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Geneva, Switzerland

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

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

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

Dear Special Rapporteurs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Daniel A. Kronenfeld', with a stylized, cursive flourish.

Daniel A. Kronenfeld