

**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**

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AL USA 7/2021

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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.

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## **Annex**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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