# (INTER)NATIONAL LEGAL FRAMEWORKS IN THE MARIANAS ARCHIPELAGO: THE RIGHT TO SELF-DETERMINATION AND THE NATIONAL ENVIRONMENTAL POLICY ACT

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This paper illuminates three contemporary challenges to (inter)national laws and norms of the Pacific through a case-study of the Marianas Archipelago, to highlight how these legal frameworks authorise US militarisation over self-determination. The Indigenous Pacific multidimension decolonial struggle promotes self-determination and resists expanding militarisation. Firstly, in Guåhan (Guam) the implications and limitation of the United States Constitution are discussed through a decolonial lens, followed by the overview of the legal right to exercise self-determination as determined by the United Nations. The third example explores the community lawsuit against the US Department of Defense (DoD) in the Commonwealth of the Northern Mariana Islands (CNMI) which the community believes violates the National Environmental Policy Act. While residents of the entire archipelago are United States (US) citizens, they lack representative democracy and political rights.[1] The US federal government, through their legal systems, continues to enable further militarisation of the lands, seas, airspace, as well as the residents of the archipelago through the DoD's Asia-Pacific expansion.

Indigenous Chamorros of the archipelago have resisted and navigated militarised imperial and (inter)national colonial control for nearly 500 years. Academic, artistic, and legal work by Chamorro scholars offers critical and diverse perspectives of

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[1] Julian Aguon, 'On Loving the Maps Our Hands Cannot Hold: Self-Determination of Colonized and Indigenous Peoples in International Law' (2011) 16(1) *UCLA Asian Pacific American Law Journal* 67; and Steve Limtiaco, 'Territories again denied floor vote' *The Pacific Daily News* (Hagåtña, Guam) 15 January 2017 http://www.guampdn.com/story/news/2017/01/15/territories-again-denied-floor-vote/96512878/ (Accessed 26 November 2018).

successfully resisting the US federal government and military.[2] Chamorro scholar, Dr Tiara R. Na'puti, characterises the current (inter)national legal frameworks imposed on the island of Guåhan as 'both/neither', which categorise the archipelago as both part of the US and domestic structure, while in other circumstances, the islands and people are rendered foreign and international.[3]

## THE MARIANAS ARCHIPELAGO

Today, the Marianas Archipelago remains politically divided as two 'insular areas' possessions within the US Congressional legal structure, under the federal jurisdiction of the Office of Insular Affairs at the Department of the Interior.[4] These political arrangements consider the islands as belonging to the US, rather than a part of it. The local governments of the Marianas Archipelago continue to remain dependent on US federal funds and lack full sovereignty and control over their islands, resources, and people.5 The colonial political status of the Marianas Archipelago and lack of self-determination, enables expanding militarisation for the US to maintain a forward presence in the Indo-Asia-Pacific region.

Guåhan (or imperially referred to as 'Guam') is the largest, most southern, and populated island and is an 'organized, unincorporated territory' of the US with non-

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[2] See Chamorro attorney's overview of the militarisation, Leevin T. Camacho, 'Poison in Our Waters: A Brief Overview of the Proposed Militarization of Guam and the Commonwealth of the Northern Mariana Islands' (2013) 11(51) *The Asia-Pacific Journal: Japan Focus* http://apjjf.org/2013/11/51/Leevin-Camacho/4050/article.html (Accessed 26 November 2018); as well as Chamorro scholars, Tiara R. Na'puti & Michael Lujan Bevacqua, 'Militarization and Resistance from Guåhan: Protecting and Defending Pågat' (2015) 67(3) *American Quarterly* 837-858 https://muse.jhu.edu/article/593317 (Accessed 26 November 2018); and 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' (2010) 8(49) *The Asia-Pacific Journal: Japan Focus* https://apjjf.org/-LisaLinda-Natividad/3454/article.html (Accessed 26 November 2018).

[3] Tiara R. Na'puti 'Speaking the Language of Peace: Chamoru Resistance and Rhetoric in Guåhan's Self-Determination Movement' (2014) 56(2), *Anthropologica* 302.

[4] Office of Insular Affairs, 'Definition of Insular Area Political Organizations' (2015) https://www.doi.gov/oia/islands/politicatypes (Accessed on 30 December 2015).

[5] Michael B. Schwebel, 'Climate change perceptions and preparation in the United States territories in the Pacific: American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands' (2018) 13(1) *Island Studies Journal* 136 https://islandstudies.ca/sites/default/files/ISJSchwebelClimateChangePerceptionsAmericanPacific.pdf (Accessed on 26 November 2018).

self-governing status, a direct violation of United Nations self-determination principles. Today, Guåhan continues to be the 'longest colonized possession in the world'.6

To the north, the remaining fourteen islands of the archipelago are politically structured as The Commonwealth of the Northern Mariana Islands (CNMI) in a political union with the US. The CNMI residents are US citizens and since 2008, the CNMI has had, like Guam and Puerto Rico, a non-voting member in the US House of Representatives but no representation in the Senate. The residents are currently using the National Environmental Policy Act of 1970, a US federal legal framework, to sue the US Department of Defense (DoD) for the planned military projects across the archipelago.7

Although the archipelago is divided politically, the US DoD planners make no distinction between political entities. The DoD conceptualises every island in the Marianas Archipelago as a potential Live Fire Training Range Complex (hereafter LFTRC), as well as the 100-million-square-mile training area surrounding the archipelago.[8]

## Political History of the Archipelago

After the Spanish-American War of 1898, the US strategically acquired the islands of Cuba, Guåhan, the Philippines, and Puerto Rico, and, in a separate move, US sovereignty was established over Eastern Samoa (today American Sāmoa). The new

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[6] The United Nations, 'The United Nations and Decolonization' (2015) http://www.un.org/en/decolonization/nonselfgovterritories.shtml (Accessed on 26 June 2018). Also see Kisha Borja-Kicho'cho' & Ricardo A. Aguon Hernandez, 'GUÅHAN' (2012) http://www.iwgia.org/regions/oceaniapacific/guam (Accessed 26 on November 2018).

[7] See two tables of the military projects in 2016, Sylvia C Frain's 'Resisting political colonization and American militarization in the Marianas Archipelago' (2016) 12(3) *AlterNative: An International Journal of Indigenous Peoples*, 306–307; also see Ferdie De La Torre, 'Groups insist on standing to sue Navy over live-fire plan' *Saipan Tribune* (Saipan, CNMI) 9 January 2017, http://www.saipantribune.com/index.php/groups-insist-standing-sue-navy-live-fire-plan/ (Accessed on 26 November 2018).

[8] The United States Marine Corps Forces Pacific, *Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for Commonwealth of the Northern Marianas Islands Joint Military Training* (2015) http://www.cnmijointmilitarytrainingeis.com/documents (Accessed on 28 May 2018).

island territories were exploited for US military and commercial purposes and the US did not consider extending US citizenship or enabling self-determination by the residents. While the US Congress was obligated to determine the civil rights and the political status of the people of Guåhan under the treaty ending the Spanish-American War, the residents were placed under US Naval Command.[9]

The US, having supreme power over Guåhan and its inhabitants, could also sell Guåhan, give it away, or set it free (as in the case of Cuba), thereby restoring sovereignty. The US could also enter into an agreement with Guåhan for Free Association or Commonwealth. Or, the US could do nothing. Unfortunately for Guåhan, the US picked the last option. This lack of congressional action has lasted for fifty years. Congress did not adopt legislation providing for a local government and birth right citizenship until 1950. By failing to act, Congress allowed the US Navy to rule the island of Guåhan under virtual martial law from 1898 to 1950.[10]

Guåhan / Guam & Organic Act 1950

When the Organic Act of Guam was enacted by the US Congress in 1950, Guåhan became an organised territory of the United States. The Organic Act took the place of the US Constitution as the fundamental law of the local government and bound the territorial authorities. The Organic Act of Guam in 1950 defines 'native inhabitants' as those people, and their descendants, who became US citizens according to the US Congress and were on Guåhan at that time.[11] Organic legislation pertains to the constitutional or essential law(s) passed by Congress organising the government of the territory. Under the territorial clause of the US Constitution, Congress is the ultimate legislative power over the US territories.[12]

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[9] Michael Lujan Bevacqua, 'America-Style Colonialism' (11 November 2014). http://www.guampedia.com/american-style-colonialism/ (Accessed on 22 June 2016).

[10] Carlos P. Taitano, 'Guam's Political Development' (5 September 2018). https://www.guampedia.com/guams-political-development/ (Accessed 26 November 2018).

[11] John I. Borja, 'U.N. resolution on Guam self-determination is a huge victory, advocates say' *Pacific Daily News* (Hagåtña, Guåhan) 10 November 2017, http://www.guampdn.com/story/news/2017/11/10/u-n-resolution-guam-self-determination-huge-victory-advocatessay/851181001/ (Accessed on 26 November 2018).

[12] Carlos P. Taitano, above n 10.

The Organic Act of Guam created an unincorporated territory of the United States with limited home rule, no participation in the presidential elections, no representation in the US Congress, and the appointment of the Guåhan governor in Washington. Guam has had a non-voting member of the US House of Representatives since 1972 but has no representation in the Senate. Since only a territory was created, rule by Congress continued under its plenary powers as provided by the territorial clause of the US Constitution. Today, 'the entire Bill of Rights doesn't apply to us', explains Guåhan Senator, Fernando Barcinos Esteves, referring to the limits a territory faces that states do not.[13]

## The United States Constitution

The legislative history covering the passage of this act contains the statement that 'unincorporated areas are not integral parts of the US, and no promise of statehood—or a status approaching statehood—is held out to them'.[14] Therefore, not all parts of the US Constitution apply to the unincorporated territories. It has also been interpreted that in the absence of a precise congressional grant of rights, citizenship for the inhabitants of Guåhan is not the equivalent of citizenship in the various states of the Union.

While many of the colonies of the world experienced decolonisation and self-determination, Guåhan today remains as an unincorporated territory. In the Pacific, fourteen island communities were freed from direct colonial rule. However, Guåhan and the French territories are still on the agenda of the United Nation's Special Committee of 24 on Decolonization.[15] This special committee is the main body concerned with progress towards self-determination and independence of all people under colonial rule. Decolonisation is an international term in the United Nations system for the process of eliminating the colonial system in the world and creating

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[13] Cristina Verán, 'Self-Determined Nation: Chamorros Seek Justice Under the UN Mandate for Decolonization' (2017) 40(4) *Cultural Survival Quarterly Magazine*, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/self-determined-nation-chamorros-seek-justice-under-un (Accessed on 26 November 2018).
[14] Carlos P. Taitano, above n 10.
[15] United Nations. (2015) *The United Nations and Decolonization*. Available at: http://www.un.org/en/decolonization/nonselfgovterritories.shtml (Accessed on 6 May 2018).

independent states from the former dependent territories. Self-determination is the right of a people to decide upon its own form of government without outside influence.[16] Still, in 2019, has not happened.

## Contemporary Legal Issues: Self Determination and Decolonisation

Two legal developments in Guåhan occurred in 2017. Firstly, the US Department of Justice ruled that Guåhan's self-determination plebiscite law is race-based and thus unconstitutional. Secondly, the United States voted against the resolution for Guåhan's self-determination at the United Nations (again).

### Guåhan's Plebiscite law

The self-determination plebiscite is a non-binding vote which offers three political status options to voters: Independence; Free Association; and Statehood. There is currently no set date to hold a plebiscite in Guåhan and the consultation of the people is therefore hypothetical. Many local residents wonder why the US federal government is so concerned with something that is still unscheduled.

In November 2017, the US Department of Justice urged the US Court of Appeals for the Ninth Circuit to uphold a ruling for *Davis vs. Guam* in the District Court of Guam that found Guåhan's self-determination plebiscite law was 'race-based and thus unconstitutional'. The law limits voting to native inhabitants only. Chief Judge Frances Tydingco-Gatewood found that the law imposed race-based restrictions, a violation of the US Constitution in March 2017. Her order barred the government of Guåhan from holding a nonbinding plebiscite vote on a political status and limiting the votes to native inhabitants.[17]

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[16] 1 UNTS XVI Chapter XI: 'Declaration Regarding Non-Self-Governing Territories' (24 October 1945), http://www.un.org/en/sections/un-charter/chapter-xi/index.html (Accessed on 26 May 2018).

[17] Jasmine Stole Weiss, 'Justice Department supports Dave Davis in plebiscite appeal' *Pacific Daily News* (Hagåtña, Guåhan) 29 November 2017, https://www.guampdn.com /story/news/2017/11/29/justice-department-supports-dave-davis-plebiscite-appeal/ 903800001/ (Accessed on 26 November 2018).

US Justice Department attorneys Diana K. Flynn and Dayna Zolle urged the appellate court to affirm Tydingco-Gatewood's ruling. Flynn and Zolle wrote that the plebiscite law violated the Constitution's 14th and 15th amendments. 'Guam's plebiscite law intentionally discriminates based on race against non-Chamorros', Flynn and Zolle wrote. 'The plebiscite law's definition of "native inhabitant of Guam" is essentially identical to the Guam Legislature's definition of "native Chamorros" in other legislation.' The US Justice Department stated the plebiscite law purposefully established race-based voting qualification.[18]

Arnold 'Dave' Davis, a non-Indigenous, white American military retiree residing on the island, filed the lawsuit in 2011, alleging that Guåhan's plebiscite law, which is only open to 'native Chamorros', is 'unconstitutional' on the basis of 'racial discrimination' in violation of the 14th and 15th Amendments. However, Dr LisaLinda Natividad of the Guam Commission on Decolonization clarifies, the 'decolonization process is not a matter of civil rights, but an exercise of the inalienable right to self-determination for those who have collectively experienced colonization.'[19]

The next generation of Chamorro leaders agrees that *the opinion of the* Davis vs. Guam *decision demonstrates that granting settlers the 'right to participate in a decolonization vote justifies white colonial dominance and weighs the political participation of settlers over the legacy of historical and continuing trauma experienced by native Chamorus'.*[20] The November 2017 decision was appealed by the Government of Guam on 11 October 2018 before three judges with the Ninth Circuit Court of Appeals in Honolulu, Hawai'i. It is unclear when the judges will issue their response.[21]

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[18] Jasmine Stole Weiss, above n 17.
[19] John I. Borja, above n 11.

[20] Samantha Marley Barnett, 'Fanohge Chamoru: Decolonization on Guam, one of the world's last colonies' *The Campanil* 21 April 2017, http://www.thecampanil.com/fanohge-chamoru-decolonization-on-guam-one-of-the-worlds-last-colonies/ (Accessed on 6 May 2018).

[21] Kevin Kerrigan & Mindy Aguon, 'GovGuam appeals decision that struck down plebiscite law' *The Guam Daily Post* (Hagåtña, Guåhan) 12 October 2018, https://www.postguam.com/news/local/govguam-appeals-decision-that-struck-down-plebiscite-law/article_fdb0c178-cd05-11e8-aaf3-c37e3fa300de.html (Accessed 26 November 2018).

Right to Self-Determination

*The Charter of the United Nations*, which was ratified by the US in 1945, stated that the US had an additional treaty obligation with respect to Guåhan as a non-self-governing territory. 'Non-self-governing territories' is an international term for areas subject to the authority of another state.[22] In the Charter chapter XI entitled, 'Declaration Regarding Non-Self-Governing Territories', Article 73, UN member states administering such territories recognised the principle that the interests of the inhabitants were paramount; member states also accepted as a sacred trust the obligation to promote their well-being to the utmost. To that end, they pledged to ensure the political, economic, social and educational advancement of the inhabitants of those territories, to develop self-government, and to assist the peoples in the progressive development of their free political institutions. The US assumed the obligation to submit an annual report on Guåhan to the UN General Assembly.[23]

While the UN mandate is to decolonise Guåhan by 2020, Dr Natividad warned in her petition to the UN international body that 'the unilateral misapplication of U.S. law to the territory' stands in the way.[24] Over fifty years after the *Declaration on the Granting of Independence to Colonial Countries and Peoples* was adopted by United Nations member states, Chamorros continue annually to testify at the UN, in front of the General Assembly's Fourth Committee, which oversees matters of decolonisation.[25]

In October 2017, a delegation of 16 Chamorros (elected officials, activists, and academics) travelled to New York City to speak in front of the United Nations Fourth

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[22] United Nations, *Charter of the United Nations*, 1 UNTS XVI (24 October (1945) https://www.refworld.org/docid/3ae6b3930.html (Accessed on 25 November 2018).

[23] 1 UNTS XVI Chapter XI: 'Declaration Regarding Non-Self-Governing Territories', Article 73 (24 October 1945), http://www.un.org/en/sections/un-charter/chapter-xi/index.html (Accessed on 26 May 2018).

[24] John I. Borja, above n 11.

[25] Samantha Marley Barnett, 'Decolonization efforts bring delegates from Guam to United Nations' *The Campanil* 15 October 2017, http://www.thecampanil.com/guam-at-the-united-nations/ (Accessed on 16 November 2018). Similar offers took place in 2018, see Michael Lujan Bevacqua, ''United Natives,' Guam's place in the UN' *Pacific Daily News* (Hagåtña, Guåhan) 16 August 2018, https://www.guampdn.com/story/opinion/columnists/2018/08/16/united-natives-guams-place-un-bevacqua/995174002/ (Accessed 2 March 2019).

Special Political Decolonization Committee of the General Assembly. They came to assert their sovereignty and demand that their voices be heard and that the will of the people be given full sway over their island's future.[26]

Governor Eddie Calvo, Vice Speaker Therese Terlaje and Sen. Telena Nelson urged the adoption of the resolution and to force the US to cooperate with Guåhan's path to self-determination.[27] The delegates said collectively that the US has taken little to no action to assist. Recent events, including two federal lawsuits and movement towards a new Marine Corps Base on Guåhan, have once again put a strain on the island's right to self-determination.

## The United Nations Resolution

The resolution presented to the UN in 2017 was different compared to previous years because it had a stronger, more organised approach. Dr Natividad said the resolution was particularly strongly worded as to the military presence on Guåhan. The resolution not only calls for the 'conservation and protection of the environment', but also for the 'removal of the military bases on the island.'[28] 'Our situation on Guam is urgent, as our land and ocean are increasingly under threat. Access and control of our resources are impeded by the delay in decolonization', Vice Speaker Therese Terlaje, D-Yona, said to committee chair Rafael Darío Ramírez Carreño. Other petitioners spoke of their opposition of the planned Marine Corps Base. Sen. Telena Nelson, D-Dededo, told the U.N. committee that Guåhan did not have a say in the dialogue between the US and Japan regarding the relocation of approximately 5,000 Marines and their families from Okinawa to Guam. 'We have no ability to vote, no ability to

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[26] John I. Borja, 'U.S. votes against U.N. resolution for Guam self-determination' *Pacific Daily News* (Hagåtña, Guåhan) 09 November 2017, http://www.guampdn.com/story/news/ 2017/11/09/u-s-votes-against-u-n-resolution-guam-self-determination/847082001/ (Accessed on 26 November 2018).

[27] Voting and discussion of the resolution on the Question of Guam can be viewed on a livestream playback on the UN website, http://webtv.un.org/watch/fourth-committee-27th-meeting-general-assembly-72nd-session/5638016176001/. The video is titled, 'Fourth Committee, 27th meeting - General Assembly, 72nd session'. The discussion begins around the 2:27:00 marker.

[28] John I. Borja, above n 26.

govern ourselves and as it stands, until the United States government says so, we have no voice', Nelson said.[29]

The resolution, relative to Guåhan's right to self-determination, includes the call for the UN Assembly to conduct the following, among other resolves:

- encourage Guam and the US to negotiate on self-determination efforts;
- call on the US to cooperate fully with the committee to help promote Guam decolonization;
- request that the US transfer lands back to original landowners on Guam;
- request that the US acknowledge and respect the cultural and ethnic identity of the indigenous Chamorro people;
- plan a visiting mission to Guam; and
- ask the US and Guam to protect the environment against harmful impacts of militarisation.[30]

The United States votes against the UN resolution

Special Political and Decolonization Committee voted 80 in favour, 9 against and 62 abstentions. The US, Japan, United Kingdom, France, Iraq, Israel, Morocco, Malawi, and Ukraine voted against the resolution relative to Guåhan's right to self-determination. A United States representative, who voted against the United Nations resolution, stated the 'resolution contains language that appears to attack the United States.' The *Pacific Daily News* was unable to confirm the identity of the US representative, who was not named. On the subject of political status related to decolonisation, the US representative said, 'the UN must stop looking at independence as the main option.' Status quo and integration also are options, he said. The US representative concluded with the 'reminder that the resolution is non-binding and does not necessarily reflect international law.' The US voted against the resolution, citing 'problematic language in the resolution that made it seem like an attack.' A representative speaking on behalf of the US cited conflicting perceptions about the

[29] John I. Borja, above n 26.
[30] United Nations AC Res 472L (16 Questions of Guam) (30 October 2018) https://assets.documentcloud.org/documents/4178102/A-C-4-72-L-16-Question-of-Guam.pdf (Accessed on 26 November 2018).

military presence on Guåhan and political status.[31] The US militarisation plans for the region occur without the consent of the local community. Due to the continued colonial political status of the Marianas Archipelago the region and local communities are tasked with responding to military plans.

## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

The resistance to militarism is directly tied to the self-determination struggle. While the Commonwealth of the Northern Mariana Islands (CNMI) was taken off the decolonisation list, it is still an 'insular area' of the United States and the US still has legal jurisdiction over the land and sea, especially when it comes to national security.[32] This is supported in the DoD's defence of the militarisation plans which are a political issue, decided between the United States executive branch and the Japanese government, with the CNMI local governments and even the US federal court in Saipan lacking jurisdiction.

### The US Foreign Policy: The Asia Pacific Pivot

The DoD is 'refocusing' to the Pacific region to meet the 'challenges of America's Pacific Century' and further militarising Guåhan and the CNMI.[33] In 2006, a bilateral foreign policy decision between the executive branch of the United States and Japan was formalised through the *United States–Japan Roadmap for Realignment Implementation Agreement*. This *Roadmap* is a repositioning of US military hardware

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[31] John I. Borja, above n 26.

[32] The removal of CNMI from the decolonisation list was vigorously debated at the time on the basis that its status did not conform to that set out in the General Assembly's standards for an adequate act of decolonisation. See Roger S. Clark, 'Self-Determination and Free Association – Should the United nations Terminate the Pacific Islands Trust?' (1980) 21 (1) *Harvard International Law Hournal*1, 75—8.

[33] Hillary Rodham Clinton, *America's Pacific Century* (2011), http://www.state.gov/secretary/20092013clinton/rm/2011/11/176999.htm (Accessed on 1 May 2018). Also read the report by Michael Green, Kathleen Hicks, & Mark Cancian, *Asia-Pacific Rebalance 2025. Capabilities, Presence, and Partnerships: An Independent Review of U.S. Defense Strategy in the Asia-Pacific* (2015) and watch the YouTube summary, https://youtu.be/iEKw7Gg97Ic.

and personnel from Japan to Guam and comes with a price tag of $10.2 billion USD with Japan contributing $6 billion USD.[34] All branches of the US armed forces in the Asia-Pacific region will need to maintain a 'forward presence' and require locations for Live-Fire Training Range Complexes (LFTRCs) or bombing ranges.[35]

## United States Military Base Network

The US Department of Defense's Pacific Command (PACOM) is headquartered on O'ahu, Hawai'i, and has the authority over more than 160 US military areas and training ranges, spanning 100-million-square-miles of Pacific Ocean.[36] This US Pacific base network includes the lands, seas, and airspace, and recruitment of the populations from American Sāmoa; Hawai'i; Johnston Atoll; Wake Island; the Republic of the Marshall Islands; the Republic of Palau and the Federated States of Micronesia.[37] These highly militarised sites include varying political relationships with the US based on defence access.[38] While the islands and seas support US and allied troops worldwide in the name of freedom and democracy, the island residents are denied self-determination.[39] The Micronesian area is central to US Pacific defence and considered

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[34] US Secretary of State Rice, US Secretary of Defense Rumsfeld, Japanese Minister of Foreign Affairs Aso, & Japanese Minister of State for Defense Nukaga, *United States-Japan Roadmap for Realignment Implementation* (Washington, DC) 1 May 2006.
[35] The United States Marine Corps Forces Pacific, above n 8.

[36] Timothy J. Keating, 'United States Pacific Command' (2008), http://photos.state.gov/libraries/adana/19452/pdfs/uspacom.pdf (Accessed on 27 May 2018). Also read Indigenous Pacific scholars, Keith L. Camacho, 'Transoceanic Flows: Pacific Islander Interventions across the American Empire' (2011) 37(3) *Amerasia Journal* xii; Joseph H Genz, Noelani Goodyear-Ka'ōpua, Monica C La Briola, Monica, Alexander Mawyer, Elicita N Morei & John P Rosa, *Militarism and Nuclear Testing* (Vol. 1, 2016).

[37] Sasha Davis, 'The US military base network and contemporary colonialism: Power projection, resistance and the quest for operational unilateralism' (2011) 30(4) *Political Geography*, 221; Justin Nobel, 'A Micronesian Paradise — for U.S. Military Recruiters' *TIME* (New York City) 31 December 2009. Also see the documentary, *The Island Soldier*, directed by Nathan Fitch (2016), http://www.islandsoldiermovie.com.
[38] Sylvia C Frain, 'Mapping contemporary political arrangements across Micronesia' 14 November 2018 https://www.pasifikarising.org/mapping-contemporary-political-arrangements-across-micronesia/. (Accessed on 28 November 2018).

[39] Ross Dardani, *Weaponized Citizenship: A Critical Race Theory Analysis of U.S. Citizenship Legislation in the Pacific Unincorporated Territories* (Doctor of Philosophy thesis, the University of Connecticut, 2017) 34, 35.

a militarised 'imperial archipelago' with fifty-two US bases, installations, and outposts.[40]

Militarisation of the Marianas

The DoD plans to construct an additional Marine Corps installation and Live Fire Training Range Complex (LFTRC) on Guåhan to fulfil the 'forty-two joint training deficiencies'.[41] The LFTRC is adjacent to the only Wildlife Refuge on the island, Nasion lihing lina'la'machålik gi halmo tåno' yan tasi- puntan Litekyan, or Ritidian National Wildlife Refuge.[42] Additional war exercises and weapons testing areas, ammunition storage facilities, and fuel pipelines are planned for the Commonwealth of the Northern Mariana Islands. The northern two-thirds of the island of Tinian and the entire island of Pågan are 'needed' for additional LFTRCs, the use of the beaches for amphibious landings, including artillery, grenade, and high-impact zones for the Navy, Air Force, Army, and Marines.[43] The island of Saipan will serve as a troop 'R&R' (rest and recreation) destination.[44]

Currently, the 984,000-square-nautical-mile live-fire Marianas Island Training and Testing range surrounds Guåhan, Rota, Tinian, and Saipan. Recently, the ongoing bombing of the island Farallon de Medinilla (referred locally as 'FDM') was increased by nearly 300 percent and the military is authorised to use powerful sonar, deep-sea

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[40] Craig Santos Perez, 'Transterritorial Currents and the Imperial Terripelago' (2015) 67(3) *American Quarterly*, 619.
[41] The United States Marine Corps Forces Pacific, above n 8.
[42] Keith L. Camacho, 'The Politics of Indigenous Collaboration'(2008) 43(2) *The Journal of Pacific History* 207-222; Mike T Carson, *Guam's Hidden Gem: Archaeological and Historical Studies at Ritidian*. (Ed. 2014).
[43] David S. Cloud, 'Island of Pagan opposes plan to use it for Marine invasion training' *Los Angeles Times* (Los Angeles, California) 17 May 2015 http://www.latimes.com/world/asia/la-fg-marines-invade-20150517-story.html#page=1 (Accessed on 26 November 2018).
[44] Alexie Villegas Zotomayor, 'Saipan residents say 'no' to Tinian, Pagan military training' *Marianas Variety* (Saipan, CNMI) 1 May 2015, http://www.mvariety.com/cnmi/cnmi-news/local/76415-saipan-residents-say-no-to-tinian-pagan-military-training (Accessed on 26 November 2018); Steve Limtiaco, 'Guam, CNMI Suggested for U.S. Military Expansion in Pacific: Increased investments in islands recommended in strategic report' *Pacific Daily News* (Hagåtña, Guåhan) 3 August 2012, http://www.pireport.org/articles/2012/08/03/guam-cnmi-suggested-us-military-expansion-pacific (Accessed 26 November 2018).

and urban warfare, and ordnance training on the islands of Guåhan, Rota, Saipan, Tinian.[45]

## The National Environmental Policy Act

The US Department of Defense is required to follow the legal frameworks of the US National Environmental Policy Act law 42 U.S.C. §§ 4321 et seq., which outlines the 'expected environmental and societal ramifications of destroying the majority of the island with bombs and mortars' and produce written reports referred to as Environmental Impact Statements (EIS).[46]

The United States National Environmental Policy Act (NEPA) of 1970 was enacted to address concerns about federal actions and their effects on the environment. It is designed to protect people from harmful environmental actions by federal agencies and to prevent the military from engaging in operations harmful to US civilians.[47] The process is supposed to include: A Notice of Intent (NOI), a Public Scoping Period, Preparation of Draft of Supplemental Environmental Impact Statement (SEIS), Notice of Availability (NOA) for Draft SEIS, Public Comment Period on Draft SEIS (30 days), Review of Public Comment on Draft SEIS, Preparation of Final SEIS, NOA for Final SEIS, Waiting Period, and finally, the signing of the Record of Decision (ROD).

## Environmental Impact Statements

An Environmental Impact Statement (EIS) is the most detailed analysis prescribed by regulations implementing NEPA, with each EIS document costings an estimated $25 million USD. Subcategories of EIS are the Draft Environmental Impact Statements (DEIS), Overseas Environmental Impact Statements (OEIS), Supplementary Environmental Impact Statements (SEIS), Environmental Assessments

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[45] Sophia Perez, 'Our Oceania: Tinian Women's Association faces biggest challenge' *Saipan Tribune* (Saipan, CNMI) 06 July 2018 http://www.mvariety.com/cnmi/cnmi-news/ editorials/ 105745-our-oceania-tinian-women-s-association-faces-biggest-challenge (Accessed 26 November 2018).
[46] Sophia Perez, above n 45.
[47] United States Environmental Protection Agency, *National Environmental Policy Act of 1970* 42 U.S.C. §4321 et seq, https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act (Accessed on 24 August 2017).

(EA), and Overseas Environmental Assessment (OEA). A Supplemental Environmental Impact Statement (SEIS) is required after an EIS document undergoes substantial changes to a proposed action, or there are significant new circumstances or information relevant to environmental concerns. An SEIS is a public document and public involvement is a vital component of the NEPA process. Military projects in the Marianas Archipelago are outlined in numerous Environmental Impact Statements (EIS) which have previously been found to be in violation of the NEPA. In February 2010, the US Environmental Protection Agency conducted a mandatory review of the Guam Relocation DEIS, giving the document the lowest possible rating: 'Unsatisfactory: Inadequate information (EU3).' [48]

Since 2006, the US DoD has released a series of separate EIS highly technical documents that lack the accumulative environmental impacts from the overlapping and often contradictory EIS projects. Separate documents reveal 'independent' plans for Guåhan and for CNMI and underestimate and/or omit the social impacts on local communities and often disregard NEPA. Additional violations of relevant US federal laws include the Endangered Species Act, the Migratory Bird Act, and the Marine Mammal Protection Act.[49]

US Military Projects with a Signed Record of Decision (ROD), includes four recent militarisation plans (2010 – 2016) for the Marianas Archipelago now completed through the final stage required by the NEPA process, with pending US Military projects in consultation with the National Environmental Policy Act (NEPA), are the two projects planned (as of August 2018) for the archipelago.

The 2009 Draft Environmental Impact Statement (DEIS) for the *Guam and Mariana Islands Military Relocation: Relocating Marines from Okinawa*, Japan to Guam took over five years to create, is the longest in US history and includes nine volumes, twenty-two chapters and is 11,000-pages. Local Guåhan government officials assisting with the creation of the document had to 'sign non-disclosure agreements

[48] Ronni Alexander, 'Living with the fence: militarization and military spaces on Guåhan/Guam' (2015) *Gender, Place & Culture* 5.
[49] Tiara R. Na'puti & Michael Lujan Bevacqua, above n 2.

punishable by federal penalties' if violated.[50] The public and local agencies were only given forty-five days to comment. The community expressed their outrage and opposed the project verbally at the 'public hearings' administered by the DoD and through over 10,000 written comments.[51]

Despite the recurring release of numerous 'lengthy, technical, complex American English-language documents that refer to one another, which have been 11,000, 4,000, and 1,500 pages long', Mariana Archipelago residents, as well as politicians and US federal agencies, have expressed strong opposition to the expanding militarisation.[52] The military is required by NEPA to provide opportunities for public reviews and comments of those documents but lacks additional legal frameworks to certify that the DoD integrates the communities' comments.

'Commonwealth of the Northern Mariana Islands Joint Military Training'

The 1,836 paged EIS document, *Commonwealth of the Northern Mariana Islands Joint Military Training* (CJMT) (see Table 2, number 1) was released in April of 2015. The Tinian Women's Association, a local grassroots women's collective tasked with protecting their community, divided up the document to read among its members and found it challenging to understand the military's plans. 'I think it was designed so the layman would not understand', said a local resident. 'I did not understand half the things they were saying.' [53] The language was even unclear to Julian

[50] See Leevin T. Camacho, Resisting the Proposed Military Build-up on Guam' in Daniel Broudy, Peter Simpson, & Makoto Arakaki (Eds.), *Under Occupation: Resistance and Struggle in a Militarised Asia-Pacific* (2013) 185.
[51] Tiara R. Na'puti & Michael Lujan Bevacqua, above n 2, 846.
[52] Read the US Environmental Protection Agencies written comments outlining the concerns relating to militarisation. Kathleen H. Johnson, *Draft Environmental Impact Statement (DEIS) for Commonwealth of the Northern Mariana Islands Joint Military Training* 29 September 2015 http://www.cnmieis.org/uploads/5/5/0/4/55040605/epa_comments_on_cjmt_deis.pdf (Accessed 26 November 2018).
[53] Anita Hofschneider, 'Chapter 3: Tinian: 'We Believed in America'' *Honolulu Civil Beat* (Honolulu, Hawai'i) 4 December 2016 http://www.civilbeat.org/2016/12/tinian-we-believed-in-america/ (Accessed on 26 November 2018).

Aguon, principal attorney of the Guåhan-based international human rights law firm Blue Ocean Law.[54]

After the release of the highly technical EIS document, and as required by NEPA, the US DoD provided the community a thirty-day comment period to submit written or verbal comments from elected officials, governmental agencies, the private sector, businesses, community organisations and the general public. In response, the Federal and Foreign Affairs Committee in the Marianas House voted 19-0 in favour of a resolution introduced by the late CNMI Governor Inos to 'oppose any and all proposed military use of Pågan.'[55] In addition, a record number of nearly 30,000 comments opposing the project were submitted in response.[56]

The DoD also controlled 'open-house style public meetings' at schools on Saipan and Tinian. In order to speak at the meeting, local residents had to register in advance and verbal comments were limited to only three minutes.[57] Indigenous Chamoru and Refaluwasch residents highlighted that this form public meetings are culturally incompatible with Chamoru and Refaluwasch methods of gathering community insight and feedback. They discuss the 'obligations and proper etiquette for the guests' [US government agencies, including the military] to abide by if they want to learn from the community.[58]

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[54] Sophia Perez, above n 43. Also see Blue Ocean Law, http://blueoceanlaw.com and read the interview with Julian Aguon covering major human rights issues in the contemporary Pacific, http://www.pmc.aut.ac.nz/articles/we-cannot-footnote-our-way-freedom.

[55] Kenneth A. Kedi, & Fernando Scaliem, Relative to expressing opposition to any and all proposed military use of the Northern Mariana Islands of Pågan and any increase in military activities on Tinian, Commonwealth of the Northern Mariana Islands APIL Resolution No. 34-GA-16, CD1 (2015). Also, see Sylvia C Frain, ''Make America Secure': Media, militarism, & climate change in the Marianas Archipelago' (2018) 24(2) *Te Koakoa Pacific Journalism Review* 230-232.

[56] See the special investigative series by Saipan-born journalist, Anita Hofschneider, 'Chapter 1: Can These Islands Survive America's Military Pivot to Asia?' *Honolulu Civil Beat* 12 December 2016 http://www.civilbeat.org/2016/12/can-these-islands-survive-americas-military-pivot-to-asia/; 'Chapter 2: The Fight to Save Pagan Island from US Bombs' *Honolulu Civil Beat* 13 December 2016 http://www.civilbeat.org/2016/12/ the-fight-to-save-pagan-island-from-us-bombs/; 'Chapter 5: Missing Data Plagues Military Training Plans in The Marianas' *Honolulu Civil Beat*. 16 December 2016 http://www.civilbeat.org/2016/12/ what-the-military-isnt-saying-about-its-training-plans-in-the-marianas/ (Accessed on 26 November 2018).

[57] Joel D. Pinaroc, 'U.S. Military Gets Earful of Opposition at CNMI Public Hearing' *Saipan Tribune* (Saipan, CNMI) 30 April 2015.

[58] Genevieve S. Cabrera, Cinta M. Kaipat, Kelly G. Marsh-Taitano, & Rick Perez, 'Facts you need to know about gathering community input' *Saipan Tribune* (Saipan, CNMI) 16 June 2015,

Legality of CJMT DEIS

Concerned regarding the legality of the CJMT DEIS documents, the CNMI government hired Dentons Environmental Science Associates (hereafter Dentons), to review the proposal.[59] Attorney Matthew Adams found it 'fails to meet even the most basic requirements… and the limited evidence presented in the document suggests that the CJMT would violate both federal and CNMI law, and is non-complaint with the basic principles of the NEPA.'[60] Brian Turner, an attorney at the National Trust for Historic Preservation, says the EIS proposal demonstrates 'environmental injustice' and 'if this sort of thing were purposed in North Carolina [the continental US], it just would never happen.'[61] Non-voting US Congressman for the CNMI, Gregorio 'Kilili' S. Sablan, supports the 'right of concerned citizens and community groups in the Marianas to raise grievances' through the NEPA process.[62]

**Current Lawsuit: National Environmental Protection Act**

The most recent lawsuit against the DoD is related to the past ten years of Environmental Impact Statement (EIS) documents released and focuses specifically on the most recent CJMT document of 2015. On July 27, 2015, the Law Office of Kimberlyn King-Hinds (F0495) of San Jose Village, Tinian, supported by attorney David Henkin of the environmental law organisation Earthjustice, filed Civil No. 16-

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http://www.saipantribune.com/index.php/facts-you-need-to-know-about-gathering-community-input/ (Accessed on 26 November 2018).

[59] Jon Perez, 'Aldan: I'm no longer alone opposing live-firing range', *Saipan Tribune* (Saipan, CNMI) 12 September 2016, http://www.saipantribune.com/index.php/aldan-im-no-longer-alone-opposing-live-firing-range/ (Accessed on 26 November 2018).

[60] Dentons US LLP Environmental Science Associates, Brief Summary of Findings Regarding Legal Adequacy of Draft Environmental Impact Statement for the Commonwealth of the Northern Mariana Islands Joint Military Training Project (2015), http://www.chamorro.com/docs/brief_executive_summary_of_findings_re_adequacy_of_draft_environmental_impact_statement(84720732_2).pdf (Accessed on 26 November 2018).

[61] As quoted in Anita Hofschneider, above n 56.

[62] Gaynor Dumat-ol Daleno, 'CNMI suit could halt Guam buildup' *Pacific Daily News* (Hagåtña, Guåhan) 2 August 2016, http://www.guampdn.com/story/news/2016/08/02/cnmi-suit-could-halt-guam-buildup/87943268/ (Accessed on 26 November 2018).

00022, in the United States District Court for the CNMI on Saipan on behalf of the local organisations: the Tinian Women's Association; Guardians of Gani'; PaganWatch; and the Center for Biological Diversity. They sued Navy Secretary Richard V. Spencer, and Defense Secretary James Mattis over the Navy's decision to relocate 5,000 US Marines from Okinawa to Guam and to conduct live-training on Tinian and Pågan. These actions, the local community argues, are 'inextricably intertwined' and the Navy must consider the impacts of these 'connected actions' in a single EIS.' Attorney Henkin said the DoD violated the National Environmental Policy Act (NEPA) 'by illegally segmenting' the militarisation project EIS documents.[63]

According to the complaint, the US Navy and the DoD are accused of violating NEPA in two ways:

1) Failing to evaluate in a single environmental impact statement (EIS) the impacts of both permanent stationing of Marines on Guam and the training on Tinian and Pågan the Navy claims those Marines will need to perform their national security mission.
2) Refusing to consider alternative locations outside of the Mariana Islands where the Marines could accomplish their mission with fewer adverse impacts Live-Fire Training Range Complexes (LFTRCs) for those Marines on the islands of Tinian and Pågan in the CNMI.[64]

The US DoD prepared its final EIS for the relocation of Marines to Guam in 2010 and the supplemental EIS for the relocation in 2015. The US Navy, therefore,

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[63] See the press release by Earthjustice, *Defending the Northern Mariana Islands* https://earthjustice.org/cases/2016/ defending-the-northern-mariana-islands (Accessed on 26 May 2018); the original document by Kimberlyn King-Hinds, *Complaint for Declaratory and Injunctive Relief* (Vol. Civil No. 16-00022), District Court for the Northern Mariana Islands: Law Office of Kimberlyn King-Hinds (27 July 2015) CASE ID: 3099,3135; and local newspaper coverage by Bryan Manabat, 'Environmental groups' lawyer: Navy's Environmental Impact Statement deficient', *Mariana Variety* (Saipan, CNMI) 09 July 2018, http://www.mvariety.com/cnmi/cnmi-news/local/105801-environmental-groups-lawyer-navy-s-environmental-impact-statement-deficient (Accessed on 26 August 2018); and transpacific reporting by Radio New Zealand, 'CNMI group opposing US Navy plans are not anti-military- lawyer' 30 July 2018, https://www.radionz.co.nz/international/pacific-news/362941/cnmi-group-opposing-us-navy-plans-are-not-anti-military-lawyer (Accessed on 26 November 2018).

[64] Kimberlyn King-Hinds, underlined in the original, above n 63.

knew what those Marines would need to conduct in the CNMI and yet it failed to disclose in either EIS how highly destructive those trainings would be, the devastating toll its proposed course of action would inflict on the people of Tinian and Pågan.[65]

Political Question

The DoD through the US Department of Justice has asked the court in Saipan to dismiss the lawsuit on the grounds that the 'court lacks subject-matter jurisdiction, and that the lawsuit presents a political question because it was the US executive branch that decided to relocate the Marines as part of a treaty negotiated with Japan'.[66] This motion displays how the US DoD continues to deny the US citizens of the Marianas Archipelago sovereignty and promotes the Asia-Pacific Pivot plans as a 'political question' between the US and Japan. It is this treatment of the archipelago as insular possessions used for security purposes.

On 22 August 2018, the US District Court for the CNMI Chief Judge Romona V. Manglona ruled, in a 41-page decision and order, that the US DoD did not violate the NEPA.[67] On 12 September 2018, Earthjustice issued a statement that they will appeal the ruling and 'will continue their fight against the US Navy's plans to stage massive live-fire war games' with attorney Henkin adding 'we respectfully disagree with the district court's decision.'[68]

> Residents know that this lawsuit is *'not going to stop them [the military], but [if the lawsuit is successful], on the next EIS they will be required by court order to be totally transparent with their study processing, their resources, their actual plan. So that's what we're after — to force them to put everything on the table. They*

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[65] Ferdie De La Torre, above n 7.
[66] Bryan Manabat, above n 63.
[67] Ferdie De La Torre, 'Breaking News: Defense, Navy did not violate NEPA, APA' *Saipan Tribune* (Saipan, CNMI) 22 August 2018, https://www.saipantribune.com/index.php/ breaking-news-defense-navy-did-not-violate-nepa-apa/
[68] Earthjustice, *Northern Marianas Residents Appeal Decision Allowing Relocation of Marines* (2018) https://earthjustice.org/news/press/2018/northern-marianas-residents-appeal-decision-allowing-relocation-of-marines (Accessed 26 November 2018). Plaintiff's Notice of Appeal; Representation Statement, Civil Action No. 1:16-cv-00022 https://earthjustice.org/ sites/default/files/files/2018-9-12%20Ps%20 Notice%20 of%20 Appeal.pdf (Accessed on 26 November 2018).

> *were not too specific many times because I think they were wary about being specific.'*[69]

## CONCLUSION

This paper demonstrated through three contemporary legal case-studies how United States federal legal frameworks promote US militarisation before US citizens who lack democratic and representative rights and self-determination in the Marianas Archipelago. The decolonial struggle in the Marianas Archipelago supports Indigenous self-determination in the midst of expanding militarism. The political history and US military legacy of Micronesia were offered to expose how the varying (inter)national legal frameworks in the Marianas Archipelago continue to operate. The two contemporary legal concerns impacting Guåhan are how the US federal government applies colonial understandings of the US constitution in relation to Guåhan's plebiscite law, and the failure of the US to support self-determination as outlined by the UN and international legal frameworks. In addition to political concerns, the people of the Mariana Archipelago are also burdened with the increasing militarisation of their lands, seas, air, and population. The legal structures promote colonial control at the expense of the right to self-determination, which then allows for expanding militarisation. The residents of the CNMI continue to apply the US federal National Environmental Policy Act (NEPA) to hold the US Department of Defense environmentally accountable.

With each of these three lawsuits, the population waits to hear from the US Ninth District Court of Appeals in Hawai'i to learn if Guåhan's plebiscite law is in fact 'racially unconstitutional' and should include white settlers' votes. Chamorro activists will continue to testify annually before the UN, despite the US federal government continuing to vote against self-determination resolutions. The Mariana's community will continue to be treated as 'garrison islands' as they were told in 2016 to expect a

[69] Sophia Perez, above n 43.

CJMT Supplemental EIS to be released in 'early 2017 and a ROD by 2018', with the website currently reading, 'late 2018 or early 2019' as of March 2019.[70]

As a Peace and Conflict Studies scholar and US citizen with connections to the archipelago, I recommend becoming aware of how current legal frameworks of the US, founded on outdated and racists principles, promotes hyper-militarisation at the expense of self-determination in Oceania. The US has a legal obligation to support the Indigenous peoples' of Guåhan struggle for self-determination to determine their political future. The US DoD has the legal obligation to the NEPA, but the question remains; will (inter)national legal systems uphold colonial power over representative rights and full democracy?

Legal successes are possible. My call to action is to digitally support the residents' in the Marianas Archipelago legal efforts, through online petitions and sharing media coverage while learning how the multifaceted decolonial legal struggle for self-determination and against militarisation is occurring across Oceania.[71] For up-to-date information regarding the legal issues across Oceania, like and follow the Facebook page, Oceania Resistance: www.facebook.com/OceaniaResistance/. For concerns specifically related to the Marianas Archipelago, follow the Facebook page, Alternative Zero Coalition: www.facebook.com/AlternativeZeroMarianas/.

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[70] Leevin T. Camacho, above n 50, 176; The US Department of Defense, *The Commonwealth of the Northern Mariana Islands Joint Military Training (Overseas) Environmental Impact Statement* (2015), http://www.cnmijointmilitarytrainingeis.com/ announcements/26 (Accessed on 26 June 2018).

[71] Tiara R. Na'puti & Sylvia C. Frain, '"Free Guåhan! Decolonize Oceania!" Communicating Resistance at the 2016 Festival of Pacific Arts' (2017) 43(3) *Amerasia Journal* 2–35, 23 – 26.