States’ political system and are subject to contamination and exploitation as a result of U.S. militarization² and economic extraction. This ongoing explicit colonialism violates the civil and political rights of the peoples living in U.S. territories, namely the failure to guarantee self-determination and the lack of effective remedy available to colonial subjects, and calls into question both the U.S. government’s commitment to its international human rights obligations, as well as the willingness of the state to adequately account for the harms of colonization, militarization and capitalist extraction.

This report focuses specifically on the experiences of colonized peoples in Guam and Puerto Rico, though the peoples of the other territories are grappling with many of the same harms. By centering the experiences of communities in Guam and Puerto Rico³, who are currently living under U.S. colonial rule, the Human Rights Committee (HRC) can reinforce the primacy of the right to self-determination, and the international commitment to decolonization and repair for historic harms. Further, the Committee’s attention to the United State’s colonial character will encourage compliance with its duty to render reports to the U.N. General Assembly under Article 73 (e) of the Charter, regarding the administration of the territories. Though the United States has avoided this responsibility for decades by relying on the “Insular Cases,” discussed further below, failure to uphold this “sacred trust” must be understood as a defining feature of U.S. governance as well as a grave violation of international law.

The history of the U.S. settler-colonial project is characterized by the ethnic cleansing, mass displacement and dispossession of Indigenous peoples and the enslavement of African peoples to consolidate white power over land and capital.⁴ Settlers, in the words of scholar

¹ The United States maintains that Puerto Rico and the CNMI have completed acts of self-determination by entering into commonwealth covenants with the United States. While these covenants provide for more local autonomy, Puerto Rico and CNMI remain subject to the same colonial regime as the other unincorporated territories. They remain possessions “belonging to” the United States and subject to the plenary authority of Congress, their citizens have no right to vote in federal elections and no meaningful representation in the federal legislature, and—unlike U.S. states—they are not considered to have any independent sovereignty. *See Puerto Rico v. Sanchez Valle*, 579 U.S. (2016), 136 S. Ct. 1863 (2016) (declared Puerto Rico as a territory without sovereignty for purposes of the double jeopardy doctrine)

² See Report of the Special Rapporteur on minority issues, Fernand de Varennes, Visit to the United States of America, 17 August 2022, A/HRC/49/46/Add.1; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/462/51/PDF/G2246251.pdf?OpenElement>

³ For reference, the populations of the island territories: Guam - 170,534; Puerto Rico - 3.264 million

⁴ *See* Natsu Taylor Saito, *Tales of Color and Colonialism: Racial Realism and Settler Colonial Theory*, 10 FLA. A&M U. L. REV. 1 (2014) (arguing that the United States must be analyzed as a settler colonial society in order to accurately understand the structural dynamics of race and racism in America).

Mahmood Mamdani, “are made by conquest, not just by immigration.”⁵ Seeking to “eliminate the Native,”⁶ settler-colonizers deployed strategies of removal and replacement to violently uproot Indigenous peoples and create a racialized and gendered labor system to establish domination and extract profit from stolen land.⁷

Despite Indigenous refusal, legacies of resistance of colonized people, and centuries of people’s movements aiming to disrupt this racist and intolerable status quo, these logics of domination, extraction and exploitation continue to define U.S. domestic and foreign policy.⁸ The denial of self-determination remains a feature of U.S. governance of marginalized and racialized communities, implicating other human rights such as the right to life as well as broader political disenfranchisement and socioeconomic disinvestment.⁹ This submission considers how the racist policies of disinvestment and abandonment that have been historically perfected on Black and Indigenous people across Turtle Island (North America) have also been exported to U.S. overseas colonies like Guam and Puerto Rico.

Insular Cases: Reducing Colonialism to A Domestic Concern

In undertaking overseas expansionism at the turn of the 20th Century, the United States employed many of the same strategies of racialized dispossession and oppression it had employed across the continent and in Hawai‘i. At the same time, while island possessions like Guam and Puerto Rico were seen as strategically important, they were not viewed as suitable homelands for white settlers.¹⁰ Thus, rather than incorporating the territories into the settler-colonial Union, the United States developed a system of administration that afforded the federal government immense power over the territories but very little responsibility for the

⁵ Mahmood Mamdani, When Does a Settler Become a Native? Reflections of the Colonial Roots of Citizenship in Equatorial and South Africa (May 13, 1998), available at <http://citizenshiprightsinafrica.org/docs/mamdani%201998%20inaugural%20lecture.pdf>.

⁶ Patrick Woolf, Settler colonialism and the elimination of the native, 8 *Journal of Genocide Research* 387-409 (2006)

⁷ Joshua Inwood & Anne Bond, *Confronting White Supremacy and a Militaristic Pedagogy in the U.S. Settler Colonial State*, 106 *Annals of American Associations of Geographers* 521, 521 (1 July 2015); Robert A. Williams, JR, *The American Indian in Western Legal Thought: The Discourses of Conquest* 246-51 (1990) (discussing Anglo-American settlers' reliance on the Lockean notion of transforming "wastelands" into valuable property)

⁸ Audra Simpson, *On Ethnographic Refusal: Indigeneity, 'Voice' and colonial Citizenship* (Dec. 9, 2007) https://pages.ucsd.edu/~rfrank/class_web/ES-270/SimpsonJunctures9.pdf

⁹ For example, the water crisis in the predominantly and historically Black city of Jackson, Mississippi, which reached a dangerous inflection point in 2022, exposes both the structural racism as well as the far-reaching and life-altering consequences of the denial of self-determination. The city of Jackson can be understood as an “internal colony” where state decision-makers in Mississippi, who are overwhelmingly white, have long neglected the city and continue to block the public funds necessary to repair the water infrastructure system. They have failed to guarantee the residents of Jackson the human right to safe drinking water leaving 160,000 people, along with hospitals, fire stations and schools, without safe drinking water--in many cases, these communities had no water services at all. See *Mississippi City's Water Problems Stem From Generations of Neglect*, SPLC (28 June, 2023). <https://www.splcenter.org/news/2023/06/28/timeline-jackson-mississippi-water-problems>; see generally Gutiérrez, Ramón, *Internal Colonialism: An American Theory of Race*, *Du Bois Review*, 281–295 (discussing the theory of internal colonization of black and people of color within the United States).

¹⁰ See Generally Lanny Thompson, *Imperial Archipelago: Representation and Rule in the Insular Territories under U.S. Dominion After 1898* (Oxford Press, 2010)

well-being of territorial inhabitants.¹¹ The doctrine of territorial incorporation, announced by the U.S. Supreme Court in a series of racist decisions, known as the “Insular Cases,” provides that because the “alien races” of the territories are “savage” and “different,” the territories “belong to” but are “not a part of” the United States and, accordingly, the Constitution does not apply of its own force therein.¹² Instead, the territories remain subject to the plenary power of Congress, which determines the extent to which the Constitution applies and when and if the territories shall become more than mere possessions. To this day, the doctrine of territorial incorporation has been upheld and defended by the Supreme Court and every presidential administration as an appropriate framework for administering the territories. It was on this basis that, in 2016, the U.S. Supreme Court held that territories, unlike states, have no independent sovereignty.¹³ Rather, under U.S. domestic law they are considered to be under the total dominion of the federal government.¹⁴

A Historic Opportunity to Eliminate Human Hierarchy

The ideology of human hierarchy employed by the United States to administer its territorial possessions is precisely what the human rights framework has attempted to eliminate. Without robust protections and international intervention in response to such blatant suspension of international norms, the United States will continue to behave with impunity with profound implications for the most marginalized communities, whether within the United States, in its territories, and abroad. The Human Rights Committee has the unique opportunity to address the ongoing reality of the United States’ position as a colonial power and specifically, the U.S. government’s ongoing colonial relationship with territories such as Guam and Puerto Rico. Acknowledgement of the colonial reality in Guam would be a historic first in the Committee’s review of the United States, and a significant step in supporting decades of community demands for decolonization and repair (See Appendix 2). Despite assertions from the U.S. government that bestowing nominal rights or granting discrete engagement in procedural democracy is a sufficient form of decolonization,¹⁵ the Committee must make clear that the right to self-determination entails the full range of internationally recognized options for effectuating the right, including outright independence should that be the will of the colonized people. It also

¹¹ Christina Duffy Barnett, *The Edges of Empire and Limits of Sovereignty: The American Guano Islands*, 57 *Am. Q.* (2005).

¹² *Downes v. Bidwell*, 182 U.S. 244, 279 (1901) (reasoning that Puerto Rico could “belong[] to the United States, but not [be] a part of the United States within the revenue clauses of the Constitution,” because its “alien races” were so incongruous with “Anglo-Saxon principles” that “the administration of government and justice ... may for a time be impossible.”)

¹³ *Puerto Rico v. Sanchez Valle*, 597 US (2016)

¹⁴ On June 30, 2016, President Barack Obama signed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA, at 48 U.S.C. § 2101 et seq.), a bill that establishes a fiscal or Control Board (Financial Oversight and Management Board for Puerto Rico -FOMB-) to oversee the commonwealth’s finances, with the task of restoring the credit of Puerto Rico by paying a multibillion-dollar debt of 73 billion dollars to bond holders. The fiscal board consists of members appointed by the President of the United States, and governs **despite never being elected by the People of Puerto Rico**. As such, the Board unlawfully “usurp[ed] the Commonwealth of Puerto Rico’s political and governmental powers and right to home rule.” *Altair Global Credit Opportunities Fund (A), LLC v. United States*, 138 Fed. Cl. 742 (U.S. Claims 2018).

¹⁵ See generally Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, (December 30, 2011)

demands accountability for past and present harms—as has been repeatedly stated by authorities including the UN General Assembly and the International Court of Justice (ICJ).¹⁶ Anything less degrades human rights protections not only for the people of Guam and Puerto Rico, but for all peoples.

THE INHERENT CONTRADICTION OF COLONIALISM AND SELF-DETERMINATION (Arts. 1, 25, 26, 27)

Colonial frameworks—Indigenous elimination, anti-Black racism and immigrant exploitation—continue to shape governing structures within the United States.¹⁷ The U.S. colonial project persists today in the continued administration of colonial possessions. The subjugation of these jurisdictions to the primacy of federal law and the United States’ concomitant failure to provide any process for their people to freely choose their political status represents an ongoing denial of the fundamental right to self-determination. In direct contravention of the United States’ human rights obligations, over four million people in U.S. territories are summarily denied legal rights simply because of their national origin, birth or place of residence.¹⁸ Though U.S. citizens (with the exception of residents of American Samoa), territorial inhabitants cannot vote in federal elections and do not have voting representation in Congress. In Guam, Puerto Rico, and the CNMI,¹⁹ unfettered militarization on “U.S. soil” not only violates the economic self-determination principle of permanent sovereignty over natural resources, but also gives rise to a number of substantive human rights violations, including the right to life, right to health, and right to food.²⁰ Despite passing mention of the existence of the territories in previous reviews before the Human Rights Committee, the United States has not been held accountable as a

¹⁶ See, e.g., *Declaration on the Granting of Independence to Colonized People, Res. 1514 (XV) (Dec. 14 (1960))*; *Legal Consequences of the Separation of the Chagos Archipelago*, Advisory Opinion, I.C.J. Reports 2019, p. 95.

¹⁷ See generally Andrew Smith, *Indigeneity, Settler Colonialism, White Supremacy*, in *RACIAL FORMATION IN THE TWENTY-FIRST CENTURY* 66-90 (2012) (discussing the three “logics of white supremacy” that enable settler colonialism). Also see Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 *Sociology of Race and Ethnicity* 1 52-72 (2014) (discussing U.S. settler colonialism as an ongoing structure, not a past historical event, to understand race and gender formation, stating “The settler goal of seizing and establishing property rights over land and resources required the removal of indigenes, which was accomplished by various forms of direct and indirect violence, including militarized genocide. Settlers sought to control space, resources, and people not only by occupying land but also by establishing an exclusionary private property regime and coercive labor systems, including chattel slavery to work the land, extract resources, and build infrastructure.”)

¹⁸ International Covenant on Civil and Political Rights, GA res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (Dec. 16, 1966), entered into force Mar. 23, 1976; ratified by U.S. September 8, 1992, [hereinafter ICCPR], Art 2, Art. 26; International Convention on the Elimination of All Forms of Racial Discrimination, GA res. 2106 (XX), entered into force 4 January 1969, ratified by U.S. October 21, 1994 [hereinafter CERD] Art. 5.

¹⁹This is also the case in the freely associated states of the Marshall Islands, Palau, and the Federated States of Micronesia.

²⁰ See 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 to the United States, U.N. Doc. AL USA 7/2021 (Jan. 29, 2021), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25885>

colonial power actively denying the human rights of its various colonial subjects. This report briefly elucidates this situation, focusing first on Guam and then on Puerto Rico.

Guam

Guam has been subject to continued colonization for some 500 years—by Spain, Japan, and, for the past 125 years, by the United States. The Indigenous people of Guam, the Chamorro, have been under U.S. colonial rule since 1898. Between 1898 and 1950, Guam was governed by the U.S. Navy, with the exception of a brief period of Japanese occupation between 1941 and 1944. The United Nations listed Guam as a non-self-governing territory in 1946, and the United States accepted as a “sacred trust” the obligation to promote the well-being of territorial inhabitants and to effectuate their right to self-determination.²¹ Instead the United States has turned Guam into a military outpost, entrenching its own power in the Pacific with little care for the well-being of the territory’s inhabitants. To this day, Congress continues to enjoy “plenary power” over Guam, while denying its people full rights. As is the case with Puerto Rico, discussed below, the people of Guam cannot vote for U.S. President and are represented only by a non-voting member of the U.S. Congress, seriously undermining their right to meaningful political participation (Art. 25).²²

Guam was subject to outright military rule until 1950, when Congress passed the Guam Organic Act, establishing a civilian government and extending application of most provisions of the U.S. Constitution to Guam. The imposition of American law in the territory has actively frustrated the ability of Guam’s colonized peoples to exercise their right to self-determination or to access the remedy of decolonization, both of which are guaranteed under international law. In 2000, Guam’s territorial legislature passed a law to establish a plebiscite on the question of Guam’s future political status—whether to pursue integration as a U.S. state, free association, or independence. The poll was to be open to “native inhabitants of Guam,” a race-neutral term created in the first instance by Congress in the Guam Organic Act and later codified by the Guam Legislature to refer to all the people living in Guam in 1950 and their descendants.²³ In other words, the colonized class. In 2015, prior to the implementation of the plebiscite, Arnold Davis, a statesider who relocated to Guam, sued the Guam Legislature alleging that the plebiscite violated, among other things, the Fourteenth and Fifteenth Amendments to the U.S. Constitution. In 2019, a U.S. federal court agreed with Davis on Fifteenth Amendment grounds, holding that the plebiscite amounted to race-based discrimination.²⁴

²¹ UN Charter, art. 73; Blue Ocean Law and Unrepresented Nations & Peoples Organizations, *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*.

²² Blue Ocean Law and Unrepresented Nations & Peoples Organizations, *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*.

²³ Guam Organic Act of 1950, 48 U.S.C. 1421; *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019).

²⁴ *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019). This decision adopts the reasoning of *Rice v. Cayetano*, a Supreme Court decision that found that voting for members of the Office of Hawaiian affairs—a body meant to administer programs for Native Hawaiians—could not be restricted to “Hawaiians,” defined as inhabitants of Hawaii in 1788 and their descendants.

The *Davis* decision demonstrates that U.S. domestic law is not only incapable of remedying the harms of colonization, but actively prevents the inhabitants of non-self-governing territories from exercising their right to self-determination.²⁵ The sweeping application of race-neutral constitutional commands, coupled with the imposition of the Western norm of private property, has also impeded Chamorro and other Indigenous peoples in the U.S. territories from retaining sovereignty and ownership over their ancestral land.²⁶ Moreover, in a system that axiomatically collapses ancestry with race, the ability of the colonized class to even express their opinions about their political future is increasingly foreclosed. Further, U.S. law and policy, including the Jones Act and an ever expanding military presence,²⁷ have divested Guam's native inhabitants of their lands and imposed an artificially high cost of living, forcing many to leave their homeland.

The U.S. military has also served to entrench colonial control over the island and disrupt the power of the people of Guam to organize for a self-determined future. The U.S. military already occupies nearly 30% of Guam, thereby denying the people of their right to permanent sovereignty over their land and natural resources.²⁸ Moreover, much of the island and its people have been subjected to toxic contamination as a result of various military activities over the course of U.S. colonial rule. Some 90 toxic sites associated with military activity have been identified on the island, and residents have higher rates of cancer and other conditions associated with toxic exposure than anywhere else in the United States.²⁹

Today, the U.S. military is expanding its footprint in the form of a large-scale military buildup, at the center of which is the construction of a new military base. This buildup is moving forward despite adamant opposition by the people of Guam.³⁰ Crucially, the military has failed to adequately consult, let alone secure the consent of the Chamorro people, in contravention of key

²⁵ See, e.g., Julian Aguon, *Reflections While Driving*, in *No Country For Eight-Spot Butterflies* (Astra House, 2022); Addie Rolnick, *Indigenous Subjects*, 131 *Yale L. J.* 2652 (2022).

²⁶ *Davis v. Commonwealth Election Comm'n*, 2014 WL 2111065 (D.N.M.I. 2014), *aff'd*, 844 F.3d 1087 (9th Cir. 2016). It is also important to note that equal protection jurisprudence in the United States has evolved into a framework of race neutrality that ignores legacies of race-based oppression making these laws an ill-fit to remedy the harms of racism. See, e.g., *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, D. No. 20-1199 (Jun. 29, 2023) (striking down Affirmative Action as race-based discrimination).

²⁷ The military presence has not only divested colonized peoples of their lands, it has also driven up the cost of living and induced a housing crisis, as military personnel choose to live in civilian areas while retaining access to cheaper commodities available on base.

²⁸ See Kevin Lujan & Tiara Na'puti, "Indigenous Resistance as Multiscalar, Insurgent Planning under Empire." *Interface Resistance and Response in Planning*, *Planning Theory & Practice*, 24, no.2 (2023). DOI: [10.1080/14649357.2023.2190681](https://doi.org/10.1080/14649357.2023.2190681).

²⁹ See 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 to the United States, U.N. Doc. AL USA 7/2021 (Jan. 29, 2021), available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25885>

³⁰ See generally *id.*; see also Alexander Ossola, *Guam's Ecological Fate is in the Hands of the U.S. Military*, *The National Geographic* (27 Dec. 2018)

https://www.nationalgeographic.com/environment/article/guam-endangered-species-ecology-threatened-us-military-base-expansion?irgwc=1&irclickid=zdRTuA2-9xyPTaww3CU5SRqEUKF1VOShy3vbUU0&cmpid=org%253Dngp%253A%253Amc%253Daffiliate%253A%253Asrc%253Daffiliate%253A%253Acmp%253Dsubs_aff%253A%253Aadd%253DSkimbit%2520Ltd.

human rights instruments as well as Articles 15, 17, 19, 30, 32, and 36 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).³¹ The build-up includes the transfer of 5,000 new marines and 1,300 dependents from Okinawa, and up to 10,000 new or temporary residents at the peak of construction, a significant impact to an island with a population of roughly 170,000 people. The decision to make the transfer was negotiated bilaterally between the United States and Japan, with no option or opportunity for the people or territorial government of Guam to have any say in the matter.

The costs of the U.S. military expansion on Guam is incalculable, particularly the impact on the natural environments and resources critical to Chamorro culture, sovereignty, and wellbeing. For example, the military is constructing a live-fire training range at Ritidian Point over sacred Indigenous villages and burial grounds dating to 2000 B.C., unearthing a significant number of human remains and cultural artifacts in the process.³² This project will result in the destruction of thousands of acres of pristine limestone forest, which is home to critically endangered species and is the only environment in which certain plants essential to Chamorro medicine and cultural practices are able to grow. The firing range is also being built over Guam's only freshwater aquifer, compromising the island's main source of drinking water.³³ Entry of local people to both the land and ocean of Ritidian Point will be restricted—with 3,660 acres of land around the firing range and 2.8 miles offshore being cordoned off as a “surface danger zone.” Much of the land and the entire ocean space in the surface danger zone extends beyond the military base into civilian areas. As a result, Chamorro fishers will not have access to traditional fishing grounds and Chamorro healers will be unable to access medicinal plants and herbs while the range is in use.

Another substantial impact of the military presence on Guam is the Marianas Island Training and Testing area (MITT). The MITT covers the entire land area of Guam and the CNMI as well as a 984,469 square mile swath of ocean surrounding the islands. This area, which is nearly the combined size of all of the countries in Western Europe, is used by the US military to prepare for war.³⁴ U.S. military vessels, personnel, and weapons are deployed in the area to simulate war-time scenarios, which includes live-firing on land, at sea, and in the air. The United States also invites foreign militaries to enter Guam's waters and partake in these war games. Between 2020 and 2025, the federal government has authorized the military to detonate 12,000 explosives, destroy nearly 30 miles of coral reef, and cause the incidental death and injury to 26 species of marine mammals (including endangered species).³⁵

Beyond the immediate destruction of natural resources and the restrictions on cultural practices, the ongoing militarization of Guam looms as an existential threat. For instance, the

³¹ Michael Lujan Bevacqua, Guam: Protests at the Tip of America's Spear, 116 THE SOUTH ATLANTIC QUARTERLY 174, 178 (2017) (noting that “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.”)

³² See Lujan & Na'puti, *supra* note 44.

³³ *Id.*

³⁴ Tiara Na'puti & S.C. Frain, “Indigenous environmental perspectives: Challenging the oceanic security state.” Security Dialogue, 54, no. 2 (2023).

³⁵ Marianas Island Training and Testing Area Supplemental Environmental Impact Statement (2020).

current expansion also entails development of a missile defense system that would include mobile installations in civilian areas. The local community has expressed grave concerns that the military expansion would threaten their very existence given the island's geopolitical position and the escalating regional tension between the U.S. and China.³⁶ Once the “tip of America's spear,” Guam has now been referred to as a “first-strike” community, reflecting its position as the primary target in any conflict between the United States and its adversaries.³⁷ Both China and North Korea possess “Guam Killer” missiles, intended to make nuclear and conventional weapon strikes on the island. The very real threat of extermination as a result of U.S. militarization is in direct contravention of the United States' responsibilities to effectuate the people's health, safety and welfare.

In the absence of decolonization and demilitarization, the U.S. will continue to be in violation of its international human rights obligations. Moreover, if this pattern of gross disregard continues unabated, it will deepen global disregard of the fundamental right of all peoples to self-determination, a peremptory norm of an *erga omnes* character which the ICJ deems irreproachable.

Puerto Rico

In the aftermath of the Spanish-American War in 1898, Spain ceded Puerto Rico—held as a Spanish colony since 1493—to the United States, granting Congress the power over “the civil rights and political status” of the territory and its people.³⁸ Shortly after acquiring the island as a spoil of war, the United States established a military government that ostensibly came “bearing the banner of freedom,” not to make war upon the people of a “country that for centuries has been oppressed.”³⁹ However, after establishing a civilian colonial government, the U.S. Supreme Court ruled in the first of the Insular Cases that Congress had absolute power to “admit [Puerto Rico] as a state ... sell its public lands to individual citizens or [] donate them as homesteads to actual settlers.”⁴⁰ Although a limited form of U.S. citizenship was granted to the people of Puerto Rico in 1917 through the Jones Act,⁴¹ this particular form of citizenship remains

³⁶ See e.g., North Korea threatens strike on Guam, CNN (9 Aug. 2017).

<https://www.cnn.com/2017/08/08/politics/north-korea-considering-guam-strike-trump/index.html>; See generally Blue Ocean Law and Unrepresented Nations & Peoples Organizations, *Submission to Mr. Francisco Cali 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*.

³⁷ See John O'Connor, “Guam 'being offered as a first-strike community,' *The Guam Daily Post*, 19 July 2023, available at:

https://www.postguam.com/news/local/guam-being-offered-as-a-first-strike-community/article_b6e50e04-2523-11ee-8ca3-732b67fcc304.html

³⁸ See Treaty of Paris, Dec. 10, 1898, U.S.-Spain, art. II, IX, T.S. No. 343

https://avalon.law.yale.edu/19th_century/sp1898.asp#art2 (“Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.”)

³⁹ Ediberto Roman, *Empire Forgotten: The United States's Colonization of Puerto Rico*, 42 Villanova Law Review 1119, 1141 (1997).

⁴⁰ *DeLima v. Bidwell*, 182 U.S. 1, 197 (1901) (holding that the Treaty of Paris established Puerto Rico as an unincorporated, but not organized, U.S. territory that should not be treated as a state)

⁴¹ Note that the Jones Act has also impeded economic progress for Puerto Rico and other territories. The Act requires that goods shipped between U.S. ports by air or sea be carried on vessels that are U.S.-owned, U.S.-crewed, U.S.-registered, and U.S.-built. This restriction dramatically increases the cost of shipping to overseas territories,

inferior—Congress extended citizenship statutorily and can just as easily take it back.⁴² More broadly, the island’s people lack full constitutional protections and hold inferior rights and political representations compared to citizens of the several states.⁴³ The people of Puerto Rico are unable to achieve full self-determination,⁴⁴ and their structural subordination, like all colonized subjects, is justified by the racist ideologies of their colonizers.⁴⁵

Despite two seemingly significant advances - the passage of the 1917 Jones Act and the ratification of the constitution of the Commonwealth of Puerto Rico in 1952 - the island remains a colony of the U.S. denied effective self-governance and fundamental legal rights. Just prior to the referendum approving the Puerto Rican constitution, the U.S. Congress enacted Public Law 447 (1952), substantially modifying the new Constitution’s Bill of Rights to ensure that Puerto Rico’s political, social, and economic relationship to the United States would remain unchanged. The U.S. then leveraged the existence of Puerto Rico’s constitution before the UN General Assembly in 1953, and with the passage of UN Resolution 748 (VIII) was no longer required to submit information about the island territory as required of all colonizers under Article 73e of the UN Charter.

In direct violation of Article 1 of the ICCPR, the United States still controls Puerto Rico’s economy, foreign policy and natural resources. The United States also denies the people of Puerto Rico equal representation and participation in the U.S. political system. Despite being

which would otherwise have easier and more affordable access to trade in their regions, driving up the costs of goods for local peoples while stymying the ability of the territories to engage in global trade.

⁴² In contrast, all individuals born within one of the 50 states enjoy birthright citizenship through the 14th Amendment of the U.S. Constitution. Because the Constitution does not apply of its own accord in the territories, citizenship has been extended to territorial inhabitants statutorily by Congress. Congress has not chosen to extend citizenship to American Samoa, whose inhabitants, therefore, are not the citizens of any nation (though as explained below, the comparatively limited extension of the U.S. Constitution to American Samoa has helped to preserve a more Indigenous way of life there. See *infra* Note 62).

⁴³ Torruella Juan R. 2017. “To Be or Not to Be: Puerto Ricans and Their Illusory U.S. Citizenship.” *Centro Journal* 29(1):108–35; Puerto Ricans have full citizenship rights once they move to the United States; however, those born on the island continue to have a reversible statutory U.S. citizenship even when they reside in the United States. See Valle, A. J. (2019). *Race and the Empire-state: Puerto Ricans’ Unequal U.S. Citizenship. Sociology of Race and Ethnicity*, 5(1), 26–40. <https://doi.org/10.1177/2332649218776031>; *Id.*

⁴⁴ Puerto Ricans are unable to fully participate in U.S. elections or elect a president while residing in Puerto Rico but they can vote if they reside in one of the 50 U.S. states or the District of Columbia; they must choose between Puerto Rican citizenship or U.S. citizenship. They are also considered to be born outside of the United States for citizenship purposes, See e.g., Ramon Antonio Vargas, *Travel encounters show how US treats Puerto Ricans as ‘second-class citizens’* (June 2023)

<https://www.theguardian.com/us-news/2023/jun/11/puerto-rico-travel-encounters-us-citizens>

⁴⁵ See generally Ediberto Roman, *Empire Forgotten: The United States’s Colonization of Puerto Rico*, 42 *Villanova Law Review* 1119, 1141 (1997); see also, JT Gathii, *Writing race and identity in a global context: What CRT and TWAIL can learn from each other*, UCLA L. R., 1642 (2020) (discussing the racialized colonization of Puerto Rico specifically and generally the imperialist strategy of coupling the status of colonial territories to the racial statuses of the individual inhabitants as a justification for imperialism); see also *Downes v Bidwell*, 182 U.S. at 287: [i]f those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible; and the question at once arises whether large concessions ought not to be made for a time, that, ultimately, our own theories may be carried out, and the blessings of a free government under the Constitution extended to them. We decline to hold that there is anything in the Constitution to forbid such action,” *Balzac v. Porto Rico*, 258 U.S. 308 (1922) (finding that the United States Constitution did not apply to Puerto Rico, except by express will of Congress).

U.S. citizens, inhabitants of Puerto Rico cannot vote for the U.S. President. And despite Congress' absolute authority over their affairs, the people of Puerto Rico only have a nonvoting resident commissioner to represent them in the U.S. House of Representatives.⁴⁶ Meanwhile, Puerto Rico and the other territories are also consistently underserved by U.S. federal programs. While 43.4% of Puerto Rico's population lives below the federal poverty line,⁴⁷ that population consistently receives low levels of aid under federal programs compared to populations in the several states.⁴⁸ For example, the 2017 federal government response to Hurricane Maria in Puerto Rico was inadequate and not responsive to the needs and interests of the people.⁴⁹ Five years later, the electric grid remains compromised; schools, hospitals, roads, water systems and other critical systems are still recovering; and only a few of the planned multimillion-dollar projects have been even partially approved by Congress to address the economic, financial and social implications of the disaster.⁵⁰

The United State's failure to protect and promote the economic development of Puerto Rico has had far-reaching consequences culminating in a devastating debt crisis in 2014. Decades of U.S. mismanagement⁵¹ and discriminatory⁵² approach to its fiduciary responsibilities

⁴⁶ *Igartúa-De La Rosa v. United States*, 417 F.3d 145 (1st Cir. 2005) (holding that the people of Puerto Rico have neither a constitutional right nor a claim in international law to vote in the presidential election rejecting the Plaintiff's argument that the United States violates its obligation under ICCPR by denying the Plaintiff the right to vote); *see also* Ricardo Alfonso, *The Imposition of the Death Penalty in Puerto Rico: A Human rights Crisis in the Path Towards Self-Determination*, 76 REV. JUR. U.P.R. 1077, 1092 (2007) ("The Resident Commissioner of Puerto Rico, the Island's only elected 'representative' in Congress, has the right to speak but not to vote on legislation before the House of Representatives.").

⁴⁷ Data USA: Puerto Rico, Poverty; <https://datausa.io/profile/geo/puerto-rico/#:~:text=43.4%25%20of%20the%20population%20for,the%20national%20average%20of%2012.8%25>.

⁴⁸ *See e.g.*, *Harris v. Rosario*, 446 U.S. 651, 651-54 (1980) (finding that lower level of financial assistance that the people of Puerto Rico receive under the former Aid to Families with Dependent Children program does not violate the Due Process Clause of the Fifth Amendment); Emilio Pantojas-Garca, *The Puerto Rican Paradox: Colonialism Revisited*, 40 LATIN AM. RES. REV. 163 (2005) (arguing that poverty in Puerto Rico is related to its status as unincorporated territory, stating "[u]nderlying the reality of Puerto Rican poverty . . . are the 'colonial status of the island and the second-class citizenship forced on its people . . .'"); *see also* Jacqueline N. Font-Guzmán, *Puerto Ricans are hardly U.S. citizens. They are colonial subjects*, Wash. Post (13 Dec. 2017) https://www.washingtonpost.com/opinions/puerto-ricans-are-hardly-us-citizens-they-are-colonial-subjects/2017/12/13/c0f1c700-de9f-11e7-89e8-edec16379010_story.html. Of course, the same is true in the other territories as well. *See, e.g.*, *Schaller v. SSA*, No. 20-16589 (9th Cir.) (concerning the disparate treatment of Guam with regard to SSI benefits).

⁴⁹ Gitte Pedersen, Paul Lippert Figueroa, *Climate Crisis and Colonialism in Puerto Rico*, Transform Europe (6 Oct. 2022) <https://www.transform-network.net/en/blog/article/climate-crisis-and-colonialism-in-puerto-rico-1/>

⁵⁰ Carlos A. Suárez Carrasquillo/Fernando Tormos-Aponte, *Puerto Rico's vulnerability to hurricanes is magnified by weak government and bureaucratic roadblocks*, UNDRR (18 Sep. 2022) <https://www.preventionweb.net/news/puerto-ricos-vulnerability-hurricanes-magnified-weak-government-and-bureaucratic-roadblocks>; *Hurricane Recovery Can Take Years—But For Puerto Rico, 5 Years Show Its Unique Challenges*, GAO (14 Nov. 2022), <https://www.gao.gov/blog/hurricane-recovery-can-take-years-puerto-rico-5-years-show-its-unique-challenges>.

⁵¹ *See* Press Release, Government Development Bank For Puerto Rico, Moody's Downgrades Puerto Rico's Credit And Keeps It On Its Watchlist (May 8, 2006), available at: <http://gdb.pr.gov/communications/PressReleases/cpMoodydowngradesPRcreditMay8-06.pdf>

⁵² In 1984, Congress prohibited Puerto Rico's instrumentalities and municipalities from declaring bankruptcy under Chapter 9, Title 11, U.S. Code, *see* Pub. L. No. 98-353, 98 Stat. 333 (1984), applying a prohibition that does not exist for the states of the Union in violation to the Bankruptcy Uniformity Clause.

to the island have created a volatile economic situation, whereby local municipalities and government agencies were forced to accrue debts⁵³, and raise revenue by issuing sales tax revenue bonds. In 2008, the Board of Trustees of the Employees Retirement System (ERS) issued three series of bonds totalling nearly 3 trillion dollars⁵⁴, and in 2011, the legislature of Puerto Rico amended the ERS Enabling Act authorizing the ERS to continue raising capital via loans from the government of Puerto Rico or the United States.⁵⁵ In February 2014, all bonds in Puerto Rico “were rated as non-investment grade or ‘junk bonds,’ triggering acceleration clauses that threw the local economy into crisis.”⁵⁶

On June 30, 2016, President Barack Obama signed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), a bill that establishes a Fiscal Control Board (Financial Oversight and Management Board for Puerto Rico (FOMB)) to oversee the commonwealth’s finances, with the purported task of restoring the credit of Puerto Rico by repaying a 73 billion USD debt to bond holders. The fiscal board consists of members appointed by the President of the United States rather than elected by the people of Puerto Rico. The Act encompasses nearly every aspect of life and governmental budget expenditures, and has created enormous challenges on the island related to austerity measures that jeopardize the well-being of the population. The Board has overthrown decades of progress in the fields of higher education and university autonomy⁵⁷, public education (where more than 400 public schools have been closed)⁵⁸, labor law, public health⁵⁹, retirement plans, security, privatization of essential services, among others. This together with lack of transparency, massive payments to members of the board, power to veto local legislation and usurp constitutional powers of the elected government, and its negative impact on the ability of people to access the judiciary, including in civil rights’ cases. Significantly, PROMESA triggered an automatic stay of the commencement or continuation of judicial actions against the Government of Puerto Rico, including lawsuits for civil rights violations pursuant to the Civil Rights Act (42 U.S.C. sec. 1983).⁶⁰

⁵³ See *Altair Global*, 138 Fed. Cl. at 747 (citing M. JOFFE & J. MARTINEZ, ORIGINS OF THE PUERTO RICO FISCAL CRISIS 12 (2016))

⁵⁴ See *id.* at 748

⁵⁵ P.R. LAWS ANN. tit. 3, § 779d

⁵⁶ See *Altair Global*, 138 Fed. Cl. at 749

⁵⁷ See Valeria Torres-Nieves, “La Junta de Supervisión Fiscal recorta \$94 millones del presupuesto de la UPR,” *Pulso Estudiantil*, 16 April 2021, available online:

<https://pulsoestudiantil.com/la-junta-de-supervision-fiscal-recorta-94-millones-del-presupuesto-de-la-upr/>

⁵⁸ See Sofia Rico, “Investigan escuelas cerradas y en desuso en San Juan,” *NotiCel*, 11 March 2022, available at: <https://www.noticel.com/legislatura/ahora/top-stories/20220311/investigacion-escuelas-cerradas-y-en-desuso-en-san-juan/>

⁵⁹ See “Crisis médica a causa del éxodo de médicos de Puerto Rico a Estados Unidos,” *Univision Puerto Rico*, 19 July 2016, available at:

<https://www.univision.com/local/puerto-rico-wlii/crisis-medica-a-causa-del-exodo-de-medicos-de-puerto-rico-a-estados-unidos>

⁶⁰ See Oscar J. Serrano, “Swain dice tomó en cuenta “el dolor y la esperanza” de los puertorriqueños al confirmar Plan” *NotiCel*, 20 January 2022, available at:

<https://www.noticel.com/la-junta-de-control-fiscal/tribunales/ahora/top-stories/20220120/swain-dice-tomo-en-cuenta-el-dolor-y-la-esperanza-de-los-puertorriquenos-al-confirmar-plan/>; see also Ethel Ríos-Orlandi, “Ley Promesa, desarrollo sostenible y la UPR.” *El Nuevo Día*, 18 November 2021, available at

<https://www.pressreader.com/puerto-rico/el-nuevo-dia/20211118/28189589149671>; Emmanuel Estrada Lopez,

“¿La antesala de Promesa? Venden y destruyen terrenos protegidos.” *Diálogo UPR*, 5 April 2017, available at:

<https://dialogo.upr.edu/la-antesala-de-promesa-venden-y-destruyen-terrenos-protegidos/>; Ronald Avila Claudio, “Recortes de Promesa afectarían a las agencias que protegen el medio ambiente.” *Diálogo UPR*, 12 April 2017,

The unique financial crisis in Puerto Rico that PROMESA is intended to address must not be used as a free pass for individual government actors to violate fundamental rights, nor should it constitute an additional burden for litigants in Puerto Rico to have access to a fair judicial remedy in federal and territorial courts. PROMESA has not only created a civil rights free zone in Puerto Rico, but there is the danger of extending its application to other colonies in the future like Guam, the U.S. Virgin Islands, and American Samoa. PROMESA allows an exclusive bankruptcy of the entire insular government, allowing an illegal taking of the budget of Puerto Rico, resulting in a human rights crisis and displacement of the local population, which only increased after Hurricane María in 2017.⁶¹ Rather than promote self-government and decolonization, the U.S. has only reaffirmed its sovereign powers over Puerto Rico, fostering economic dependence. U.S. policies in Puerto Rico are the true cause of its economic, social and political disruption.⁶²

The resilience of the island in response to environmental challenges has been further compromised by the lingering vestige of U.S. military colonialism in Puerto Rico.⁶³ The U.S. Navy operated a military base in Vieques from 1941-2003, where they tested various weapons and ammunition (including depleted uranium and napalm) with serious environmental, health and physical implications for the local inhabitants.⁶⁴ Foreign countries were invited by the U.S. government to rent the target range on Vieques island in order to test conventional and non-conventional weapons. Following his fact finding visit to Vieques, the UN Special Rapporteur on Minority Issues, Dr. Fernand De Varennes, wrote in his final report:

I was particularly struck with the example of the island of Vieques in Puerto Rico in this regard. The US military used the island as a live munitions target practice for about 60 years. According to internal Navy documents, bombardments occurred on 180 days out of a year on average. The US military used the high-level depleted uranium munitions and bombs from 1972 on the populated island of some 8,000-9,000 population. Other forms of contamination exist (heavy metals, etc.) because of the use of Vieques as a munitions testing and warfare exercise ground.

available at <https://dialogo.upr.edu/recortes-de-promesa-afectarian-las-agencias-que-protegen-el-medio-ambiente/>; Laura V. González Cruz “¿Cómo el Plan de Ajuste de la Deuda afecta a los jóvenes en Puerto Rico?” Microjuris al Día, 18 July 2022, available at:

<https://aldia.microjuris.com/2022/07/18/columna-como-el-plan-de-ajuste-de-la-deuda-afecta-a-los-jovenes-en-puerto-rico/>; Centro para una Nueva Economía (CNE) “Cinco años después: El fracaso de la Ley Promesa.” Sin Comillas, 30 June 2021, available at: <https://sincomillas.com/cinco-anos-despues-el-fracaso-de-la-ley-promesa/>

⁶¹ Since the filing of the bankruptcy process, the Board has engaged in aggressive litigation designed to delay the eventual production of important documents. (See CENTRO DE PERIODISMO INVESTIGATIVO (“CPI”) vs. THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD OF PUERTO, Civil No. 17-1743 JAG). The Board also challenges the legislative powers of the Commonwealth of Puerto Rico. See THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO v. HON. PEDRO R. PIERLUISI URRUTIA, et als, PROMESA, Title III, No. 17 BK 3283-LTS (Jointly Administered), Adv. Proc. No. 21-00072-LTS.

⁶² See Steven P. Lausell Recurt, *The Song Remains the Same: The United States’ Fiduciary Duty to Puerto Rico as a Basis for Legal Responsibility* (May 26, 2016) (Master thesis, Lund University, Sweden)

⁶³ Atilés-Osoria, J.M. (2014a) Environmental colonialism, criminalization and resistance: Puerto Rican mobilizations for environmental justice in the 21st century. *Revista Crítica de Ciências Sociais (RCCS) Annual Review* 6. <https://doi.org/10.4000/rccsar.524>

⁶⁴ Joel C. Yelin and DeMond S. Miller, *A Brief History of Environmental Inequity and Military Colonialism on the Isle of Vieques, Puerto Rico*, *Environmental Justice* Vol. 2, No. 3 (23 Sep. 2009).

The result, summarised eloquently in a town meeting of a lack of any visible cleanup yet, is simply ‘They bombed us, they made us sick, then they left us. They don’t give a damn.’⁶⁵

The U.S. government has made no attempt to reverse the damage done to thousands of acres for such military games. Today, people in Puerto Rico, specifically in Vieques, lack control of the future development of their community and natural resources that would strengthen the island’s capacity to not only overcome these intersecting crises, but to fashion a society where the population is positioned to thrive with full enjoyment of their human rights.⁶⁶ This deprivation of permanent sovereignty over natural resources is also a direct violation of the right to self-determination. This pattern of environmental destruction, toxic contamination, and abandonment can be seen throughout the United States’ current and former insular areas.⁶⁷

Despite the United States’ intransigence with regard to its obligations to Puerto Rico as a colonial power, and its attempt to manipulate the UN system to avoid responsibility, the international community continues to uphold Puerto Rico’s fundamental right to self-determination. In 1972, the U.N. Special Committee on Decolonization recognized and reaffirmed “the inalienable right of the people of Puerto Rico to self-determination ...” and has kept the question of Puerto Rico under continuous review for over half a century. In its resolutions regarding Puerto Rico, since then, the UN Special Committee has repeatedly recognized Puerto Rico’s status as a ‘people’ with the right to self-determination and independence. The last resolution was approved unanimously in June 2023.⁶⁸

U.S. GOVERNMENT RESPONSE REGARDING SELF DETERMINATION AND THE RIGHT TO EFFECTIVE REMEDY FOR U.S. TERRITORIES

In its initial report to the Human Rights Committee in 1993, the United States felt compelled to acknowledge the existence and status of its territories, naming the “Insular Areas”

⁶⁵ See Unrepresented Nations and Peoples Organization, “UN Special Rapporteur on Minority Issues Releases Report on United States Unrepresented Peoples and Territories” 15 December 2021, available at: <https://unpo.org/article/22182>

⁶⁶ See generally Sherrie Baver, *Peace Is More Than the End of Bombing”: The Second Stage of the Vieques Struggle*, CUNY Graduate Center (2006)

⁶⁷ See “Guam” section, *infra*. See also Holly Barker, *Bravo for the Marshallese: Regaining Control in a Post-Nuclear, Post-Colonial World* (2013) (Sharing oral histories of Marshallese people who experienced the United States nuclear testing program on their islands from 1945 to 1955, and who were subject to non-consensual medical experimentation at the hands of U.S. scientists); Sasha Davis, *The Empires’ Edge Militarization, Resistance, and Transcending Hegemony in the Pacific* (2015) (Describing the systematic pattern of U.S. militarization in the Pacific Islands).

⁶⁸ See Special Committee resolutions: A/AC.109/419, A/AC.109/438, A/AC.109/574, A/AC.109/589, A/AC.109/628, A/AC.109/677, A/AC.109/707, A/AC.109/751, A/AC.109/798, A/AC.109/844, A/AC.109/883, A/AC.109/925, A/AC.109/973, A/AC.109/1013, A/AC.109/1051, A/AC.109/1088, A/AC.109/2131, A/AC.109/1999/28, A/AC.109/2000/24, A/AC.109/2001/22, A/AC.109/2002/22, A/AC.109/2003/22, A/AC.109/2004/L.7, A/AC.109/2005/L.7, A/AC.109/2006/L.7, A/AC.109/2007/L.7, A/AC.109/2008/L.7, A/AC.109/2009/L.7, A/AC.109/2010/L.8, A/AC.109/2011/L.6, A/AC.109/2012/L.7, A/AC.109/2013/L.6, A/AC.109/2014/L.6, A/AC.109/2015/L.6, A/AC.109/2016/L.6, A/AC.109/2017/L.12, A/AC.109/2018/L.7, and A/AC.109/2019/L.7, A/AC.109/2021/L.7

as “an integral part of the U.S. political family.”⁶⁹ The report to the Committee indicated appreciation for the primacy of the right to self-determination not only in international law, but “as a core of American political life, as the nation was born in a struggle against the colonial regime of the British during the eighteenth century.” The United States explains its compliance with Article 1 of the ICCPR, noting that it provides for self-governance of every state in similar ways to the 12th, 17th, 20th, 22nd and 23rd Amendments of the U.S. Constitution.⁷⁰ Nonetheless, the United States’ communication also expressly limited the scope of self-determination for residents of the territories, attempting to justify their second-class citizenship and make acceptable their limited form of political participation. For example, rather than explain with transparency that the representatives of the U.S. citizens living in “Insular Areas” are non-voting members of Congress, the U.S. government rationalized, “Other than the right to vote on the final passage of a bill or resolution, the delegate from each Insular Area enjoys the same privileges and exercises the same powers as a member of Congress from one of the states.” Likewise, the report states that territorial inhabitants “enjoy the protections for individual liberty that the Bill of Rights guarantees to all Americans,” omitting that all but the most fundamental Constitutional rights apply to the territories solely at the discretion of Congress. In fact, in the case of American Samoa, the U.S. Congress has yet to confer Constitutional protections on inhabitants, who are not U.S. citizens, but U.S. nationals.⁷¹

The U.S. government acknowledged in its initial report that Guam, American Samoa, and the U.S. Virgin Islands are “still non-self-governing” for the purposes of Article 73 of the UN Charter and have “not yet completed the process of achieving self-determination.”⁷² In contrast, the same initial Report affirms incorrectly that the Commonwealth of Puerto Rico and the CNMI (as well as the States of Alaska and Hawaii) have “completed acts of self-determination through which they have resolved the terms of their respective relationships with the rest of the United States.” This distinction is misleading and elides the fact that all five unincorporated territories are subject to the same colonial administration: they remain possessions governed by the plenary authority of Congress, their citizens have no right to vote in federal elections and no meaningful or equal representation at the federal level, and—unlike all other political subdivisions within the United States—they are not considered to have any independent sovereignty. The reality of unincorporated status within the U.S. system is that these territories remain colonized regardless of whether they have commonwealth status or not.

Moreover, in discussing Puerto Rico, the U.S. government appeared to confuse self-determination as a matter of “public debate and discussion” rather than an obligation under international human rights law that can be neither delayed nor deferred.⁷³ In addition to the

⁶⁹Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Initial Reports of States parties due in 1993 (19 Jul. 1994) CCPR/C/81/Add.4, 6. <https://digitallibrary.un.org/record/175656?ln=en>

⁷⁰ *Id.*

⁷¹ In some ways, this status is to the benefit of American Samoans relative to the inhabitants of other territories. For example, American Samoa is able to maintain its customary, communal and ancestry based land tenure system, rather than submit to the imposition of a Western private property regime. This is only possible because Congress has not extended the equal protection provisions of the U.S. Constitution to American Samoa. *See e.g.*, *Fitismanu v. United States*, 1 F.4th 862 (10th Cir. 2021).

⁷²Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Initial Reports of States parties due in 1993 (19 Jul. 1994) CCPR/C/81/Add.4, 6. <https://digitallibrary.un.org/record/175656?ln=en>

⁷³Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Initial Reports of States parties due in 1993 (19 Jul. 1994) CCPR/C/81/Add.4, 6. <https://digitallibrary.un.org/record/175656?ln=en>

ICCPR, the right to self-determination is a fundamental principle fully affirmed by a range of international law instruments;⁷⁴ General Assembly resolutions;⁷⁵ General comments;⁷⁶ regional agreements;⁷⁷ ICJ advisory opinions;⁷⁸ and reiterated in various international court cases.⁷⁹ Beyond its enshrinement in specific legal instruments, self-determination exists as a peremptory rule of customary international law. As such, all states—regardless of whether they are party to any particular treaty—hold legally binding obligations to respect, uphold, and protect the right, with no derogations permitted.

The United States has also failed to provide territorial inhabitants (and other colonized peoples within its jurisdiction) an effective remedy for the harms of colonization. This would include, at minimum, cessation of the violation (i.e., decolonization and self-determination) and reparations for harm caused.⁸⁰ U.S. law and policy—which recognizes race as the only legible

⁷⁴ See e.g., Article 1(2), Charter of the United Nations; Article 1(1), International Covenant on Economic Social and Cultural Rights; C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

⁷⁵ Declaration on the Granting of Independence to Colonial Countries and Peoples Adopted by General Assembly resolution 1514 (XV) (14 Dec. 1960); Resolution adopted by the General Assembly [Adopted on a Report from the Sixth Committee (A/8082)] 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (24 October 1970); Resolution 1803 (XVII) of 14 December 1962, 'Permanent Sovereignty over Natural Resources', UN General Assembly; General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources" (14 December 1962), General Assembly resolution 1803 (XVII);

⁷⁶ As of September 2021, the Committee has adopted 37 general comments Twenty first session (1984): General comment No. 12: Article 1 (Right to self determination); General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR, CCPR/C/21/Rev.1/Add.5 (26 April 1994); General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR Addendum, General Comment No. 25 (57), CCPR/C/21/Rev.1/Add.7 (27 August 1996); General comment on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.8/Rev.1 (8 December 1997); General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Adopted on 29 March 2004 (2187th meeting), CCPR/C/21/Rev.1/Add. 13 (26 May 2004); General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR Addendum, General Comment No. 25 (57), CCPR/C/21/Rev.1/Add.7 (27 August 1996); General recommendation 21 (48) adopted at 1147th meeting on 8 March 1996 : Committee on the Elimination of Racial Discrimination, 48th session, (26 February-15 March 1996); CCPR General Comment No. 12: Article 1 (Right to Self-determination) The Right to Self-determination of Peoples Adopted at the Twenty-first Session of the Human Rights Committee (13 March 1984)

⁷⁷ Article 20(1), African Charter on Human and Peoples' Rights

⁷⁸ Western Sahara Case, International Court of Justice, 1975; Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding with Security Council Resolution 276 (the Namibia case), International Court of Justice, 1970; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136

⁷⁹ Kalevi Paadar et al. v Finland, Human Rights Committee, 2011; Poma Poma v Peru, Human Rights Committee, 2006; Gillot v France, Human Rights Committee, 2002; Länsman (Jouni) et al. (2) v Finland, Human Rights Committee, 2001; Diergaardt et al v Namibia, Human Rights Committee, 2000; Howard v Canada, Human Rights Committee, 1999; Äärelä and Näkkäläjärvi v Finland, Human Rights Committee, 1997; Portugal v Australia (the East Timor case), International Court of Justice, 1995; Mahukia et al v New Zealand, Human Rights Committee, 1993; Lubicon Lake Band v Canada (the Ominayak case), Human Rights Committee, 1990; B. et al. v Italy, Human Rights Committee, 1990; P. et al. v Colombia, Human Rights Committee, 1988; L. et al. v Canada, Human Rights Committee, 1989; 0; Gunme and Others v Cameroon, African Commission of Human and People's Rights, 2009.

⁸⁰ ILC Draft Articles on State Responsibility, art. 30-36.

classification for Indigenous and colonized peoples⁸¹--not only fails to provide a remedy but actively frustrates the ability of colonized peoples to achieve self-determination.⁸² And far from taking steps to repair the harms of colonization, the United States is only tightening its grip on the territories, most evidently through rapid and expansive militarization.

As communities seek to determine their futures, international law requires that States make efforts toward decolonization, as well as ensure accountability for past harms and provide solutions that make injured communities whole. However, the United States has not interpreted the right to effective remedy in Art. 2.3 as an obligation to repair the harms of colonization and militarization, reducing the right to legal remedies in the context of criminal or civil cases. And while the U.S. government regularly invokes the Equal Protection Clause of the U.S. Constitution, no state reports to the Human Rights Committee have referenced a commitment to ensuring equal protection of colonized subjects. We regret that the U.S. government's 5th periodic report to the Committee neither addresses self-determination nor repair.

PREVIOUS CONCLUDING OBSERVATIONS

As yet, the Human Rights Committee has failed to originally address U.S. territories in their concluding observations.⁸³ The HRC has, however, expressed concerns with the way the United States treats Indigenous Peoples as well as the state's general lack of compliance with Article 1.⁸⁴ This situation is untenable. Self-determination is a fundamental precept from which enjoyment of all other rights flow, and the international community has indicated in no uncertain terms that continued colonization is unacceptable. Given the positive international trend towards naming the root causes of human rights violations and calling on states to repair the lingering harms of colonialism,⁸⁵ the HRC must draw international attention to the U.S.' ongoing human rights violations in the U.S. territories, and lend meaningful support to the peoples of Puerto Rico, Guam, CNMI, the U.S. Virgin Islands, and American Samoa in their rights-based struggle for self-determination, accountability and reparations.

⁸¹ With the exception of federally recognized Indian tribes, which are afforded a limited form of sovereignty, though still subject to the plenary power of Congress.

⁸² Addie Rolnick, *Indigenous Subjects*, 131 *Yale L. J.* 2652 (2022).

⁸³ *See e.g.*, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, CCPR/C/USA/CO/3/Rev.1 page 12 (18 December 2006); Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, page 11 (23 April 2014); Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee, CCPR/C/USA/CO/3 (15 September 2006)

⁸⁴ *See e.g.*, As of September 2021, the Committee has adopted 37 general comments Twenty first session (1984): General comment No. 12: Article 1 (Right to self determination); Report of the Human rights Committee Concluding Observation on the ICCPR, A/50/40 paras. 266-304 (3 October 1995); General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR, CCPR/C/21/Rev.1/Add.5 (26 April 1994); General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR Addendum, General Comment No. 25 (57), CCPR/C/21/Rev.1/Add.7 (27 August 1996).

⁸⁵ *See e.g.*, Report of the U.N. High Commissioner for Human Rights, *Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Descent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers*, A/HRC/47/53 (June 1, 2021).

OTHER UN & REGIONAL HUMAN RIGHTS BODIES RECOMMENDATIONS

The UN has long been a site of anti-colonial struggle, with colonized peoples throughout the Third World finding in the human rights framework principles in support of human dignity and the right to be free from domination, subordination and conquest. The UN General Assembly has for decades reaffirmed its commitment to bring “to a speedy and unconditional end colonialism in all its forms and manifestations,”⁸⁶ and the United States, as the administering colonial power over five unincorporated territories, is obligated to create the conditions for the people of its territories to realize their political aspirations. As described above, while Puerto Rico and CNMI are not on the UN’s non-self-governing territories list (which does include Guam, American Samoa and the U.S. Virgin Islands), the reality of their administration also requires a swift end to colonial rule over these territories.

The international community, including the HRC, has also recognized the particular obligations of states vis-a-vis Indigenous Peoples, and while the United States has not fully endorsed the critical UN Declaration on the Rights of the Indigenous Peoples, the government is nonetheless bound by international norms regarding free prior and informed consent which is embedded within the right to self-determination. On August 30, 2022, the 107th Session of the United Nations Committee on the Elimination of Racial Discrimination (CERD) issued a concluding observation regarding its review of the United States and its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acknowledging the harmful effects of colonization, lack of U.S. recognition of many Indigenous Peoples, failure to fully implement free, prior and informed consent, and impacts of imposed extractive and infrastructure projects and environmental pollution.⁸⁷ We commend the positive efforts of the CERD in addressing U.S. human rights violations, which in 2022, expressed concern of the lingering legacies of colonialism and slavery and recommended that the U.S. government “take the appropriate measures towards the establishment of such a commission to study and develop reparation proposals for people of African descent.”⁸⁸ The HRC must affirm these advances.

Numerous Special Mechanisms of the UN have called on the United States to remedy its failure to guarantee self-determination. UN Special Rapporteur on Extreme Poverty and Human Rights, Phillip Alston, who visited the island after Hurricane María, stressed that the situation in

⁸⁶ Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) (adopted 14 Dec. 1960), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>; *see e.g.*, G.A. Res. 74/104, U.N. Doc A/Res/72/104 (Dec. 13, 2019); G.G.A. Res. 73/113, U.N. Doc A/Res/73/113 (Dec. 19, 2018); G.A. Res. 72/102, U.N. Doc A/Res/72/102 (Dec. 15, 2017); G.A. Res. 71/113, U.N. Doc A/Res/71/113 (Dec. 28, 2016).

⁸⁷ United Nations Committee on the Elimination of Racial Discrimination (CERD) concluding observations highlight multiple forms of discrimination against indigenous peoples in the United States, International Indian Treaty Council (9 Sep. 2022) <https://www.iitc.org/wp-content/uploads/CERD-Concluding-Observations-Press-Release-Sept.-1-final.pdf>

⁸⁸ Concluding Observations on the combined tenth to twelfth reports of the United States of America, CERD/c/USA/CO/10-12, 14-15 (21 Sep. 2022), COs 55-56, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/495/96/PDF/G2249596.pdf?OpenElement>

Puerto Rico indicates a lack of self-government.⁸⁹ In addition, a recent visit of the U.N. Special Rapporteur on Minority Issues in November 2021, Fernand de Varennes, confirmed the discriminatory treatment of the people Puerto Rico and Guam where individuals are devoid of equal rights to political participation and representation. The Special Rapporteur called for a new federal approach in order “to fully respect the identity, traditions and specificities of the populations of the territories and their minority communities, including their rights as Non-Self-Governing Territories and their human rights as recognized under international human rights instruments.”⁹⁰ In 2021, three U.N. Special Rapporteurs issued a Joint Allegation Letter to the United States, expressing serious concern about the U.S. military buildup on Guam, and its impacts on the human rights of the Chamorro people, including rights to self-determination, life, health, and culture. The special rapporteurs also expressed additional concern that the United States “has not supported self-determination for the Chamorro people of Guam.”⁹¹

In its review of the United States, the HRC must affirm the core principles of international law that States have a non-derogable obligation to promote, protect, and uphold the right of self-determination of all peoples, as well as special obligations to end their colonial projects and provide self-determination. Only through real implementation of these principles can all peoples, including those living in U.S. territories, experience the fullness of life imagined by the human rights framework in a world free from human hierarchy, and defined not by domination or subjugation, but by accountability, repair and collective flourishing.

QUESTIONS & RECOMMENDATIONS TO U.S. GOVERNMENT

Recommended Questions:

1. How does the Biden administration understand the requirements for decolonization under the international human rights framework, and what economic obligations does decolonization impose upon colonial Powers?
2. Will the U.S. Government hold a comprehensive and independent public inquiry into the human rights violations committed against the inhabitants of each of five unincorporated U.S. territories of Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, the U.S. Virgin Islands, and Puerto Rico?
 - a. Specifically, what steps will the government take to ensure a reparative justice process that provides an opportunity for acknowledgement of harm, for affected peoples to share their stories, and for appropriate reparations to be made?
3. What steps will the U.S. government take to begin the process of demilitarization of its territories, which impede the fundamental right to self-determination and the exercise of sovereign power of its colonial subjects?

⁸⁹ See “Report of the Special Rapporteur on extreme poverty and human rights on his mission to the United States of America” 4 May 2018, A/HRC/38/33/Add.1

⁹⁰ See A/HRC/49/46/Add.1

⁹¹ See 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 to the United States, U.N. Doc. AL USA 7/2021 (Jan. 29, 2021), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25885>

4. Will the administration specifically recognize “native inhabitants of Guam” and corollary groups in the other territories as a political class entitled to exercise self-determination through measures including but not limited to a political status plebiscite?
5. What steps will the Biden Administration take to ensure that PROMESA, a Congressional Act overseen by a Control Board appointed by the U.S. President with the power to overrule the decisions of Puerto Rico’s elected Government, complies with the concept of self-determination and self-governance?

Suggested Recommendations:

1. Immediately, without further delays, begin a process of decolonization and repair for U.S. territories, including by:
 - a. Joining the Special Committee on Decolonization and expediting a process that will allow the full exercise of the right to self-determination for the peoples of the U.S. territories.⁹²
 - b. Encouraging and supporting a visiting mission by the United Nations Special Committee on Decolonization to the five unincorporated U.S. territories of Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, the U.S. Virgin Islands, and Puerto Rico.
 - c. Publicly recognizing the incompatibility of its colonial relationship with the territories and a commitment to human rights, and initiating a process of reparations for centuries of colonial exploitation, discrimination, racism, and administration of territories exclusively for the benefit of United States economic and military interests.
2. Take all effective steps necessary to end military expansion and fully demilitarize its territories as a commitment to decolonization, including by:
 - a. Collecting and publicizing on an annual basis data, information, and disclosures of harm concerning the impacts of the U.S. military presence on the physical, cultural, and human environments, taking proactive steps to ensure that this information is given to all stakeholders, especially vulnerable and impacted communities.
 - b. Rescinding the Record of Decision to relocate U.S. Marines and their dependents from Okinawa to Guam.
 - c. Ceasing and desisting all military construction projects related to the relocation of U.S. Marines from Okinawa to Guam, including any further development of Camp Blaz, and the Mason Live Fire Training Range Complex at Ritidian Point.
3. Take all effective steps necessary to safeguard the principle of free, prior and informed consent as set out in the UN Declaration on the Rights of Indigenous Peoples, including by ensuring all development of the federal government, including military involvement, in the territories is undertaken only with the informed consent of Indigenous communities after having access to accurate and complete information about the proposed project and consent is given affirmatively and freely.⁹³

⁹² <https://press.un.org/en/2006/gacol3138.doc.htm>

⁹³ Implement these same steps in all jurisdictions where military projects affect Indigenous peoples and local communities, including, but not limited to, the Federated States of Micronesia, Palau, and the Marshall Islands.

4. Support Congressional efforts to condemn the Insular Cases as colonial and racist relics that are incompatible with international human rights law, while encouraging Congress to devise, in collaboration with each of its territories, individually tailored solutions for accommodating rights to land, culture, and self-government in a manner consistent with certain subsequent federal court decisions that effectively repurposed the territorial incorporation doctrine for that purpose.⁹⁴
5. Create a specific policy council within the Executive Office of the President that drives the development and implementation of rights-respecting policies consistent with the inalienable right of self-determination concerning federal government policy, decisions, and programs impacting or affecting U.S. territories.
6. Nullify PROMESA and direct the U.S. Congress and Treasury Department to assume their responsibility for the debt due to their failure to comply with the U.S. fiduciary duties towards Puerto Rico.

⁹⁴ See e.g. <https://www.congress.gov/bill/118th-congress/house-resolution/314>. In articulating the doctrine of territorial incorporation in the Insular Cases, the Supreme Court also intimated that maintaining unincorporated territories in perpetuity may be impermissible under the United States' own Constitution. See *Downes v. Bidwell* (suggesting that it would be a “violation of duty under the Constitution,” for the United States to “permanently hold territory which is not intended to be incorporated.”)

APPENDICES

1. APPENDIX 1 - INFORMATION ABOUT THE SUBMITTING ORGANIZATIONS
2. APPENDIX 2 - UN TESTIMONIES ON THE QUESTION OF GUAM, 1982-2022
3. APPENDIX 3 - TESTIMONY BY LISA LINDA NATIVIDAD (Guam), 16th Session of the Expert Mechanism on the Rights of Indigenous Peoples
4. APPENDIX 4 - SUBMISSION TO MR. FRANCISCO CALI 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 (Blue Ocean Law and Unrepresented National & Peoples Organization)
5. APPENDIX 5 - JOINT ALLEGATION LETTER TO UNITED STATES BY SPECIAL RAPPORTEURS IN RESPONSE TO BOL & UNPO SUBMISSION, 29 January 2021
6. APPENDIX 6 - ESSAYS & REFLECTIONS BY JULIAN AGUON, Founder of Blue Ocean Law, Indigenous human rights lawyer and writer from Guam
 - a. Birthday Cakes Mean Birthdays
 - b. No Country for Eight-Spotted Butterflies
 - c. Reflections While Driving
7. APPENDIX 7 - LETTER BY ADVOCACY GROUPS CALLING ON PRESIDENT BIDEN TO CONDEMN THE INSULAR CASES, August 22, 2023

APPENDIX 1 - PARTNER ORGANIZATIONS



BLUEOCEANLAW
a professional corporation

Blue Ocean Law is an international law firm based in Guam, which works at the intersection of human rights and environmental justice. Blue Ocean Law provides counsel to clients across Oceania on a wide range of issues including climate change, self-determination, and the rights of Indigenous peoples.



The **Center for Constitutional Rights** works with communities under threat to fight for justice and liberation through litigation, advocacy, and strategic communications. Since 1966, the Center for Constitutional Rights has taken on oppressive systems of power, including structural racism, gender oppression, economic inequity, and governmental overreach. The Center for Constitutional Rights has special consultative status with ECOSOC.



The **American Civil Liberties Union - Puerto Rico** works daily in courts, legislatures and communities to defend and preserve the individual rights and liberties guaranteed to every person in the Constitution and laws of the United States, and in the Constitution and laws of the Commonwealth of Puerto Rico. Formally established in 2001, the ACLU has long worked in Puerto Rico to combat racial profiling, discriminatory policing, and social marginalization while ensuring that the people of Puerto Rico are guaranteed civil rights and liberties.

APPENDIX 2 - UN TESTIMONIES

Compiled by Dr. Tiara Naputi documenting the list of names and dates of Guam petitioners to the UN from 1982-2022.

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
2022									
1	11-May-22	Melvin Won Pat Borja	Executive Director, Commission on Decolonization, Government of Guam		Committee of 24 (Special Committee on Decolonization, C-24)				
1	4-Oct-22	Melvin Won Pat Borja	Executive Director, Commission on Decolonization, Government of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY			
2021									
1	10/6/21	Joshua Tenorio	Lt. Governor, Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY			
	6/24/21	Question of Guam (Continued); Guam Working Paper			Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2021/SR.7; A/AC.109/2021/9 [Guam Working Paper]	A/AC.109/2021/SR.7	
	6/17/21	Draft Resolution, Question of Guam			Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2021/L.16	A/AC.109/2021/L.16	
1	6/15/21	Tony Babauta	Chief of Staff, Office of the Governor, Guam	Lou Leon Guerrero, Governor, Guam	Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2021/SR4	A/AC.109/2021/SR.4	
2020									
	12/10/20	Resolution adopted by the General Assembly			General Assembly		A/RES/75/113	A/RES/75/113	75th Session, agenda item 61
	11/16/20	Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Report of the Special Political and Decolonization Committee (Fourth Committee)			General Assembly		A/75/420	A/75/420	
	8/5/20	Resolution on Guam (submitted by Chair)			General Assembly		A/75/23	A/75/23	
2019									
	12/13/19	74/104. Question of Guam. Resolution adopted by General Assembly			General Assembly		A/RES/74/104	A/RES/74/104	
	11/1/19	Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples Report of the Special Political and Decolonization Committee (Fourth Committee)			General Assembly		A/74/418	A/74/418	
1	Oct-19	Joshua Tenorio	Lt. Governor, Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
2	Oct-19	Régine Biscoe Lee	Senator in 35th Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
3	Oct-19	Sabina Flores Perez	Senator in 35th Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
4	Oct-19	Julia Faye Munoz	I Hagan Famaláo'an Guåhan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
5	Oct-19	Melvin Won Pat Borja	Commission on Decolonization, Government of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
6	Oct-19	Rikki Orsini	Senior Policy Adviser to Kelly Marsh		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
7	Oct-19	Kelly Marsh-Taitano	Senator in 35th Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
8	Oct-19	Samantha Barnett	Independent Guåhan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
9	Oct-19	Leonardo Orsini	Bay Area Chapter Independent Guåhan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
10	Oct-19	Andrew Gumataotao	Duk Duk Goose Inc./Nihil		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
11	Oct-19	Pim Limtiaco	Guåhan Coalition for Peace & Justice		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/74/SR.4	A/74/251 59[7] GUAM QUESTION	A/C.4/74/4; A/C.4/74/4/Rev.1
1	Jun-19	Joshua Tenorio	Lt. Governor, Guam		Committee of 24 (Special Committee on Decolonization, C-24)		A/AC.109/2019/SR.9		A/AC.109/2019/9; A/AC.109/2019/L.16
2	Jun-19	Melvin Won Pat Borja	Executive Director, Commission on Decolonization		Committee of 24 (Special Committee on Decolonization, C-24)		A/AC.109/2019/SR.9		A/AC.109/2019/9; A/AC.109/2019/L.16
	May 2-4, 2019	Melvin Won Pat Borja	Executive Director, Commission on Decolonization		Caribbean Regional Seminar	Saint George's, Grenada	CRS/2019/CRP.5		
	May 2-4, 2019	Michael Lujan Bevacqua, PhD.	Program Coordinador, Chamorro Studies at the University of Guam/Co-Chair, Independence for Guam Task Force		Caribbean Regional Seminar	Saint George's, Grenada	CRS/2019/CRP.3		

2018

1	10/10/18	Samantha Barnett	Independent Guåhan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
2	10/10/18	Alaina Arroyo	University of San Francisco Pacific Islander Collective		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
3	10/10/18	Tiara Na'puti	Guåhan Coalition for Peace & Justice		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
4	10/10/18	Julia Faye Munoz	Diablo Valley College, Pacific Islands Students Association (Pleasant Hill, CA)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
5	10/10/18	Ana Bordallo	Famoksaiyan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
6	10/10/18	Lelani Rania Ganser	Reed College		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/73/SR.4	A/72/251/63 [Guam Question]	A/C.4/73/4
	May 9-11, 2018	Amanda Blas	Guam Commission on Decolonization (via videoconference on behalf of Gov. Eddie Baza Calvo)		The Special Committee on Decolonization... C-24	Saint George's, Grenada	A/73/23		PRS/2018/CRP.14
1	Jun-18	Amanda Blas	Guam Commission on Decolonization (via videoconference on behalf of Gov. Eddie Baza Calvo)		Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2018/SR.7		(A/AC.109/2018/SR.9); (A/AC.109/2018/L.15); (A/AC.109.2018/L.16)
2	Jun-18	Pim Limtiaco	Guåhan Coalition for Peace & Justice		Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2018/SR.7		(A/AC.109/2018/SR.9); (A/AC.109/2018/L.15); (A/AC.109.2018/L.16)
3	Jun-18	Julia Faye Munoz	Diablo Valley College, Pacific Islands Students Association (Pleasant Hill, CA)		Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C24)	NYC, NY	A/AC.109/2018/SR.7		(A/AC.109/2018/SR.9); (A/AC.109/2018/L.15); (A/AC.109.2018/L.16)

2017

1	10/3/17	Eddie Baza Calvo	Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
2	10/3/17	Mr. Arcia Vivas	Bolivarian Republic of Venezuela		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
3	10/3/17	Dietrix Duhaylonsod	Descendent of Soledad Leon Guerrero Balajadia and Juan Mesa Manibusan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
4	10/3/17	Tiara Na'puti, PhD.	Guåhan Coalition for Peace & Justice		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
5	10/3/17	Meivin Won Pat Borja	Independent Guåhan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
6	10/3/17	Victoria-Lola Leon Guerrero	Our Islands Are Sacred		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
7	10/3/17	Michael Lujan Bevacqua, PhD.	Independence for Guam Task Force		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
8	10/3/17	Samantha Barnett	Prutehi Litekyan: Save Ritidian		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
9	10/3/17	LisaLinda Natividad	Guam Commission on Decolonization		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
10	10/3/17	Therese M. Terlaje	34th Guam Legislature/Commission on Decolonization		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
11	10/3/17	Telena Cruz Nelson	Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
12	10/3/17	Kerri Ann Naputi Borja	Sagan Kotturan Chamoru		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
13	10/3/17	Julia Faye Munoz	Pacific Women's Indigenous Network		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
14	10/3/17	Pim Limtiaco	Famoksaiyan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.3	A/72/251/62 [Guam Question]	A/C.4/72/4
1	10/4/17	Samuel Tom	Diablo Valley College (Pleasant Hill, CA)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.4	A/72/251/62 [Guam Question]	A/C.4/72/4
2	10/4/17	Alexander San Nicolas	Hale' Para Agupa		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.4	A/72/251/62 [Guam Question]	A/C.4/72/4
3	10/4/17	Alaina Arroyo	University of San Francisco		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.4	A/72/251/62 [Guam Question]	A/C.4/72/4
4	10/4/17	Glenn Petersen, PhD.	City University of New York		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/72/SR.4	A/72/251/62 [Guam Question]	A/C.4/72/4
1	May 16-18, 2017	Amanda Blas	Need.		C-24 Caribbean Regional Seminar	Kingston, Jamaica	A/72/23		

2016

1	May 31-June 2, 2016	Edward A. Alvarez	Not listed.		C-24 Pacific Regional Seminar	Managua, Nicaragua	A/71/23		
2	May 31-June 2, 2016	Michael Lujan Bevacqua	Not listed.		C-24 Pacific Regional Seminar	Managua, Nicaragua	A/71/23		

2015

	May25-29, 2015	2 attendees from Guam (?)			71st session of the Economic and Social Commission for Asia & the Pacific (ESCAP)	Bangkok, Thailand	E/2015/39-E/ESCAP/71/42		
1	19-May-15	Edward A. Alvarez	1 Nasion Chamorro		Caribbean Regional Seminar on the implementation of the Third International Decade for the Eradication of Colonialism: first quarter review of developments and trends	Managua, Nicaragua	CRS/2015/CRP.2		CRS/2015/DP.5
2	20-May-15	Michael Lujan Bevacqua, PhD.	University of Guam/ Independence for Guam Task Force		Caribbean Regional Seminar on the implementation of the Third International Decade for the Eradication of Colonialism: first quarter review of developments and trends	Managua, Nicaragua	CRS/2015/CRP.2		CRS/2015/DP.5
	21-Apr-15	Dakota Alcantara-Camacho	Guahan Coalition for Peace and Justice		Permanent Forum on Indigenous Issues 14th session	NYC, NY	E/2015/43-E/C.19/2015/10	E/2015/100 19h Permanent Forum on Indigenous Issues. UN. PERMANENT FORUM ON INDIGENOUS ISSUES	
1	10/27/15	Thomas Castro Ada	Senator in Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/70/SR.3	A/70/251 63[7] GUAM QUESTION	A/C.4/70/5
2	10/27/15	Judith T. Won Pat	Speaker of the Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/70/SR.3	A/70/251 63[7] GUAM QUESTION	A/C.4/70/5

2014

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
1	May 21-23, 2014	Edward A. Alvarez	Not listed.		Pacific Regional Seminar	Denarau, Fiji	A/69/23		
2013									
1	May 28-30, 2013	Edward A. Alvarez	Executive Director, Commission on Decolonization		Caribbean Regional Seminar on the implementation of the Third International Decade for the Eradication of Colonialism: first quarter review of developments and trends	Quito, Ecuador	A/68/23		
2	May 28-30, 2013	Michael Lujan Bevacqua, PhD.	University of Guam/ Independence for Guam Task Force		Caribbean Regional Seminar on the implementation of the Third International Decade for the Eradication of Colonialism: first quarter review of developments and trends	Quito, Ecuador	A/68/23		
1	8-Oct-13	Tiara R. Na'puti, PhD.	Pepperdine University, Speaking in personal capacity as a Chamorro activist in diaspora		Special Political and Decolonization Committee (Fourth Committee)	New York, NYC	A/C.4/68/SR.4	A/68/251 60[7] GUAM QUESTION	A/C.4/68/4
2012									
1	May 30-June 1, 2020	Edward A. Alvarez	Not listed.		Pacific Regional Seminar	Quito, Ecuador	A/67/23		
	18-Jun-12	LisaLinda Natividad, PhD.	University of Guam		Pacific Regional Seminar	Quito, Ecuador			
1	20-Jun-12	Julian Aguon	Guahan Coalition for Peace and Justice		Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples	NYC, NY	A/AC.109/2012/SR.9		
	11-Jul-12	Trinidad Torres	Taotaomona Native Rights, Chamoru Nation of Guahan, and Chamoru Cultural Development and Research Institute		UN Human Rights Council. 5th Session of the Expert Mechanism on the Rights of Indigenous Peoples	Geneva, Switzerland	A/HRC/21/52	A/HRC/EMRIP/2012/3	
1	9-Oct-12	Tiara R. Na'puti, PhD.	Guahan Coalition for Peace and Justice		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/67/SR.3	A/67/251 60[7] GUAM QUESTION	
2011									
1	6/21/11	Clare Calvo		speaking on behalf of Eddie Baza Calvo (Governor of Guam)	Special Committee on Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C-24)	NYC, NY	A/AC.109/2011/SR.7		A/AC.109/2011/15
2	6/21/11	Ed Alvarez	Guam Commission on Decolonization		Special Committee on Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C-24)	NYC, NY	A/AC.109/2011/SR.7		A/AC.109/2011/15
3	19-Jul-11	LisaLinda Natividad	Chamorro professor at the University of Guam and a recently appointed member of the Guam Commission on Decolonization. President of the Guahan Coalition for Peace and Justice		Special Committee on Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C-24)	NYC, NY	A/AC.109/2011/SR.7		A/AC.109/2011/15
4	21-Jun-11	Dr. Yasukatsu Matsushima	Professor of Ryukoku University		Special Committee on Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C-24)	NYC, NY	A/AC.109/2011/SR.7		A/AC.109/2011/15

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
5	21-Jun-11	Lisa Baza	Conscious Living non-profit		Special Committee on Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (C-24)	NYC, NY	A/AC.109/2011/SR.7		A/AC.109/2011/15
1	4-Oct-11	Edward A. Alvarez	Guam Commission on Decolonization		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/66/SR.3	A/66/251 60[7] GUAM QUESTION	A/C.4/66/3
2	4-Oct-11	Dr. Judith T. Won Pat	Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/66/SR.3	A/66/251 60[7] GUAM QUESTION	A/C.4/66/3
	May 31-June 2, 2011	Edward A. Alvarez	Executive Director, Commission on Decolonization		Caribbean Regional Seminar	St. Vincent & the Grenadines	A/AC.109/2011/SR.7		
	May 31-June 2, 2011	Mr. Ronald L. McNinch-Su	University of Guam				CRS/2011/DP.6		

2010

1	22-Jun-10	Hope A. Cristobal	Chamorro Psychologist		Special Committee on Decolonization	?			
1	May 18-20, 2010	Hope A. Cristobal	Guahan Coalition for Peace and Justice		Pacific Regional Seminar	Noumea, New Caledonia	PRS/2010/DP.4		
1	5-Oct-10	Maria Roberts	City University of NY, School of Business		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5
2	5-Oct-10	Michael Anthony Tuncap	University of California Ethnic Studies Dept.		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5
3	5-Oct-10	Josette Marie Lujan Quinata	Famoksiyan		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5
4	5-Oct-10	Alfred Peredo Flores	PhD Candidate, UCLA Dept. of History		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5
5	5-Oct-10	My-Lin Nguyen	Famoksiyan - Southern California Chapter	Presented for Senator Hope A. Cristobal	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5
6	5-Oct-10	David Roberts	PhD Candidate, University of Toronto Dept. of Geography		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/65/SR.3	A/65/251 59[7] GUAM QUESTION	A/C.4/65/3/Add.2, 3 and 5

2009

1	7-Oct-09	Michael Anthony Tuncap	Delegation to the UN		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
2	7-Oct-09	Senator Hope Alvarez Cristobal	Guam Coalition for Peace and Justice		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
3	7-Oct-09	Julian Aguon	1 Nasion Chamorro		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
4	7-Oct-09	David Roberts	PhD Candidate, University of Toronto Dept. of Geography		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
5	7-Oct-09	Megan Roberto	Teach for America, Philadelphia Chapter. CU Berkeley Pacific Islander Alumni		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
6	7-Oct-09	Josette Marie Lujan Quinata	Chapman University PI Studies committee		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6
7	7-Oct-09	Destiny Tedtaotao	Riverside Chapter of Chamorro Nation		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/64/SR.4		A/C.4/64/3 and Add.1-6

2008

1	7-Oct-08	Victoria-Lola Leon Guerrero	I Nasion Chamorro		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/63/SR.3	A/63/251 37[7] GUAM QUESTION	A/C.4/63/3, A/C.4/63/3/Add.1-3
2	7-Oct-08	Craig Santos Perez	Guahan Indigenous Collective		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/63/SR.3	A/63/251 37[7] GUAM QUESTION	A/C.4/63/3, A/C.4/63/3/Add.1-3
3	7-Oct-08	Ms. Quan	Senator in Guam Legislature	representing Senator Vicente Lino Cabrera Pangelinan	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/63/SR.3	A/63/251 37[7] GUAM QUESTION	A/C.4/63/3, A/C.4/63/3/Add.1-3
4	7-Oct-08	Michael Anthony Tuncap	Chamorro teacher and community organizer from UC Berkeley		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/63/SR.3	A/63/251 37[7] GUAM QUESTION	A/C.4/63/3, A/C.4/63/3/Add.1-3
	May 14-16, 2008	Hope A. Cristobal	Former Senator of Guam, Fuetsan Famalao'an		Pacific Regional Seminar	Badung, Indonesia	PRS/2008/DP.4		
	2008	Sabina Flores Perez	Indigenous Chamorro Woman		Need. Addresses "Mr. Chairman Marty Natalegawa"	NYC, NY			
	Apr, 2008	Julian Aguon	I Nasion Chamorro		Permanent Forum on Indigenous Issues (Seventh session)	NYC, NY			

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
2007									
	06/19/07	Keith L. Camacho			Special Committee of 24	NYC, NY			
	06/20/07	Sabina Flores Perez			Special Committee of 24	NYC, NY			
	06/20/07	Hope A. Cristobal			Special Committee of 24	NYC, NY			
1	9-Oct-07	Miget Lujan Bevacqua			Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/62/SR.3		A/C.4/62/4, A/C.4/62/4/Add.1 and Add.2
2	9-Oct-07	Rima Miles			Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/62/SR.3		A/C.4/62/4, A/C.4/62/4/Add.1 and Add.2
3	9-Oct-07	Maria Auyong		representing Victoria-Lola Leon Guerrero	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/62/SR.3		A/C.4/62/4, A/C.4/62/4/Add.1 and Add.2
2006									
1	16-Oct-06	Julian Aguon	I Nasion Chamoru		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
2	16-Oct-06	Kerri Ann Naputi Borja	Organization of People for Indigenous Rights	speaking for Senator Hope Alvarez Cristobal	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
3	16-Oct-06	Victoria-Lola Leon Guerrero	The Guam Indigenous Collective		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
4	16-Oct-06	Sabina Flores Perez	The International Peoples' Coalition Against Military Pollution		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
5	16-Oct-06	Tiffany Naputi Lacsado	The National Asian Pacific American Women's Forum		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
6	16-Oct-06	Fanal Castro	Chamoru Cultural Development and Research Institute		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/61/SR.4		A/C.4/61/3
	Nov 28-30, 2006	Hope Alvarez Cristobal	Organization of People for Indigenous Rights (OPI-R)		Pacific Regional Seminar	Yanuca, Fiji	A/61/23/Add.1		PRS/2006/DP.5
2005									
1	10/6/05	Julian Aguon	Chamoru Cultural Development and Research Institute		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/60/SR.3		
2	10/6/05	Ms. Quinata	Chamoru Nation (I Nasion Chamoru)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/60/SR.3		
2004									
	May 18-20, 2004	Eddie L.G. Benavente	Executive Director, Guam Commission on Decolonization		Decolonization Pacific Regional Seminar	Madang, Papua New Guinea			
	May 18-20, 2004	Testimony of Rufo J. Lujan	Chairman of the Colonized Chamorro Coalition		Decolonization Pacific Regional Seminar Workshop	Madang, Papua New Guinea			
	May 18-20, 2004	Mr. Carlyle Corbin	US Virgin Islands		Decolonization Pacific Regional Seminar Workshop	Madang, Papua New Guinea	PRS/2004/CRP.17		
	No records on Question of Guam in 2004 folder								
2003									
	No records on Question of Guam in 2003 folder								
2002									
1	10/3/02	Leland Bettis	Office of the Governor, Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/57/SR.5	A/C.4/57/SR.5 (A/57/23)	A/57/23
2	10/3/02	Mr. Tanoh-Boutchoue	Cote d'Ivoire		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/57/SR.5		A/57/23

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
3	10/3/02	Mr. Huntley	Saint Lucia		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/57/SR.5		A/57/23
2001									
	No records on Question of Guam in 2003 folder								
2000									
	9/27/00	Mr. Ronald F. Rivera	Representative of Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)		A/C.4/55/SR.5	A/55/251 88 Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations. NON-SELF-GOVERNING TERRITORIES--REPORTS	
1999									
1	10/6/99	Mr. Bordallo	Speaking in the name of the Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/54/SR.5		
2	10/6/99	Mr. Lujan	Organization of People for Indigenous Rights (OPI-R)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/54/SR.5		
1	May 25-27, 1999	Ronald F. Rivera	Vice Chair, Guam Commission on Decolonization		International Decade for the Eradication of Colonialism. Caribbean Regional to Review the Political, Economic, and Social Conditions in the Small Island Non-Self-Governing Territories	Castries, St. Lucia			
1	7/2/99	Carl T. Gutierrez	Governor of Guam		Overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development, General Assembly 21st Special Session	NYC, NY	A/S-21/PV.9	A/S-21/1 8 Overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development. POPULATION--DEVELOPMENT--PROGRAMME OF ACTION (1994)	N/A
1998									
1	10/7/98	Mr. Robert Underwood	Representative of Guam to US Congress		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/53/SR.4		A/C.4/53/2
2	10/7/98	Ms. Isabel S. Haggard	Mayor's Council of Guam (& Mayor of Piti)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/53/SR.4		A/C.4/53/2
3	10/7/98	Mr. Ronald F. Rivera	Guam Commission on Decolonization		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/53/SR.4	A/53/251 18[7] GUAM QUESTION	A/C.4/53/2
4	10/7/98	Mr. Ovia	Papua New Guinea		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/53/SR.4		A/C.4/53/2
5	10/7/98	Ms. Hope A. Cristobal	Representative of Senator Santos		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/53/SR.4		A/C.4/53/2
	7/7/98	Rufo J. Lujan	Organization of People for Indigenous Rights (OPI-R)		Committee on Natural Resources and Environment before the Special Committee on Decolonization				
1997									
1	10/31/97	Congressman Robert A. Underwood	Member for Guam of the House of Representatives, Congress of the United States of America		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
2	10/31/97	Senator Mark Charfauros	Senator in Twenty-fourth Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
3	10/31/97	Mr. Leland Bettis	Guam Commission on Self-Determination		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
4	10/31/97	Ms. Hope A. Cristobal	Organization of People for the Indigenous Rights		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
5	10/31/97	Mr. Ronald Teehan	Guam Landowners Association		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
6	10/31/97	Mr. Nunez Mosquera	Cuba		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
7	10/31/97	Mr. Ovia	Papua New Guinea		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
8	10/31/97	Mr. Jose Ulloa Garrido	Nasion Chamoru		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
9	10/31/97	Mr. Mekdad	Syrian Arab Republic		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
10	10/31/97	Ms. Patricia Garrido	Ancestral Landowners Coalition of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
11	10/31/97	Mr. San Nicolas	Tribal Chairman, Chamorro Tribe of the Marianas		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
12	10/31/97	Mr. Scott	United States of America		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/52/SR.6		A/C.4/52/2/
	6/12/97	Laura M. Torres Souder de Betances	Governor of Guam/ Chairman, Guam Commission on Self-Determination	Carl T. C. Gutierrez	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY			

1996

1	10/7/96	Mr. Ronald Teehan	Guam Landowners Association	speaking on behalf of Don Parkinson, Speaker of the Twenty-Third Guam Legislature	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/51/SR.3	A/C.4/51/3	A/C.4/51/3 and Add.1 and 2
2	10/7/96	Mr. Howard	Committee on Federal and Foreign Affairs, Twenty-Third Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/51/SR.3	A/C.4/51/3	A/C.4/51/3 and Add.1 and 2
	June 12-14, 1996	Mr. Ronald Teehan	Guam Landowners Association		UN Regional Seminar, Special Committee on Decolonization	Papua New Guinea	A/C.4/51/SR.3	A/C.4/51/3	A/C.4/51/3 and Add.1 and 2

**Use GA Summary Record docs & testimony docs to verify names/affiliations*

1995

1	10/9/95	Don Parkinson	Speaker, 23rd Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	A/C.4/50/5 and Add.1
2	10/9/95	Ms. Hope Alvarez Cristobal	23rd Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	
3	10/10/95	Ronald Teehan	Guam Landowners Association		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	
4	10/10/95	Artero	No affiliation listed on GA Summary		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	
5	10/10/95	Angel "Sonny" Lujan Orsini	Senator, 23rd Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	
6	10/10/95	Ms. Marianne Rios	Guahan Landowners United, Inc.		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/50/SR.4	A/50/251 18[5] GUAM QUESTION	
	7/4/95	Don Parkinson	Speaker, 23rd Guam Legislature		Special Committee on Decolonization	Port of Spain, Trinidad and Tobago			
	7/5/95	Don Parkinson	Speaker, 23rd Guam Legislature		Special Committee on Decolonization	Port of Spain, Trinidad and Tobago			

**Use GA Summary Record docs & testimony docs to verify names/affiliations*

1994

1	10/11/94	Joseph F. Ada	Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	A/AC.109/1192
2	10/11/94	Robert T. Underwood	Representative of Guam in US Congress		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	

Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
3	10/11/94	San Agustin	Speaker of Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
4	10/11/94	Don Parkinson	Senator, Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
5	10/11/94	Manibusan	Senator, Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
6	10/11/94	Reyes	Senator, Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
7	10/7/94	Hope Alvarez Cristobal	Organization of People for Indigenous Rights (OPI-R)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
8	10/11/94	Ronald Teehan	Guam Landowners United		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.3	A/49/251 18[5] GUAM QUESTION	
9	10/12/94	Marianne Rios	Guam Landowners United		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/49/SR.4	A/49/251 18[5] GUAM QUESTION	
	10/12/94	Artero	Artero Realty		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY		A/49/251 18[5] GUAM QUESTION	
	5/26/94	Forbes/Ada?			Subcommittee on Small Territories	NYC, NY			
	May 22-25, 1995	Don Parkinson	Speaker of 23rd Guam Legislature		Subcommittee on Small Territories	NYC, NY			
	7/11/94	Senator Don Parkinson	Senator 22nd Guam Legislature		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY			
	7/6/94	Mataga David Sablan	Tribunal Council Member of Chamoru Nation		Special Committee of 24				

1993

1	10/12/93	Mrs. Lourdes Pangelinan	On behalf of the Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/AC.109/1173	A/48/251 18[5] GUAM QUESTION	
	6/15/05	Martha Diaz (now Martha Duenas)	On behalf of OPI-R		Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities 45th session	Geneva, Switzerland		E/CN.4/Sub.2/1993/29	

1992

1	13-Oct-92	Mr. P.L. Guerrero	Representing the Governor of Guam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/47/23	A/47/251 18[5] GUAM QUESTION	
2	13-Oct-92	Ms. Laura M. Torres Souder	Organization of People for Indigenous Rights (OPI-R)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/47/23	A/47/251 18[5] GUAM QUESTION	
3	13-Oct-92	Mr. Gonzalez-Gonzalez	Speaking in a personal capacity		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/47/23	A/47/251 18[5] GUAM QUESTION	
	12-Oct-92	Ms. Lourdes T. Pangelinan	Chief of Staff, Office of Governor	on behalf of Joseph F. Ada Governor	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY			
	28-Jul-92	Ms. Lourdes T. Pangelinan	Chief of Staff, Office of Governor	on behalf of Joseph F. Ada Governor	Special Committee on Decolonization	NYC, NY			

1991

					Special Political and Decolonization Committee (Fourth Committee)				
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1990

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1989

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Order of appearance	Testimony Date	Petitioner Name	Organization	Presented Testimony for/Spoke for	UN Hearing/Meeting	Location	UN Symbol [Top Corner, GA Summary records]	UN Agenda Information	UN Addenda (docs)
1988									
1987									
1986									
	10/9/86	Mrs. Palomo	Organization of People for Indigenous Rights (OPI-R)		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/41/SR.10		
1985									
1	10/30/85	Mr. Teehan	Organization of People for Indigenous Rights (OPI-R)	Speaking on behalf of Mrs. Hope A. Cristobal	Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/40/SR.11		A/C.4/40/3/Add.1
2	31-Oct-85	Mr. Teehan	Guam Landowners Association		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/40/SR.13		A/C.4/40/2, 3 and 4, and A/C.4/40/4/Add.1 and Add.3-7
		**FYI: There are several 1985 petitions on the Federated States of Micronesia, Marshall Islands, and the U.S. Pacific Islands Trust Territories at this 4th Committee meeting							
1984									
	11/12/84	Mr. Phan Dinh Truc	Vietnam		Special Political and Decolonization Committee (Fourth Committee)	NYC, NY	A/C.4/39/SR.18		A/39/23A/39/23 (Part VI), chap. XVIII, para. 11
1983									
1982									
	1982	Robert A Underwood	Organization of People for Indigenous Rights (OPI-R)		Special Committee on the situation with regard to the implementation of the declaration of the granting of independence to colonial countries and peoples	?	?		?

**APPENDIX 3 - TESTIMONY BY LISA
LINDA NATIVIDAD (Guam)**

16th Session of the Expert Mechanism on the Rights of Indigenous Peoples



**Expert Mechanism on the Rights of Indigenous Peoples
Sixteenth Session
Geneva, July 17-21, 2023**

Agenda Item 13: *Proposals to be submitted to the Human Rights Council for its consideration and approval*

Presenter: Lisa Linda Natividad, Guam

Statement Submitted by: Pacific Indigenous Women's Network

Hafa adai from the Pacific Indigenous Women's Network!

In its resolutions on the implementation of the Decolonization Declaration, the UN General Assembly annually reaffirms that "there is no alternative to the principle of self-determination, which is also a fundamental human right as recognized under the relevant human rights conventions." The UN resolutions further reaffirm that "colonialism in any form or manifestation...is incompatible with the Charter of the United Nations, the Decolonization Declaration, and the Universal Declaration of Human Rights."

The UN General Assembly continues to acknowledge the concerns of the peoples of the Non Self-Governing Territories regarding the deleterious impact on their well-being and human rights due to incessant militarization and escalating military activity and installations in some territories, particularly on the island of Guahan (Guam).

In 2021 three Human Rights Council Special Rapporteurs sent a joint letter to the United States pursuant to Human Rights Council resolutions 37/8, 42/20 and 45/17 concerning "the impacts of the (US) 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."

The Special Rapporteurs noted that "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, (and that) 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." The Special Rapporteurs also expressed the additional concern that the US "has not supported self-determination for the Chamorro people of Guam."

To address these issues, the UN General Assembly has consistently reiterated that military activities and arrangements by administering Powers in the Non-Self-Governing Territories under their administration should not run counter to the rights and interests of the peoples of the Territories concerned, especially their right to self-determination. In this connection, the UN General Assembly has called repeatedly for the administering Powers concerned "to terminate these military activities and eliminate these military bases in the Non-Self-Governing Territories under their administration in compliance with the relevant resolutions of the General Assembly." Such activities are a serious impediment to the exercise of the human rights of the indigenous CHamoru people of Guahan. These repeated calls for the cessation of military activities in Non Self-Governing Territories has been met only with silence and the ever accelerating militarization of Guahan continues unabated placing our homeland and our people in harm's way.

The Pacific Indigenous Women's Network offers the following recommendation:

1. That the Human Rights Council under its agenda item on *Human rights situations that require the Council's attention* conduct a study on the impact of militarization in Non Self-Governing Territories including Guahan (Guam), and on the impact of persistent colonialism on the fundamental human right to self-determination of the people of the Non Self-Governing Territories.

Un dangku'lo na si Yu'os ma'ase! (Many thanks)

**APPENDIX 4 - SUBMISSION TO MR.
FRANCISCO CALI TZAY, SR ON THE
RIGHTS OF INDIGENOUS PEOPLES,**

*Regarding ongoing human rights violations of the Indigenous Chamorro people of Guam under
U.S. colonization and militarization (Blue Ocean Law and Unrepresented Nations & Peoples
Organization)*

**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
- II. Overview of Guam's colonization
- III. Brief history of the U.S. military's intervention in Guam
- IV. Current military buildup
 - A. Background of the buildup
 - B. Commencement of the buildup
 - C. Environmental, social, and cultural impacts
 1. Chamorro artifacts and human remains
 2. Litekyan/Ritidian
 3. Other impacts
 - D. Regional aggression
 - E. COVID-19 risks
- V. Prutehi Litekyan: Save Ritidian
- VI. Recommendations

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 17th 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,”¹ 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.² The Chamorro people of Guam were an organized cultural and linguistic society marked by advanced seafaring, horticulture, hunting, and fishing.³ 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.⁴ 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.⁵ 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.⁶

The 16th 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.⁷ The Spanish responded to indigenous rebellion with vicious campaigns, resulting in the loss of thousands of native lives from both war and introduced disease.⁸ Within a short time after Spanish colonization, the population of the Marianas had declined from 50,000 people to less than 4,000 in 1710.⁹

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.¹⁰ 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.¹¹ 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 1944.¹²

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.¹³ Under Naval rule, English was mandated and the Chamorro language was banned from the education system and other public places.¹⁴ Although a plan to put Chamorro people on reservations and leave two-thirds of the land for military use did not materialize,¹⁵ Chamorros continue to be denied various civil and political rights.¹⁶

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."¹⁷ 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.¹⁸ Throughout this period, beginning in 1901, delegations of Chamorros petitioned the United States to end the Navy's rule of Guam,¹⁹ filing petitions throughout the years leading up to (and after) WWII, all of which were ignored.²⁰

Guam came under the control of Japanese military forces in December 1941.²¹ 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.²² 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.²³ During this period, the U.S. military seized Chamorro lands to build bases to launch more attacks on Japanese-controlled areas throughout the Pacific.²⁴

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.²⁵ 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.²⁶ 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.²⁷ Many Chamorro landowners received little or no compensation for land that was taken.²⁸ 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.²⁹

Guam's self-sufficient pre-war agricultural economy never recovered from these land seizures;³⁰ 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.³¹

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).³² 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 Guam³³ and provided that the U.S. Constitution – and its rights and freedoms – did not necessarily or automatically apply in Guam as an unincorporated territory.³⁴ 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.³⁵ 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 1962.³⁶ 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).³⁷ 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.³⁸

In 1982, the Commission on Self-Determination organized a status referendum, in which 73% of Guam voters chose the Commonwealth option over Statehood (27%).³⁹ 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.⁴⁰ 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.⁴¹

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.⁴²

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.⁴³ The U.S. failure to consult the people of Guam before formally executing a maritime boundary delimitation divested them of inestimable marine resources.⁴⁴

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”⁴⁵—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.⁴⁶ 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.⁴⁷

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.⁴⁸

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.⁴⁹ 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.⁵⁰ 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.⁵¹

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.⁵² Guam received significant radioactive debris from the fallout.⁵³ 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.⁵⁴ 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.⁵⁵

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."⁵⁶ The impact of nuclear testing in the region, according to the report, "was the largest ecological disaster in human history."⁵⁷ 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.⁵⁸

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;⁵⁹ the storage and use of Agent Orange as a commercial herbicide in Guam during the Vietnam and Korean Wars;⁶⁰ 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;⁶¹ and whale beachings and deaths due to the military's use of sonar.⁶²

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.⁶³ 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.⁶⁴ In the late 1980s, the Navy discharged radioactive water into Apra Harbor, failing to inform the government of Guam of the discharge.⁶⁵ 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.⁶⁶ 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.⁶⁷

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.⁶⁸ 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.⁶⁹ 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 2008.⁷⁰

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.⁷¹ The military actively recruits in Guam’s schools,⁷² 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,⁷³ as well as voting rights for active-duty soldiers.⁷⁴ 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.⁷⁵

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.⁷⁶

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 2014.⁷⁷ 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.⁷⁸ 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.⁷⁹ 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.”⁸⁰

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 160,000.⁸¹ 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.⁸²

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.⁸³ 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.⁸⁴

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.⁸⁵ Additionally, rather than lodge transfer personnel in already-built, vacant housing, the military had planned to build new housing in undeveloped wilderness on Guam.⁸⁶

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.⁸⁷ This included: an increased Air Force presence, with Guam now named as one of four major global hubs for strike forces;⁸⁸ 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.⁸⁹ 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.⁹⁰

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.⁹¹ 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.⁹² 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.⁹³ 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.⁹⁴

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.⁹⁵ 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.⁹⁶

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.⁹⁷ 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.⁹⁸

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 Pãgat shooting range plans in court.⁹⁹ During this time, Chamorro activists were subjected to threats and to demeaning, racist comments by U.S. military personnel.¹⁰⁰ 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.¹⁰¹ 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 2012.¹⁰²

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.¹⁰³ 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).¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶

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 2018.¹⁰⁷ 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.¹⁰⁸

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.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ These include Latte-period ceramic, dark soil features, stone tools, possible volcanic stone tool fragments, and lusong (ancient Chamorro mortar and pestles).¹¹² 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 2020.¹¹³

These discoveries include ancient human remains recovered on the sites.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ By July 2020, buildup construction had revealed a total of 15 sites containing human remains, and 28 containing historic artifacts.¹¹⁷

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.¹¹⁸ 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).¹¹⁹

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.¹²⁰

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.¹²¹ 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.¹²² 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.¹²³

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.¹²⁴ 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.¹²⁵ 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,¹²⁶ constellations mapping Orion, Cassiopeia, and the Southern Cross, and an ancient star calendar.¹²⁷

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.”¹²⁸

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.¹²⁹ Families were provided with between \$10,000 to \$25,000 in compensation for 10 to 30-acre parcels of prized coastal land.¹³⁰ 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.¹³¹ 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.¹³²

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 Pãgat to a site within the fence at Andersen Airforce Base; while seemingly an improvement,¹³³ 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.¹³⁴

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.¹³⁵ 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).¹³⁶ Approximately 70 ancestral and historical sites in the Litekyan area will be adversely impacted or bulldozed.¹³⁷ The restrictions will also limit access to fishing sites, displacing Chamorro fishermen and impacting cultural fishing practices.¹³⁸ Traditional healers will be unable to access medicinal plants and herbs while the range is in use.¹³⁹ 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.¹⁴⁰

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.¹⁴¹ Many of Guam's endemic and unique flora and fauna, including endangered bird species, were destined for resuscitation within the Ritidian National Wildlife Refuge.¹⁴² 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.¹⁴³

The clear cutting of some 1,000 acres of pristine limestone forest (about 8 percent of the remaining limestone forest)¹⁴⁴ will further strip the land of its resilience and undermine biodiversity-rehabilitation efforts.¹⁴⁵ This includes the forest around Guam's last seeding specimen of an indigenous endangered tree species, the *Serianthes nelsonii*, or *håyun lågu*.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸

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.¹⁴⁹ 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.¹⁵⁰

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."¹⁵¹ Unsurprisingly, construction of the LFTRC has been strongly opposed by community members, including protests by thousands of residents and community groups.¹⁵²

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.¹⁵³ 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 2019.¹⁵⁴ In addition to this housing crisis, other anticipated impacts include increased noise, traffic congestion, and potential crime and prostitution.¹⁵⁵

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 Act¹⁵⁶ (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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

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.¹⁶¹

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.¹⁶² 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,¹⁶³ 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.¹⁶⁴ China has developed a DF-26 ballistic missile, known as the “Guam Killer,” for its striking distance range.¹⁶⁵ 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 2017.¹⁶⁶ 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.¹⁶⁷ Trump’s comments to “see what [North Korean leader Kim Jong Un] does with Guam”¹⁶⁸ 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.¹⁶⁹

Like other Pacific Islanders, Chamorros have continually been asked to sacrifice themselves for the good of “global security”¹⁷⁰ – 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).¹⁷¹ 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.¹⁷² 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).¹⁷³ Over 1,150 sailors from USS Theodore Roosevelt eventually tested positive, with one death.¹⁷⁴

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.¹⁷⁵ 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.”¹⁷⁶ 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.¹⁷⁷

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.¹⁷⁸ 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).¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹ 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.¹⁸² 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."¹⁸³

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.¹⁸⁴

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.

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

² 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/>.

³ ROGERS, *supra* note 2, at 24.

⁴ 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).

⁵ 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)).

⁶ Herman, *supra* note 2.

⁷ 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.

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

⁹ 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.

¹⁰ 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.

¹¹ 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).

¹² 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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- ¹³ See HATTORI, COLONIAL DIS-EASE, *supra* note 5, at 39-60, 193-95; see also Quan, *supra* note 4, at 66.
- ¹⁴ 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).
- ¹⁵ Catherine Lutz, *Bureaucratic Weaponry and the Production of Ignorance in Military Operations on Guam*, 60 CURRENT ANTHROPOLOGY 108, 110 (2019).
- ¹⁶ 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.”).
- ¹⁷ Downes v. Bidwell, 182 U.S. 244, 280-81 (1901).
- ¹⁸ Quan, *supra* note 4, at 68.
- ¹⁹ Guam Congress Walkout, GUAMPEDIA, <https://www.guampedia.com/guam-congress-walkout/>.
- ²⁰ 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).
- ²¹ 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).
- ²² VINE, *supra* note 11, at 88; see also Keith L. Camacho, SACRED MEN: LAW, TORTURE, AND RETRIBUTION IN GUAM 60-86 (2019).
- ²³ 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.”).
- ²⁴ VINE, *supra* note 11, at 88.
- ²⁵ 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.
- ²⁶ 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).
- ²⁷ T.P. Maga, *The Citizenship Movement in Guam, 1946-1950*, 53 PACIFIC HISTORICAL REV 59–77 (1984).
- ²⁸ 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/>.
- ²⁹ 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.”).
- ³⁰ 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.”).
- ³¹ *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),

<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.”).

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

³³ *Id.* at § 1423(i).

³⁴ 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.”).

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

³⁶ 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).

³⁷ Lutz, *supra* note 15, at 110.

³⁸ *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).

³⁹ 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).

⁴⁰ *Id.*

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

⁴² Nicoson, *supra* note 31, at 6.

⁴³ 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>.

⁴⁴ *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.

⁴⁵ Guam Decolonization Registry Law, 3 Guam Code Ann. § 21001(e).

⁴⁶ 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).

⁴⁷ 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.), 36th session, <https://unpo.org/downloads/2573.pdf>.

⁴⁸ 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.

⁴⁹ 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].

⁵⁰ 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).

⁵¹ VINE, *supra* note 11, at 88.

⁵² 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; 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; National Research Council, RADIATION DOSE RECONSTRUCTION FOR EPIDEMIOLOGIC USES 105 (1995).

⁵³ 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*].

⁵⁴ *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*].

⁵⁵ *Radioactivity in Guam*, *supra* note 53, at 363-65.

⁵⁶ 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).

⁵⁷ *Id.*

⁵⁸ 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, 116th 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>.

⁵⁹ 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.

⁶⁰ 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/. 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/>.

⁶¹ 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,

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/>.

⁶² 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/>.

⁶³ 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 ordnances 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].

⁶⁴ *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].

⁶⁵ *Id.*

⁶⁶ 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/>.

⁶⁷ *Id.*

⁶⁸ 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].

⁶⁹ 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.

⁷⁰ Bevacqua, *Tip of Spear*, *supra* note 54, at 178.

⁷¹ 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].

⁷² 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.”).

⁷³ Letman, DIPLOMAT *supra* note 71.

⁷⁴ 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).

⁷⁵ 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>.

⁷⁶ Lutz, *supra* note 15, at 110.

⁷⁷ 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/doco605.html>.

⁷⁸ 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>.

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>.

⁷⁹ *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.

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

⁸¹ 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. See also VINE, *supra* note 11, at 89; Natividad & Kirk, *supra* note 1, at 10.

⁸² 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.

⁸³ *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>.

⁸⁴ *Id.*

⁸⁵ VINE, *supra* note 11, at 90-91.

⁸⁶ 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).

⁸⁷ *Military Buildup*, *supra* note 78, at 6.

⁸⁸ See VINE, *supra* note 11, at 89.

⁸⁹ *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=A5ED00D0-E527-0BE6-892E-3C161E77D141.

⁹⁰ 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.”).

⁹¹ Natividad & Leon Guerrero, *supra* note 63, at 9.

⁹² *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.

⁹³ Bevacqua, *Tip of Spear*, *supra* note 54, at 176-77.

⁹⁴ 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.

⁹⁵ Natividad & Kirk, *supra* note 1, at 2.

⁹⁶ 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.

⁹⁷ 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).

⁹⁸ Aguon, *supra* note 97, at 70.

⁹⁹ VINE, *supra* note 11, at 92.

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

¹⁰¹ 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>.

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

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

¹⁰⁴ 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.”).

¹⁰⁵ Bevacqua, Tip of Spear, *supra* note 54, at 180.

¹⁰⁶ 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/>.

¹⁰⁷ 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).

¹⁰⁸ 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).

¹⁰⁹ 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/>

¹¹⁰ 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].

¹¹¹ Gelardi & Perez, *supra* note 102.

¹¹² Kaur, Marine base, *supra* note 110.

¹¹³ 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/>

¹¹⁴ 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/>.

¹¹⁵ *Id.*

¹¹⁶ 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

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>.

¹¹⁷ 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/>.

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

¹¹⁹ Aguon, *supra* note 97, at 71.

¹²⁰ 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>.

¹²¹ *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).

¹²² 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/>.

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

¹²⁴ 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>.

¹²⁵ *Id.*

¹²⁶ *Id.*

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

¹²⁸ *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, 113th Cong. (2014) (statement of Jim Kurth, Chief, National Wildlife Refuge System U.S. Fish and Wildlife Service).

¹²⁹ 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/>.

¹³⁰ *Id.*; *but see infra* note 132.

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

¹³² *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 23rd Guam Legislature, which denounced the actions taken by the U.S. federal government. *See* Guam Public Law No. 23-25 (1995).

¹³³ 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].

¹³⁴ 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/>.

¹³⁵ Navy, 2012 Roadmap Adjustments, *supra* note 133, at 5-428.

¹³⁶ Flores interview, *supra* note 63.

¹³⁷ *Id.*

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

¹³⁹ Flores interview, *supra* note 63.

¹⁴⁰ *Id.*

¹⁴¹ 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.”).

¹⁴² *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).

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

¹⁴⁴ Ossola, *supra* note 49.

http://piccc.net/piccc/wpcontent/uploads/2015/05/MI_Veg_Final_November2017.pdf

¹⁴⁵ 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.”).

¹⁴⁶ 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/>.

¹⁴⁷ 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.

¹⁴⁸ Lutz, *supra* note 15, at 117.

¹⁴⁹ 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/>.

¹⁵⁰ 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>.

¹⁵¹ Navy, 2012 Roadmap Adjustments, *supra* note 133, at 5-393.

¹⁵² 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.

¹⁵³ Navy, 2012 Roadmap Adjustments, *supra* note 133, at ES-25.

¹⁵⁴ 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.

¹⁵⁵ Natividad & Kirk, *supra* note 1.

¹⁵⁶ 16 U.S.C. § 431-433.

¹⁵⁷ 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.

¹⁵⁸ 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/>.

¹⁵⁹ *Id.*

¹⁶⁰ 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/>.

¹⁶¹ 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://apjif.org/2013/11/51/Leevin-Camacho/4050/article.html>.

¹⁶² 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).

¹⁶³ 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/>.

¹⁶⁴ 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/>.

¹⁶⁵ 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>.

¹⁶⁶ 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>.

¹⁶⁷ 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>.

¹⁶⁸ 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>.

¹⁶⁹ 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/>.

¹⁷⁰ 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/>.

¹⁷¹ 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/>.

¹⁷² 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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- ¹⁷⁴ 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>.
- ¹⁷⁵ 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>.
- ¹⁷⁶ Welna, *supra* note 175.
- ¹⁷⁷ *Id.*
- ¹⁷⁸ *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-bb4fffb4424a.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/>.
- ¹⁷⁹ 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/>.
- ¹⁸⁰ 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; 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>.
- ¹⁸¹ O'Connor, *supra* note 180.
- ¹⁸² *Id.*
- ¹⁸³ *Id.*
- ¹⁸⁴ 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/3bo0efea6b.html>.

**APPENDIX 5 - JOINT ALLEGATION
LETTER TO UNITED STATES BY SPECIAL
RAPPORTEURS**

*In response to Blue Ocean Law and Unrepresented Nations and Peoples Organization
Submission, 29 January 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 or can be provided upon request.

APPENDIX 6 - ESSAYS & REFLECTIONS
BY JULIAN AGUON

Founder of Blue Ocean Law, Indigenous human rights lawyer and writer from Guam

Birthday Cakes Mean Birthdays

I wrote this op-ed for In These Times in August 2017, when North Korea was threatening to bomb Guam and major media outlets descended on our small island for about a week. Since publication, neither North Korea's threats nor United States aggression in the region in the form of ramped-up militarization of our lands and seas (including large-scale, multi-country war games) have ceased. In fact, in August 2020, North Korea launched four ballistic missiles into the South China Sea, one of which, the DF-26, it nicknamed "Guam Killer." While some in our community refuse to admit it, we are in danger no matter which country is flexing its military muscle in this tense geopolitical theater.

Escalating tensions between the United States and North Korea culminated last week in increasingly specific threats to the island and people of Guam. North Korea announced that Guam was within striking range and that it was "seriously examining" a plan to launch four intermediate-range ballistic rockets toward the island. One headline read, "14 Minutes," which is the amount of time they say it will take for a missile to reach us.

Fourteen minutes. To run for cover. Round up our children. Reach Deep.

Steel ourselves for the possibility of oblivion.

We need not worry, our leaders tell us. We are a resilient people. We need only summon that strength now. Will someone please tell them that resilience is not a thing to be trotted out in trying times like a kind

of prized pony? As Edwidge Danticat put it, just because a people are resilient doesn't mean they can suffer more than others.

President Trump even phoned the Governor of Guam, telling him that he, that the country, was “with [us] a thousand percent.” The conversation devolved from there, with our Governor, in a kind of curtsy, saying, “Mr. President . . . I have never felt more safe or so confident [than] with you at the helm . . . We need a President like you.” The call lasted all of three minutes, with the two going on to talk about the local hotel occupancy rate and the prospect of tourism going up “tenfold.”

Mortifying though it be, it was also oddly intimate. Pillow Talkish.

For its part, Guam Homeland Security released a fact sheet of suggestions for how to prepare for an imminent missile threat—“Take cover behind anything that might offer protection,” “Lie flat on the ground and cover your head.” And this one, for those unfortunate enough to find ourselves outside during the blast—“Wash your hair with shampoo, or soap and water. Do not use conditioner . . . because it will bind radioactive material to your hair.”

What are we to do with these spectacularly useless suggestions? How can we not be defeated by this kind

of extreme stupidity? Why is no one talking about the fact that nuclear war is unlike any other kind of war?

Last Wednesday, GOP Senator Lindsey Graham, in an interview with CBS This Morning, assured the American people that even if the Trump administration elects to go to war with North Korea, they should fret not because, at the very least, “if there’s going to be a war, it’s going to be in the region, not here in America.”

And there it is. The Kiss of Kissinger.

From 1946 to 1958, the United States conducted a decades-long nuclear testing program just 1200 miles from Guam, in the Marshall Islands, where it detonated 67 atomic and thermonuclear weapons. Of these, a 15-megaton device known as “Bravo” was the worst. Detonated on March 1, 1954, it deposited life-threatening quantities of radioactive fallout on the Marshallese—some three times the estimated external dose to which the most heavily exposed people living near the 1986 Chernobyl nuclear accident were exposed.

They say the radioactive fallout was so thick that many Marshallese, having never seen snow, thought it was snowing. Children played in it.

It goes without saying that the nuclear testing program visited unspeakable violence on the Marshallese. The

rate of miscarriages in the wake of these tests, for instance, is without parallel. One woman, a dear friend who has long since passed, suffered seven miscarriages in her lifetime. And this is to say nothing of the birth abnormalities that forced Marshallese women to have to devise an entirely new language to describe the things they've seen and the babies they've birthed—for example, jellyfish babies, or babies born without bones and translucent skin. Babies buried before their time.

About this program, former National Security Advisor and Secretary of State Henry Kissinger had only this to say:

“There are only 90,000 people out there. Who gives a damn?”

If US-North Korea relations be complex, this be simple: when you live in a colony, you're easy meat. That was Senator Graham's entire—and utterly unoriginal—point.

But alas the dogs have been called off.

The other day the *Wall Street Journal* broke the story that the threat to Guam is gone. Jonathan Cheng, writing for the *Journal*, assured us that North Korea has “decided not to launch a threatened missile attack on Guam.” But, Kim Jong Un warned, North Korea would still consider a strike if “the Yankees persist in their extremely dangerous reckless actions.”

The other news outlets quickly followed suit, and in the span of a few short hours, the weather had changed and the world had moved on. Reporters returned to their hotel rooms, sorted their suitcases, and booked their respective flights home.

They may have made their flights, but they missed the boat.

The truth is this. Nuclear weapons do not have to be used to be deadly. As Arundhati Roy says, it would be supreme folly to think so. “Nuclear weapons pervade our thinking . . . They bury themselves like meat hooks deep in the base of our brains . . . They are the ultimate colonizer.”

Truer words were never written.

It was my partner’s birthday on Sunday. It was midafternoon. I was headed to the nearby bakery to pick up a birthday cake. I was frustrated because I couldn’t figure out where to put the cake once I picked it up, as my car was already full from shopping I had done earlier that day. I had decided the day before that it was better to be safe than sorry, and so that morning I went out and bought two weeks’ worth of supplies—e.g., canned food, powdered milk, a battery-powered radio. You know. Just in case. I was fussing with the bags in the backseat when it hit.

Birthday cakes mean birthdays.

Another year in the life of a loved one.

LIFE.

Guam may have to bear the burden of being a colony in a world suffering from decolonization fatigue, but—to be clear—her people mean to live.

No Country for Eight-Spot Butterflies*

In Guam, even the dead are dying.

As I write this, the U.S. Department of Defense is ramping up the militarization of my homeland—part of its \$8 billion scheme to relocate roughly 5,000 Marines from Okinawa to Guam. In fact, ground has already been broken along the island’s beautiful northern coastline for a massive firing range complex. The complex—consisting of five live-fire training ranges and support facilities—is being built dangerously close to the island’s primary source of drinking water, the Northern Guam Lens Aquifer. Moreover, the complex is situated over several historically and culturally significant sites, including the remnants of ancient villages several thousands of years old, where our ancestors’ remains remain.

The construction of these firing ranges will entail the destruction of more than 1,000 acres of native limestone forest. These forests are unbearably beautiful, took millennia to evolve, and today function as essential habitat for several endangered endemic species, including a fruit bat, a flightless rail, and three species of tree snails. Not to mention a swiftlet, a starling, and a slender-toed gecko. The largest of the

* Op-ed published in June 2020 for *The Wire*, a collaboration of media around the world and one of the three pillars of Progressive International.

five ranges, a 59-acre multipurpose machine gun range, will be built a mere 100 feet from the last remaining reproductive h ayun l agu tree in Guam.

If only superpowers were concerned with the stuff of lower-case earth—like forests and fresh water. If only they were curious about *the whisper and scurry of small lives*.³ If only they were moved by beauty.

If only.

But the militarization of Guam is nothing if not proof that they are not so moved. In fact, the military buildup now underway is happening over the objections of thousands of the island’s residents. Many of these protestors, including myself, are indigenous Chamorros whose ancestors endured five centuries of colonization and who see this latest wave of unilateral action by the United States simply as the latest course in a long and steady diet of dispossession.

When the U.S. Navy first released its highly technical (*and 11,000-page-long*) Draft Environmental Impact Statement in November 2009, the people of Guam submitted over 10,000 comments outlining our concerns, many of us strenuously opposed to the military’s plans. We produced simplified educational

³ A phrase borrowed from Arundhati Roy’s sublime debut novel, *The God of Small Things*.

materials on the anticipated adverse impacts of those plans, and provided community trainings on them. We took hundreds of people hiking through the jungles specifically slated for destruction. We took several others swimming in the harbor where the military proposed dredging some 40 acres of coral reef for the berthing of a nuclear-powered aircraft carrier. We testified so many times and in so many ways, in the streets and in the offices of elected officials. We even filed a lawsuit under the National Environmental Policy Act, effectively forcing the Navy to conduct further environmental impact assessments, thus pushing the buildup back a few years.

But delay was all we won and the bulldozers are back with a vengeance.

A \$78 million contract for the live-fire training range complex has been awarded to Black Construction, which has already begun clearing 89 acres of primary limestone forest and 110 acres of secondary limestone forest. It's bitterly ironic that so many of these machines bear the name "Caterpillar" when the very thing they are destroying is that precious creature's precious singular habitat. To be sure, such forests house the host plants for the endemic Mariana eight-spotted butterfly. But then again maybe a country that routinely prefers power over strength, and living over letting live, is no country for eight-spotted butterflies.

While this wave of militarization should elicit our every outrage, indignation is not nearly enough to build a bridge. To anywhere. It's useful, yes. But we need to get a hell of a lot more serious about articulating alternatives if we hope to withstand the forces of predatory global capitalism and ultimately replace its ethos of extraction with one of our own. In the case of my own people, an ethos of reciprocity.

And nowhere is that ethos more alive than in those very same forests—for it is there that our yo'ámte, or healers, are perpetuating our culture, in particular our traditional healing practices. It is there on the forest floor and in the crevices of the limestone rock that many of the plants needed to make our medicine grow. It is there that our medicine women gather the plants their mothers, and their mothers' mothers, gathered before them.

These plants, combined with others harvested from elsewhere on the island, are used to treat everything from anxiety to arthritis. As someone who suffers from regular bouts of bronchitis, I can attest to the fact that the medicine Auntie Frances Arriola Cabrera Meno makes to treat respiratory problems has proven more effective, in my case, than any medicine of the modern world. Yet Auntie Frances, like so many other yo'ámte I know, takes no credit for the cure. As she tells it, to do so would be hubris, as so many others are involved in the healing process: the plants themselves, with whom

she converses in a secret language; her mother, who taught her how to identify which plants have which properties and also how and when to pick them; and the ancestors, who give her permission to enter the jungle and who, on occasion, favor her, allowing her to find everything she needs and more.

More than this, she tells me that I too am part of that process—that people like me, who seek out her services, give her life meaning. That she wouldn't know what to do with herself if she wasn't making medicine. That the life of a healer was always hers to have because she was born breeched under a new moon and thus had the hands for healing.

But such things are inevitably lost in translation. And no military on earth is sensitive enough to perceive something as soft as the whisper of another worldview.

Earlier this month I received an invitation to be part of the inaugural advisory panel for Progressive International—a new and exciting global initiative to mobilize people around the world behind a shared vision of social justice. The brainchild of the brilliant Yanis Varoufakis (and others), the initiative is a bold and ambitious attempt to organize the global left in a way we've never seen before.

So of course I said yes.

Truth be told, I know little by way of details—what kind of time commitment are we talking about? how will we work as a group? who else said yes?—but I am ready anyway. Ready to build a global justice movement that is anchored, at least in part, in the intellectual contributions of indigenous peoples. Peoples who have a unique capacity to resist despair through connection to collective memory and who just might be our best hope to build a new world rooted in reciprocity and mutual respect—for the earth and for each other. The world we need. The world of our dreams.

The same world who, on a quiet day in September, bent down low and breathed in the ear of Arundhati Roy.

She is still on her way.⁴

⁴ A reference to the famous closing passage of Arundhati Roy's *Come September* speech. As you will probably gather by the time you're done reading this book, I love Arundhati Roy to an almost ridiculous degree. Love the masterpiece that is *The God of Small Things*. Love her non-fiction even more. Love her naturally adversarial relationship with power. Love that she once referred to herself as a cappist and a liddite. Love her insistence that the very smallest of things connect to the very biggest. Love that she once burst into tears in a market in Delhi upon seeing a whole plate of different kinds of lentils—because globalization means standardization and because she believes in defending the last vestiges of wilderness in the world. Toward the top of my bucket list of stupidly wonderful things I'd like to do before I die—e.g., listening to Joni Mitchell's *Blue* album beneath the Northern Lights in Iceland in winter—is rendezvousing with Arundhati on a Kashmiri houseboat on Dal Lake, or on a high terrace anywhere in India, eating mangoes in the moonlight.

Reflections While Driving

This is a Facebook post I wrote on the eve of the deadline of the government of Guam's decision to appeal Davis v. Guam to the Supreme Court of the United States (SCOTUS). I served as lead litigator in the case for nearly a decade, defending the ability of the native inhabitants of Guam to exercise our right of self-determination by way of a symbolic plebiscite regarding our future political relationship with the United States. Though we lost, this case is more important to me than any others I've argued—not only because self-determination is one of the most sacrosanct rights in all of international law—but also because an insidious trend has taken hold of the federal bench ever since SCOTUS handed down its problematic decision in Rice v. Cayetano in 2000. Since Rice, those of us indigenous peoples living under U.S. rule (but falling outside the state-centered framework of federally-recognized Indian tribes) have had to fend off one constitutional attack after another, with few doctrinal tools left at our disposal. In May 2020, SCOTUS denied Guam's petition for certiorari. In August 2020, my firm, Blue Ocean Law, together with the Brussels-based Unrepresented Nations and Peoples Organization, filed a submission against the United States with the Special Rapporteur on the Rights of Indigenous Peoples (on behalf of community-based organization Prutehi Litekyan), detailing the abrogation of our rights.

It's been nearly ninety days since the Ninth Circuit handed down its decision in *Davis v. Guam*, affirming the grant of summary judgment in favor of Arnold “Dave” Davis on Fifteenth Amendment grounds. In its 41-page decision, the panel tacitly acknowledged the injury of colonization, squarely rejected Davis's argument that ancestry is equivalent to race, and preserved our Fourteenth Amendment arguments regarding a compelling interest in advancing self-determination. Yet, we lost.

The decision marks the second time in history that a white plaintiff successfully invoked the protections of the Fifteenth Amendment to judicially invalidate a program designed to protect people whose homelands were, at one point in time, wrongfully acquired by the United States. The first was *Rice v. Cayetano*.

In *Rice*, the Supreme Court held that a state law that premises the right to vote for state officials on Native Hawaiian ancestry violates the race-neutrality command of the Fifteenth Amendment. The circumstances of that case are vastly different from a non-binding expression of self-determination by a class of colonized people in an unincorporated territory—a territory which, by definition, is neither destined for statehood, nor considered bound in permanent union with the United States. I believe the Supreme Court was incorrect to hold that the Hawai'i law was a racial classification, but the Court of Appeals was bound by its holding. Even so, *Rice* was a limited decision and I believe the appeals court was wrong to extend its logic to Guam. Yet, it did. It rejected the faulty argument that ancestry-based classifications are always racial classifications, a holding that will no doubt help in challenges to Native American rights. Yet, as in *Rice*, the court held that a law limiting voting rights to colonized people and their descendants is a racial classification. For those of us colonized peoples who live outside the state-centered framework of Indian tribes, the courts still seem to believe that ancestry does equal race.

Rice and *Davis* (along with a third decision allowing non-native people to vote to repeal land laws in the Commonwealth of the Northern Mariana Islands) lay dangerous doctrinal groundwork. It will now be even harder for colonized people to exercise any measure of self-determination (at least where an act of voting is involved) because the mere act of designating who constitutes the colonized class could collapse, in a court's eyes, into an act of racial categorization. It will now be even more difficult to determine the collective desire of a colonized people because we cannot even name those people in order to ask them. This should excite serious constitutional alarm, as the only real remaining import of the Insular Cases today is that they contemplate the ability of unincorporated territories to “break out” of the Union. Setting aside whatever legal mischief has been done in their name, the Insular Cases effectively smuggled a theory of secession into American law.¹⁸

Despite this, I hesitate to use the word ‘disappointed’ to describe how I feel about the decision. Disappointed is a lover’s word, and we should stop using it—at least to describe the American legal system and the judgments it produces.

¹⁸ A line lifted from a 2010 interview of territorial law scholar Christina Duffy Ponsa-Kraus, entitled *Islands and the law: An interview with Christina Duffy Burnett*.

Not once since 1898—America’s imperial meridian—has this country been able to come up with a satisfactory legal justification for maintaining its constellation of overseas colonial possessions—territories deemed not to be a *part of* the United States, but rather to *belong to* the United States. The constructive violence done to the text of the Constitution in the name of the colonial enterprise is surpassed only by the real violence inflicted upon the psyches of folks who must find our way in a country that neither wants us nor wants to let us go.¹⁹ More than a hundred years have produced no resolution to this constitutional crisis except at the expense of the peoples of the territories, and the loss, to the world, of the gift of our difference.²⁰

But this is not what I came here to say.

I wanted to say this: beyond the outcome in *Davis v. Guam*, beyond the question of whether or not to appeal the same—indeed, out beyond ideas of winning and

¹⁹ A line inspired by Mrs. Ponsa-Kraus and her colleague Burke Marshall in their revealing book, *Foreign in a domestic sense: Puerto Rico, american expansion, and the constitution*.

²⁰ This sentence can be traced to the work of constitutional law scholar Milner Ball, albeit in the context of federal Indian law, in his seminal article, *Constitution, Court, Indian Tribes*.

losing—there is a field.²¹ A field of very real work to be done.

The work of building community and building power; the work of interrupting the tired dynamic of always having to appeal to someone else, indeed our colonizer, to do something on our behalf; the work of creating the conditions whereby our people can live powerfully and live well.²²

We can get there, but first we have to look up—look beyond the law’s limited horizon. This is not to say that the law cannot deliver justice. Indeed it does—but only on occasion, and rarely by design. As a system, it seeks to maximize order and predictability, not necessarily justice. Moreover, the law, especially American law, is limited in its power because harms like colonization, land dispossession, and racial subordination are woven into the very fabric of this country’s being. As close to this country as a jugular vein.

²¹ A line inspired by Rumi: “Out beyond ideas of wrongdoing and rightdoing, // there is field. I’ll meet you there.”

²² This sentence contains the powerful thoughts and ideas articulated by Black Lives Matter Co-Founder Alicia Garza over the course of multiple interviews.

We can get there, but first we have to know—way down deep in our moonpit²³—that the imagination that got us into this mess will not be the one to get us out of it.

That we may be without a blueprint, but we are not without vision.

That what we love we can save—even ourselves, even each other, even when we are afraid.

²³ A line inspired by Audre Lorde's "The Black Unicorn" poem.

**APPENDIX 7 - LETTER BY ADVOCACY
GROUPS CALLING ON PRESIDENT BIDEN
TO CONDEMN THE INSULAR CASES**

August 22, 2023

August 22, 2023

The Honorable Joseph R. Biden, Jr.
President of the United States
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Biden:

As we mark 125 years since the United States invaded Puerto Rico and reneged on its professed commitment to self-governance to embrace an overseas empire, you have an historic opportunity to publicly affirm that what Justice Neil Gorsuch described as “American colonialism”¹ grounded in “ugly racial stereotypes”² has no place in this country. In 1898, Puerto Rico and Guam were acquired by the United States as a result of the Spanish-American War, with American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands to follow. As we assess the relationship between the United States and its territories 125 years later, one conclusion is inescapable: they were colonies then and effectively remain colonies today. The people in the U.S. territories should have the same right to self-determination as people anywhere in the world. At present, they do not. We call upon you to put an end to this gross inequity.

The legal foundation for the colonial relationship between the U.S. and its territories is supported by a series of explicitly racist Supreme Court decisions known as the *Insular Cases* that broke from precedent to deny self-determination and justify colonial rule over Puerto Rico and other territories. Last year, a coalition of civil rights organizations called on the United States Department of Justice “to reject the *Insular Cases* and the racist assumptions they represent.”³ But after Justice Sotomayor called the *Insular Cases* “odious and wrong,”⁴ the Justice Department urged the Supreme Court *not* to hear a case that could have presented an opportunity to overrule the *Insular Cases*.⁵ We appreciate the Justice Department’s recent condemnation of “the indefensible and discredited aspects of the *Insular Cases*’ reasoning and rhetoric”⁶—which makes the Department’s continued reliance on these cases all the more bewildering. We, the undersigned organizations, which represent millions of United States citizens, are petitioning you to **publicly condemn the racist *Insular Cases* and the colonial framework they established.**

Almost immediately after the United States captured Puerto Rico, Guam, and other islands as spoils of war in 1898, questions arose about the applicability of the Constitution to the newly acquired territories and their residents. These included whether certain provisions on tariffs and taxation apply to Puerto Rico and whether the Fifth and Sixth Amendment rights to indictment and trial by jury apply in Puerto Rico and the Philippines. In answering these questions, the Supreme Court ignored the Constitution’s text, history, and tradition in service of naked prejudice and racial bias.⁷ The *Insular Cases*, as they are known, held that the residents of Puerto Rico and other territories acquired during the Spanish-American War were not entitled to the same constitutional rights and protections afforded to residents of the states, nor were they on a path to full political participation as states or to freedom as independent sovereigns. The “alien races”⁸ and “savage tribes”⁹ living in territories such as these would not have these guarantees, said the justices,

because they were perceived as racially and culturally inferior to Anglo-Saxon whites and therefore unfit to enjoy equality or political rights.¹⁰

U.S. territories remain subordinate to federal rule today in many of the ways they did then, as the United States Supreme Court recently re-emphasized in a series of often troubling decisions.¹¹ In each of these cases, the Department of Justice has defended a sweeping view of federal power over people in U.S. territories with no clear limits. In doing so, it has repeatedly relied on the *Insular Cases*, and even actively discouraged the Supreme Court from reconsidering them.

In 2017, for example, the Justice Department defended the constitutionality of the Financial Oversight and Management Board for Puerto Rico by quoting *Downes v. Bidwell*—the most prominent of the *Insular Cases*—for the troubling proposition that the Constitution is “suggestive of no limitations upon the power of Congress in dealing with [the Territories]” and gives no indication “that the power of Congress in dealing with [the Territories] was intended to be restricted by any of the [Constitution’s] other provisions.”¹² In 2021, the Justice Department argued that Congress has the power to deny birthright citizenship in U.S. territories, affirmatively citing *Downes* for the idea “that the Constitution should not be read to automatically confer citizenship on inhabitants of U.S. territories.”¹³

The Justice Department has also consistently opposed any attempts to reconsider the *Insular Cases*. As last year’s letter explained in more detail, during oral argument before the Supreme Court in 2021, the Deputy Solicitor General repeatedly dissuaded the Justices from reconsidering the *Insular Cases*, refusing to even take a position on whether they should be overruled.¹⁴ And last year the Department expressly opposed calls to overrule the *Insular Cases* when the Court was provided a vehicle for doing so.¹⁵

The Administration’s continued reliance on and defense of the *Insular Cases* undermines your publicly stated policy positions towards U.S. territories and the people who call them home. This year, you made history by including “persons who live in U.S. territories” within your Administration’s definition of “equity,” helping ensure greater visibility for the territories in federal agencies.¹⁶ This follows a Statement of Administration Policy in December 2022 recognizing that “[f]or far too long, the residents of Puerto Rico—over 3 million U.S. citizens—have been deprived of the opportunity to determine their own political future and have not received the full rights and benefits of their citizenship because they reside in a U.S. territory.”¹⁷ You also declared in a June 2021 statement responding to discrimination against residents of U.S. territories in federal benefits programs that “there can be no second-class citizens in the United States of America.”¹⁸ You made great strides towards that goal by helping to close Medicaid funding disparities in U.S. territories, extending the Child Tax Credit, expanding the Earned Income Tax Credit, promoting better federal disaster response, and addressing many economic and infrastructure needs in the territories. Publicly condemning the *Insular Cases* would help realize both your stated commitment to the peoples of U.S. territories and your broader commitments to racial justice.

Your leadership is needed if the United States is to turn the page on the racist *Insular Cases* and the undemocratic colonial framework they created. It is time to acknowledge this often overlooked and shameful aspect of United States history. Denouncing the *Insular Cases* should not be controversial—indeed, cross-ideological consensus exists on these issues,¹⁹ even among Supreme Court Justices.

For example, last year Supreme Court Justices Neil Gorsuch and Sonia Sotomayor joined to express “hope [that] the Court will soon recognize that the Constitution’s application should never turn on . . . the misguided framework of the *Insular Cases*.”²⁰

As Justice Gorsuch explained:

A century ago in the *Insular Cases*, this Court held that the federal government could rule Puerto Rico and other Territories largely without regard to the Constitution. It is past time to acknowledge the gravity of this error and admit what we know to be true: The *Insular Cases* have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.²¹

In parsing the main opinions of the leading *Insular Cases*, Justice Gorsuch accurately discerned their through-line: “both rested,” he said, “on a view about the Nation’s ‘right’ to acquire and exploit an ‘unknown island, peopled with an uncivilized race . . . for commercial and strategic reasons’—a right that ‘could not be practically exercised if the result would be to endow’ full constitutional protections ‘on those absolutely unfit to receive [them].’”²² Justice Sotomayor agreed, acknowledging the *Insular Cases* are “premised on beliefs” of the racial inferiority of the territories’ residents that are “both odious and wrong.”²³

Ultimately, the racist legacy of the *Insular Cases* cannot be squared with the stated values of your Administration to support racial justice, equity, democracy, indigenous rights, and self-determination. The 3.6 million people living in the territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands—overwhelmingly people of color—deserve better. This is also an issue for the territorial diasporas throughout the United States, which now exceed 6 million, with more than 2.5 million living in states such as Florida, Pennsylvania, and Georgia.

As the United States approaches 125 years of American colonialism, we ask you to publicly condemn the racist *Insular Cases* and the colonial framework they established.

Thank you for considering our views. We would appreciate an opportunity to engage with your staff about these important issues. We are eager to collaborate with you and we can be reached at: Alejandro A. Ortiz, Senior Staff Attorney with the ACLU’s Racial Justice Program at ortiza@aclu.org; Lolimar Escudero-Rodríguez, Policy Counsel with the ACLU of Puerto Rico at lolimarer@aclu.org; Lía Fiol-Matta, Senior Counsel at LatinoJustice PRLDEF at lfiol-matta@latinojustice.org; and Adi Martínez-Román, Co-Director of Right to Democracy at adi@righttodemocracy.us.

Sincerely,

American Civil Liberties Union
ACLU of Puerto Rico
Asian American Legal Defense and Education Fund
Brennan Center for Justice
Center for Popular Democracy
Dēmos
Human Rights Campaign
Lambda Legal Defense and Education Fund, Inc.
LatinoJustice PRLDEF
NAACP Legal Defense and Education Fund, Inc.
Right to Democracy
Washington Lawyers' Committee for Civil Rights and Urban Affairs

Encl. February 10, 2022 Letter from Civil Rights Coalition to Attorney General Merrick Garland and Solicitor General Elizabeth Prelogar Re: Insular Cases

Cc:

Merrick Garland, U.S. Attorney General
Vanita Gupta, Associate Attorney General
Elizabeth Prelogar, U.S. Solicitor General
Kristen Clarke, Assistant Attorney General for Civil Rights
Tom Perez, Director for the White House Office of Intergovernmental Affairs
Neera Tanden, Domestic Policy Advisor
Stuart Delery, White House Counsel

¹ *United States v. Vaello Madero*, 142 S. Ct. 1539, 1553 (2022) (Gorsuch, J., concurring).

² *Id.* at 1554.

³ Kimberly Strawbridge Robinson, *Biden Urged to Help Fight Cases Treating Territories as Inferior*, Bloomberg Law (July 12, 2022), <https://news.bloomberglaw.com/us-law-week/biden-urged-to-help-fight-cases-treating-territories-as-inferior>.

⁴ *Vaello Madero*, 142 S. Ct. at 1560 n.4 (Sotomayor, J., concurring).

⁵ Robert Barnes, *Biden Administration Urges Supreme Court Not to Take Citizenship Case*, Washington Post (Aug. 29, 2022), <https://www.washingtonpost.com/national-security/2022/08/29/insular-cases-samoa-supreme-court>.

⁶ *Id.*

⁷ See *Vaello Madero*, 142 S. Ct. at 1555 (Gorsuch, J., concurring) (“[t]he Insular Cases’ departure from the Constitution’s original meaning has never been much of a secret”); *Downes v. Bidwell*, 182 U.S. 244, 380 (1901)

(Harlan, J., dissenting) (notion that territories could be held “as mere colonies” was “inconsistent with the spirit and genius, as well as with the words, of the Constitution”).

⁸ *Bidwell*, 182 U.S. at 286-87 (Brown, J.).

⁹ *De Lima v. Bidwell*, 182 U.S. 1, 219 (1901) (McKenna, J., dissenting).

¹⁰ See Brief of ACLU and ACLU of Puerto Rico as Amici Curiae at 4–5, *Fin. Oversight & Mgmt. Bd. For Puerto Rico v. Aurelius Inv., LLC*, 140 S. Ct. 1649 (2020) (Nos. 18-1334, 18-1475, 18-1496, 18-1514, 18-1521), 2019 WL 4192294, at *4–5 (describing, with citations to cases and other authorities, the race-based reasoning underlying the *Insular Cases*’ doctrine of territorial incorporation).

¹¹ *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339 (2023) (disregarding provisions in Puerto Rico’s Constitution that guarantee a right of access to public records in favor of protecting the Financial Oversight and Management Board from public scrutiny); *Vaello Madero*, 142 S. Ct. (ruling that Congress could deny low-income disabled and elderly citizens Supplemental Security Income based solely on the fact that they reside in a United States territory); *Aurelius*, 140 S. Ct. at 1661 (upholding the federally imposed Financial Oversight and Management Board as “local officers . . . with primarily local duties,” despite its absolute lack of any democratic accountability to Puerto Rico residents); *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115 (2016) (ruling that federal law preempts Puerto Rico from creating a legislative fix to federal bankruptcy statutes that arbitrarily exclude it from certain bankruptcy protections); *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 60 (2016) (concluding that Puerto Rico cannot enforce its own criminal laws if the same act is prosecuted by federal authorities given Puerto Rico’s lack of “inherent sovereignty”).

¹² Memorandum of Law filed by the United States in Support of the Constitutionality of PROMESA at 9, *In re: The Commonwealth of Puerto Rico*, No. 17 BK-3283-LTS (Bankr. D.P.R. Dec. 6, 2017) (quoting *Downes*, 182 U.S. at 285-86).

¹³ Response to Petition for Rehearing En Banc at 9, *Fitisemanu v. United States*, Nos. 20-4017, 20-4019 (10th Cir. Sept. 15, 2021).

¹⁴ Marcia Coyle, *In Puerto Rico Case, Justice Gorsuch Asks: If the Insular Cases are Wrong, Why Don’t We Admit It?*, National Law Journal (Nov. 9, 2021), <https://www.washingtonpost.com/national-security/2022/08/29/insular-cases-samoa-supreme-court>.

¹⁵ Damon Root, *Why Won’t the Biden Administration Join Gorsuch in Seeking to Overrule These Racist SCOTUS Precedents?*, Reason (Sept. 1, 2022), <https://reason.com/2022/09/01/why-wont-the-biden-administration-join-gorsuch-in-seeking-to-overrule-these-racist-scotus-precedents>.

¹⁶ Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

¹⁷ Off. of Mgmt. & Budget, Exec. Off. of the President, Statement of Administrative Policy: H.R. 8393 – Puerto Rico Status Act (December 15, 2022), <https://www.whitehouse.gov/wp-content/uploads/2022/12/HR8393-SAP.pdf>.

¹⁸ Presidential Statement on Federal Government Benefits for Residents of Puerto Rico, Daily Comp. Pres. Docs., 2021 DCPD No. 00474 (June 7, 2021), <https://www.govinfo.gov/app/details/DCPD-202100474>.

¹⁹ See Christina Ponsa Kraus, *Insular Cases Run Amok*, 131 Yale L.J. 2449 (2022); Michael Ramsey, *Another Shot at the Insular Cases*, Originalism Blog (October 13, 2022), <https://originalismblog.typepad.com/the-originalism-blog/2022/10/another-shot-at-the-insular-casesmichael-ramsey.html>; RECONSIDERING THE INSULAR CASES: THE PAST AND FUTURE OF THE AMERICAN EMPIRE (Gerald L. Neuman & Tomiko Brown-Nagin eds., 2015); Gary Lawson and Michael Seidman, THE CONSTITUTION OF EMPIRE: TERRITORIAL EXPANSION AND AMERICAN LEGAL HISTORY (2004).

²⁰ *Vaello Madero*, 142 S. Ct. at 1552 (Gorsuch, J., concurring); *Id.* at 1560 n.4 (Sotomayor, J., dissenting).

²¹ *Id.* at 1552 (Gorsuch, J., concurring).

²² *Id.* at 1553 (quoting *Downes*, 182 U.S. at 306) (White, J., concurring).

²³ *Id.* at 1560 n.4 (Sotomayor, J., dissenting).