

LOURDES A. LEON GUERRERO  
GOVERNOR



JOSHUA F. TENORIO  
LT. GOVERNOR

UFISINAN I MAGA'HAGAN GUAHAN  
OFFICE OF THE GOVERNOR OF GUAM

VIA ELECTRONIC MAIL: [klitzkie@hotmail.com](mailto:klitzkie@hotmail.com)

April 22, 2021

Senator Robert Klitzkie

RE: Sunshine Law Demand

*Hafa Adai* Senator Klitzkie:

Please find the attached documents per your email request for the Freedom of Information Act (FOIA) dated April 16, 2021, in which you seek the following:

- "...letter from Protehi Litekyan referred to in the Post..."
- "The attachments to that letter..."

*Senseramente,*

A handwritten signature in blue ink, appearing to read "Jean Taitano". The signature is fluid and cursive, with the first name "Jean" being more prominent.

Jean Taitano  
Special Assistant  
Executive Management Office

Enclosure(s)



**Prutehi Litekyan - Save Ritidian**  
**A Direct-Action Group**

April 1, 2021

Hon. Lourdes A. Leon Guerrero  
Maga'håga, Islan Guåhan  
Office of the Governor of Guam  
Ricardo J. Bordallo Complex  
513 West Marine Corps Drive  
Hagåtña, Guam 96910

**RE: United Nations Affirms Violations of Human Rights Mandates Against the Indigenous CHamoru People in response to a filing by Attorney Julian Aguon, Blue Ocean Law, and Prutehi Litekyan: Save Ritidian**

Buenas yan Håfa Adai Governor Leon Guerrero,

For the first time in our history, the United Nations (UN) is communicating to the United States government on behalf of the CHamoru people citing numerous violations against our human and indigenous rights - the desecration of our sacred places and ancestors, the destruction of our environment, a long history of military contamination, adverse effects on Guam's main source of clean drinking water, risks to the health and safety of our people and future generations of Guåhan, and existing and resulting barriers to our right to self-determination. This communication by the UN to the US is in response to an international filing submitted to the UN Special Rapporteur on the Rights of Indigenous Peoples by Atty. Julian Aguon and Blue Ocean Law on behalf of Prutehi Litekyan: Save Ritidian (PLSR) in Aug. 2020.

The official communication is addressed to President Joe Biden and was submitted by UN Special Rapporteur on Human Rights David R. Boyd, Special Rapporteur on the Rights of Indigenous Peoples Jose Francisco Cali Tzay, and Marcos A. Orellana, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. The communication identifies the impacts of the United States of America's increased military presence in Guam and the failure to protect the indigenous CHamoru people from the loss of our traditional lands, territories, and resources; serious adverse environmental impacts; the loss of cultural artifacts and human remains; the denial of the right to free, prior and informed consent, and additional concerns that the Government of the United States of America has not supported self-determination for the CHamoru people of Guam. The communication highlights the obligations of the United States government as outlined in binding international human rights treaties. As such, the representatives are requesting the following actions:

1. For the U.S. to provide information or comments on allegations regarding military build-up in Guam; destruction of indigenous CHamoru sacred sites and cultural resources; and associated environmental impacts.

2. For the U.S. to report what measures have been taken to ensure that the Chamoru can engage in cultural and religious practices and protect our cultural heritage in view of the growing militarization.
3. For the U.S. to 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. For the U.S. to provide information on current or planned measures to ensure the participation of Chamoru people in all decision-making affecting our community, to obtain our free prior informed consent to projects that affect their lands and territories, and to support and promote the Chamoru peoples' right to self-determination.
5. Information on progress achieved in the clean-up of Superfund sites, and whether there are other sites in the process of being identified as Superfund.
6. Information on any measures taken by the State to initiate a dialogue with the Chamoru people for the resolution of past human rights violations and to prevent further violations.

Moreover, the letter from the UN Special Rapporteurs urges that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence while they wait for a reply from President Biden.

At this time, we humbly ask to meet with you to discuss the implications of this official and direct communication from the United Nations to the United States Government, and furthermore for your support in echoing the requests of this letter. We respectfully beseech your leadership in engaging with the Department of Defense and Joint Region Marianas Guam to pause all activities in sites of impact in order to prevent further devastating impacts to our lands and waters and the defilement of our ancestors as we wait for a response from President Biden. This request is urgent and as the international human rights community casts its gaze on our island, we implore you to consider the substantial evidence of several violations of the United States government presented by the Special Rapporteurs in response to our filing made in August 2020.

We are facing many challenges in this difficult and unprecedented time and we feel it is crucial to quickly come together to acknowledge the significance of this official communication for our people and examine the exhaustive evidence that supported it. We have enclosed with this letter for your review, a copy of the official communication from the UN Special Rapporteurs to President Biden, as well as our initial filing from last August. We look forward to receiving your response at your earliest convenience and we thank you for your time and consideration. Un Dangkolo' na Si Yu'os Ma'ase'.

Ginen respetu,

  
Mowaeka Flores

Prutehi Litekyan - Save Ritidian

Email: [save\\_ritidian@gmail.com](mailto:save_ritidian@gmail.com)

**Attachments:**

Official Communication from the UN Special Rapporteurs to President Biden  
Submission Filed on Behalf of Prutehi Litekyan: Save Ritidian by Attorney Julian Aguon, Blue Ocean Law, and the Unrepresented Nations and Peoples Organization (UNPO)

*Prutehi Litekyan: Save Ritidian, a direct action group dedicated to the protection of natural and cultural resources in all sites identified for DOD live fire training on Guam. We oppose the establishment of any military firing range, stand in solidarity with community groups throughout the Marianas Islands including Guardians of Gani, PaganWatch, Tinian Women's Association, and Alternative Zero Coalition by preventing environmental degradation and destruction on sacred and native lands, and promote the continued pursuit for return of ancestral lands*

**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 17<sup>th</sup> century, continuing to U.S. capture in 1898, Japanese occupation during World War II, and postwar U.S. control through to the present. Despite having placed Guam on the UN list of non-self-governing territories in 1946, the United States, as Guam's administering power, has made little progress to definitively terminate colonial rule.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

### *B. Commencement of the buildup*

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

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



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

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

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

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

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

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

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



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

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

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

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

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

## *2. Litekyan/Ritidian*

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

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

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

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

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

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

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

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



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

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

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

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

### *3. Other impacts*

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



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

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

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

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

#### *D. Regional aggression*

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

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

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

#### *E. COVID-19 risks*

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

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

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

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



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

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

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

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

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

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

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

## **VI. Recommendations**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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



<http://worldwithoutgenocide.org/wp-content/uploads/2016/09/Food-Security-in-Guam-2016.pdf> ("People in Guam die from life-style and preventable diseases such as hypertension, strokes, heart disease, and diabetes at much greater rates than people in the continental US.").

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

<sup>33</sup> *Id.* at § 1423(i).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

<sup>61</sup> Steven C. Hess and Linda W. Pratt, *Final Integrated Trip Report—Site Visits to Area 50, Andersen Air Force Base, Guam National Wildlife Refuge, War in the Pacific National Historical Park, Guam, Rota and Saipan, CNMI, 2004–2005*, USGS 1 (2006), <https://pubs.usgs.gov/of/2005/1299/of2005-1299.pdf>. See also *Case Study: Brown Tree Snake*, U.S. DEPT 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/>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>78</sup> See *US Military Presence on Okinawa and Realignment to Guam*, CONGRESSIONAL RESEARCH SERVICE 1 (Apr. 9, 2019); *Military Buildup on Guam: Costs and Challenges in Meeting Construction Timelines*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE 1 (Jun. 27, 2011) [hereinafter *Military Buildup*]. The island prefecture of Okinawa hosts a large installment of US troops and dependents, who occupy about a fifth of the island. Mayuko Ono & Tim Kelly, *Outnumbered and elderly, Okinawa protestors 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>.

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

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

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

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

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

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

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

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

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

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

<sup>89</sup> *Id.* See also Brian J. Lepore, *Defense Infrastructure: Planning Efforts for the Proposed Military Buildup on Guam are in Their Initial Stages, with Many Challenges Yet to be Addressed*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE 1 (May 1, 2008), [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=A5ED00D0-E527-0BE6-892E-3C161E77D141](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=A5ED00D0-E527-0BE6-892E-3C161E77D141).

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



- kennel on Guam as part of the buildup. See, e.g., Jerick Sablan, *Repository to be built after funding awarded*, PACIFIC DAILY NEWS (Nov. 12, 2017), <https://www.guampdn.com/story/news/2017/11/12/repository-built-after-funding-awarded/850773001/>, and Stars and Stripes, *Contract awarded to relocate military dog kennel on Guam*, STARS AND STRIPES (Sept. 29, 2010), <https://www.stripes.com/news/pacific/guam/contract-awarded-to-relocate-military-dog-kennel-on-guam-1.120118>.
- <sup>117</sup> Anumita Kaur, *Marine base, live-fire training range halfway complete; 43 historic sites discovered*, PACIFIC DAILY NEWS (Jul. 13, 2020), <https://www.guampdn.com/story/news/local/2020/07/12/military-buildup-guam-dededo-marine-base-training-range-near-completion/5422669002/>.
- <sup>118</sup> Scott Russell, TIEMPON I MANMOFO'NA: ANCIENT CHAMORRO CULTURE AND HISTORY OF THE NORTHERN MARIANA ISLANDS 152-56 (1998).
- <sup>119</sup> Aguon, *supra* note 97, at 71.
- <sup>120</sup> Reclaiming Identity: The Repatriation of Native Remains and Culture, FRIENDS COMMITTEE ON NATIONAL LEGISLATION (Mar. 7, 2008), <https://www.fcni.org/updates/reclaiming-identity-the-repatriation-of-native-remains-and-culture-137#:~:text=Legal%20Protections&text=In%201990%2C%20Congress%20passed%20the,university%2C%20government%2C%20etc>.
- <sup>121</sup> See Guam Legislative Resolution No. 228-34 (2017), [http://www.guamlegislature.com/COR\\_Res\\_34th/Res.%20No.%20228-34%20\(COR\).pdf](http://www.guamlegislature.com/COR_Res_34th/Res.%20No.%20228-34%20(COR).pdf). Additionally, while no case has squarely addressed the issue of whether the Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013 (1994) (NAGPRA) applies to the Chamorro people of Guam, the U.S. Department of the Interior has adopted rules stating that NAGPRA protection shall “not [apply] to territories of the United States.” 43 C.F.R. § 10.1(b)(2) (2008).
- <sup>122</sup> Anumita Kaur, ‘Sanctioned Destruction’: Preservation office seeks to amend agreement with military, PACIFIC DAILY NEWS (July 14, 2020), <https://www.guampdn.com/story/news/local/2020/07/13/guam-preservation-office-amend-military-agreement/5425446002/>.
- <sup>123</sup> See Lynda Aguon, State Historic Preservation Officer, Statement before the 34<sup>th</sup> Guam Legislature (Sept. 7, 2017), <http://senatorterlaje.com/category/historic-preservation/>.
- <sup>124</sup> Guam National Wildlife Refuge and U.S. Fish and Wildlife Service, GUAM NATIONAL WILDLIFE REFUGE COMPREHENSIVE CONSERVATION PLAN (Sept. 2009), <https://www.fws.gov/pacific/planning/main/docs/HI-PI/Guam/GuamFinalCCP%20for%20web.pdf>.
- <sup>125</sup> *Id.*
- <sup>126</sup> *Id.*
- <sup>127</sup> Ancient Chamoru Cave Art, GUAMPEDIA, <https://www.guampedia.com/chamorro-cave-art/>.
- <sup>128</sup> The Guam Military Training and Readiness Act of 2014, Hearing on H.R. 4402 Before Subcomm. on Fisheries, Wildlife, Oceans and Insular Affairs on the H. Comm. on Natural Resources, 113th Cong. (2014) (statement of Jim Kurth, Chief, National Wildlife Refuge System U.S. Fish and Wildlife Service).
- <sup>129</sup> John I Borja, *Generations of protest: Former Ritidian landowners want their land back*, PACIFIC DAILY NEWS, 4 Sept 2017, <https://www.guampdn.com/story/news/2017/09/04/generations-protest-former-ritidian-landowners-want-their-land-back/624063001/>.
- <sup>130</sup> *Id.*; but see *infra* note 132.
- <sup>131</sup> See Gov’t of Guam ex rel. Guam Econ. Dev. Auth. v. United States, 179 F.3d 630, 632 (9th Cir. 1999).
- <sup>132</sup> *Id.* To be sure, many of the Chamorro families from Litekyan/Ritidian have maintained that both the original taking of their ancestral lands and the subsequent transfer to U.S. Fish and Wildlife were wrongful; these families were supported by the 23<sup>rd</sup> Guam Legislature, which denounced the actions taken by the U.S. federal government. See Guam Public Law No. 23-25 (1995).
- <sup>133</sup> Dep’t of the Navy, SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT GUAM AND COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS MILITARY RELOCATION (2012 ROADMAP ADJUSTMENTS) (2015) at ES-9 [hereinafter Navy, 2012 Roadmap Adjustments].
- <sup>134</sup> Gaynor Dumat-ol Danelo, *Researchers rediscover ancient Chamorro village at Ritidian*, PACIFIC DAILY NEWS (June 19, 2015), <https://www.guampdn.com/story/news/2015/06/19/researchers-rediscover-ancient-chamorro-village-at-ritidian-0620/28972905/>.
- <sup>135</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 5-428.
- <sup>136</sup> Flores interview, *supra* note 63.
- <sup>137</sup> *Id.*
- <sup>138</sup> Navy, 2012 Roadmap Adjustments, *supra* note 133, at 3-12-35.



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

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

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

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

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

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

<sup>145</sup> Gelardi & Perez, *supra* note 102; [http://piccc.net/piccc/wpcontent/uploads/2015/05/MI\\_Veg\\_Final\\_November2017.pdf](http://piccc.net/piccc/wpcontent/uploads/2015/05/MI_Veg_Final_November2017.pdf)

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

<sup>147</sup> Ossola, *supra* note 49; John I Borja, No common ground: Save Ritidian group, military at odds over firing ranges, PACIFIC DAILY NEWS (Aug. 29, 2017), <https://www.guampdn.com/story/news/2017/08/29/no-common-ground-save-ritidian-group-military-odds-over-firing-ranges/610692001/>.

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

<sup>149</sup> John I Borja, No common ground: Save Ritidian group, military at odds over firing ranges, PACIFIC DAILY NEWS (Aug. 29, 2017), <https://www.guampdn.com/story/news/2017/08/29/no-common-ground-save-ritidian-group-military-odds-over-firing-ranges/610692001/>. The U.S. Fish and Wildlife Service released a 5-Year Review of the *Serianthes nelsonii* species and found hurricanes threaten its continued survival. A consequence of the military clear-cutting around the lone tree may leave it increasingly vulnerable to hurricane damage. U.S. Fish and Wildlife Service Pacific Islands Fish and Wildlife Office, *SERIANTHES NELSONII* (HAYUN LAGU) 5-YEAR REVIEW SUMMARY AND EVALUATION (2010), [https://esadocs.defenders-cci.org/ESAdocs/five\\_year\\_review/doc4060.pdf](https://esadocs.defenders-cci.org/ESAdocs/five_year_review/doc4060.pdf).

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

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

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

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

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

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

<sup>156</sup> 16 U.S.C. § 431-433.

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

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



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

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

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

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

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

<sup>178</sup> DPHSS: Airmen violated orders; Contact tracing underway, THE GUAM DAILY POST (June 22, 2020), [https://www.postguam.com/news/local/dphss-airmen-violated-orders-contact-tracing-underway/article\\_80bb0e1e-b2d5-11ea-a9da-bb4fffb4424a.html](https://www.postguam.com/news/local/dphss-airmen-violated-orders-contact-tracing-underway/article_80bb0e1e-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/>.

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

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

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

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

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

<sup>184</sup> See, e.g., G.A. Res. 44/98, ¶ 5, A/RES/44/98 (Dec. 11, 1989) ("Reaffirm[ing] its strong conviction that the presence of military bases and installations in the Territory [of Guam] could constitute a major obstacle to the implementation of the Declaration [on the Granting of Independence to Colonial Countries and Peoples] . . ."), <https://www.refworld.org/docid/3booe6a6b.html>.

FOR IMMEDIATE RELEASE  
March 31, 2021

**UN Special Rapporteurs send joint allegation letter to United States concerning human rights violations of the Chamorro people of Guam**

In a historic decision, the UN Human Rights Council — through three of its Special Rapporteurs, namely Special Rapporteur on the Rights of Indigenous People (Francisco C. Tzay), Special Rapporteur on Human Rights and the Environment (David R. Boyd), and Special Rapporteur on Toxics and Human Rights (Marcos A. Orellana) — has made public a joint allegation letter to the U.S. Government concerning serious human rights violations suffered by the indigenous Chamorro people of Guam.

The letter was issued in response to the August 2020 submission by Blue Ocean Law (BOL) and the Unrepresented Nations and Peoples Organization (UNPO) on behalf of Prutehi Litekyan: Save Ritidian (PLSR), the community group leading the movement against the construction of the live-fire training range complex at Litekyan/Ritidian.

The three independent experts expressed concerns regarding military activities in Guam, from the unresolved environmental contamination of the island by the United States (including multiple Superfund sites), to the desecration of several sacred and culturally significant sites (including burial grounds) as part of the buildup. They write that the military buildup **“threatens to cause additional and irreparable harm to the land and sea environments on and around Guam . . . The demolishing . . . 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.”**

**“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,”** they continue.

**“[T]he 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 express additional concerns that the Government of the United States of America has not supported self-determination for the Chamorro people of Guam."**

According to Attorney Julian Aguon, "We could not be more pleased with this outcome. It is deeply validating for three Human Rights Council mandate holders to confirm that the way the U.S. military has rolled out this military buildup is wrong. It says to the world, not just to the U.S., that might does not make right, and that the Chamorro people have the right to self-determination, free, prior and informed consent, a clean environment, culture, health and life—rights that should be respected."

UNPO General Secretary Ralph Bunche adds, "It is heartening to see the challenges faced by the indigenous CHamoru people recognized by the United Nations. In May 2020, the U.S. courts denied the ability of the government of Guam to hold a non-binding referendum of the CHamoru people on their desire for the ultimate status of Guam, which we must remember is one of the few remaining Non-Self-Governing Territories in the United Nations decolonization agenda. We are hopeful, at a time of national renewal in the USA, with a government so outwardly dedicated to advancing the rights of indigenous and minority communities, that the concerns of the UN experts will result in tangible positive change for the CHamoru."

For their part, Special Rapporteurs Tzay, Boyd, and Orellana have urged that "necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence . . . ."

In reaction to the news, Monaeka Flores, Maria Hernandez, and Jessica Nangauta of Prutehi Litekyan: Save Ritidian issued the following statement:

"For the first time in our history, the United Nations is communicating to the United States Government on behalf of the CHamoru people citing numerous violations against our human and indigenous rights - the desecration of our sacred places and ancestors, the destruction of our environment, our history of contamination, adverse effects on Guam's main source of clean drinking water, risks to the health and safety of our people and future generations of Guåhan, and resulting barriers to our right to self-determination."

**For more information, please contact us at the information below.**

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

REFERENCE:  
AL USA 7/2021

29 January 2021

Excellency,

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

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

According to the information received:

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

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

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



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

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

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

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

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

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

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

*Toxic pollution and impacts on the environment*

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

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

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

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

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

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

#### *Impacts on health*

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**David R. Boyd**

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

**José Francisco Cali Tzay**

Special Rapporteur on the rights of indigenous peoples

**Marcos A. Orellana**

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

## Annex

### Reference to international human rights law

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

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

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

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

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



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

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

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

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

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

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

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

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

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

\*\*\*



