



COMMISSION ON  
DECOLONIZATION

# GUAM

A TERRITORY LIKE NO OTHER

## GUAM - AN ISLAND LIKE NO OTHER

Resolving Guam's political status is important work that will prepare our island to move into the future of an ever-changing world. It is the only way for the people of Guam to take control of our destiny and empower ourselves to make decisions that are right for us. As long as Guam remains an unincorporated Territory, our people will never be treated equally. Changing our political status ends the injustice of our colonial status and opens up an endless array of opportunities for our future.

Although much change will come, there are some things that a new political status will not change. Guam's geographically strategic location, the infrastructure that we have developed, others' interest in Guam, and our expectations about our lives and our children's future are all things that will not simply disappear when we change our political status.

The history and personality of Guam is very different from other American territories such as American Samoa or the U.S. Virgin Islands. Similarly, one should not expect the Guam to be like Hawai'i or California should we choose Statehood. Nor should one expect that Guam will be like the Federated States of Micronesia or the Marshall Islands if we choose free association. Nor would the independent country of Guam be like the Philippines or Panama, which were once U.S. territories and are now independent.

Guam is unlike any other place and there is no perfect model for us to follow or imitate. We have clearly outgrown our unincorporated Territory status, and further improvements under the current status quo are not enough to fix the inequity of our relationship with the United States. A fully Self-governing status is the only way to empower the people of Guam to protect our own interests and make decisions that are right for us.



*VIEW OF TWO LOVERS POINT, TAMUNING, GUAM*  
Guam Visitors Bureau/Expedia.com

# WHO ARE THE COLONIZED AND WHY IS IT IMPORTANT FOR THEM TO DECOLONIZE?

## What is Sovereignty?

The concept of sovereignty forms the basis of the international system, with each country possessing sovereignty. When a country possesses sovereignty, that country has the exclusive right to exercise authority within its borders and without outside interference from another country. Possessing sovereignty also means that within the international system, all sovereign countries are equal, no country is politically superior to another, and no country can exercise authority within another country's borders. When countries make agreements with one another, such as defense treaties and trade deals, they are exercising their sovereignty.

Sovereignty as it exists at the international level differs from the concept of state sovereignty. While the United States itself possesses sovereignty as a country, each of the 50 states also possesses state sovereignty. State sovereignty gives states authority over certain aspects of their governance within their respective borders.

If a federal action or policy is found to be an overstep of federal authority, state sovereignty enables states to challenge and defy that action or policy. This balance of power is a critical component of the American system of government.

As an unincorporated Territory, Guam does not possess sovereignty at the international level, nor does it possess state sovereignty within the U.S. federal system. This lack of sovereignty over both its external and internal affairs has been a point of contention throughout Guam's history. With the Guam Commonwealth Draft Act, the United States opposed the inclusion of a mutual consent clause which would have given Guam a form of state sovereignty. This lack of sovereignty makes Guam powerless to federal decisions and prevents it from engaging in foreign affairs. This implies that Guam is subject to the authority of higher or outside powers that can make decisions that are not in the best interest of the island.



SPANIARDS ENSLAVING THE NATIVE AMERICANS  
Universal History Archive/UiG/Getty Images

*Self-determination and decolonization provide Guam the opportunity to gain sovereignty and exercise true Self-governance.*

## What is Colonization?

Colonialism is the extension of a nation's sovereignty over territory outside of its borders by the establishment of colonies or dependencies where the colonial peoples are directly ruled or displaced. Colonization or the "the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation." (Resolution 1514 XV, 1960)

Declaration on the Granting of Independence to Colonial Countries and Peoples states that "the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples...an end must be put to colonialism and all practices of segregation and discrimination...all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory" (Resolution 1514 XV, 1960).

## Who are the Colonized?

Colonized peoples are those who are controlled by an outside power. Colonized people are generally subjected to the use and exploitation of their natural resources, labor, and markets as well as their socio-cultural, religious, and linguistic structures, by the colonizer. By virtue of their colonization, colonized people possess the right to Self-determination. This is a right given to people and not governments. The United Nations Covenant on Civil and Political Rights further defines Self-determination as a right belonging to "all peoples." Although the term "peoples" is not defined in international law, "peoples" are often described as a group of individual human beings who enjoy some or all of the following common features:

## THE TREATY OF PARIS 1898

*"Under the Treaty of Paris, the US was obligated to determine the civil rights and political status of the people of Guam. in spite of this treaty obligation, President William McKinley issued a two-sentence executive order placing Guam completely under the Department of the Navy."*

**CARLOS P. TAITANO, FORMER GUAM LEGISLATIVE SPEAKER**  
*Kinalamten Pulitikât: Siñenten i CHamoru Issues in Guam's Political Development: The CHamoru Perspective, published by the Political Status Education Coordinating Commission, 1996*

1. A common historical connection;
2. Ethnic identity;
3. Cultural homogeneity;
4. Linguistic unity;
5. Religious or ideological affinity;
6. Territorial connection; and
7. Common economic life.

Moreover “peoples” shall possess the will or consciousness to be a people, and have institutions to express the identity of the people (John B. Henriksen, “Implementation of the Right of Self-Determination of Indigenous Peoples”).

In Guam, the colonized are defined as the “native inhabitants or people of Guam.” (1 GCA, Chapter 21 §2101) This is consistent with item #1 in the definition above. The native inhabitants of Guam are a people who have a common historical connection—colonization under the administration of the United States. “The United States as the succeeding colonial power over the lands and the people of Guam, acceded to and recognized in the 1898 Treaty of Paris that the political rights of the native inhabitants of Guam shall be protected and that their collective right to political Self-determination is inalienable.” (1 GCA, Chapter 21 §2101) By recognizing the United States as the colonizer of Guam, Guam law also recognizes the native inhabitants of Guam as the colonized people.

Guam law states that the “Native Inhabitants of Guam” shall mean 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 (PL 25-106:2). The law further states that, “It is the intent of I Lihislaturan Guåhan to permit the native inhabitants of Guam, as defined by the U.S. Congress’ 1950 Organic Act of Guam to exercise the inalienable right to self-determination of their political relationship with the United States” (§ 21000). This law together with the right of Self-determination reaffirmed, under international law, the obligation of the United States to uphold those principles, laws, and the Treaty of Paris. Thus, the native inhabitants of Guam, who have maintained a common historical connection through their colonization, possess the right of Self-determination. Colonization displaced the native inhabitants of Guam, and it is because of this that Guam law protects the right of Self-determination for the native inhabitants of Guam. Framing this claim to the right of Self-determination based on a common historical connection—colonization—ensures that this right is not debatable based on any other commonality such as ethnicity, culture, language, religion, territory or economic life. It is rather a means to ensuring that the people who have been subjugated by external powers have the ability to freely exercise their right of Self-determination by determining their political status and freely pursuing their economic, social and cultural development (UN International Covenant on Civil and Political Rights).

*The right of Self-determination for the native inhabitants of Guam is not intended to alienate or exclude other groups of people in Guam.*

Those people who came to Guam before the signing of the Organic Act of Guam (1950) and were not afforded U.S. citizenship because of their prior political affiliations or other circumstances, and those who came to Guam after 1950 and are also not defined as native inhabitants of Guam, do not have the right of Self-determination under Guam law. Choosing to immigrate to Guam is also choosing to live under the laws of Guam. Although this group of people is still subject to the United States’ colonial authority, this subjugation was not forced upon them without choice in the way that it was for the native inhabitants of Guam.



Local organization Filipinos for Guåhan at the 2019 Fanohge March for CHamoru Self-Determination. CREDIT: Michael Lujan Bevacqua, Ph.D.

## What is Decolonization?

Decolonization is the undoing of this relationship. To be decolonized, a people will have achieved Self-determination, freedom and political sovereignty (Declaration on the International Decade for the Eradication of Colonialism). In a general sense, the most important aspect of decolonization is the principle of political Self-determination. Not only is Self-determination recognized as a human right under international law (Universal Declaration of Human Rights, 1948), furthering the political aspirations of the people of the territories is the duty of Congress in accordance with the United Nations Charter (Chapter 11) and the Treaty of Paris.

Decolonization does not mean that the native inhabitants of Guam want Guam to be independent. Self-determination does not mean that the native inhabitants of Guam want Guam to be independent. Decolonization is the final step to achieving Self-government and Self-determination is the means to achieve that end.

## Why Should the Native Inhabitants of Guam Decolonize?

The native inhabitants of Guam have been under colonial rule for approximately 500 years. Each colonizer brought parts of their culture and traditions that have become part of the local landscape. Although these changes have shaped what Guam is today, colonization is colonization, the United States has colonized Guam, and the people of Guam are colonized.

Under the American flag, it is easy to see how the people of Guam see their current political relationship with the United States as one of freedom. But a colonial relationship is not an equal relationship and without equality, there can be no freedom. When a people are under the control of a colonizer, it means that someone else, somewhere else is making the decisions for them. The colonizer is writing their laws, providing their education, giving them financial aid, and using their land. The colonized people live within a world shaped by the decisions of the colonizer. They are not doing any of these things for themselves. This also means that the colonizer can dictate what the colonized do and how they do it. True freedom comes from self-development and the ability for a people to choose how to develop without interference from another.

When the United States Congress passed the Organic Act of Guam, they gave the people limited Self-government. Congress transferred control from the Naval Administration to a local government, but they did not free the people from colonial rule. Rather they constrained the island with the territorial clause and its plenary powers. Decolonization will allow the people of Guam to be free from colonization and be the master of their own destiny. Decolonization will allow the people of Guam to realize political sovereignty and decide for themselves how to structure their government, how to educate their children, how to create sustainable economic industries, and how to use their land and resources.

Decolonization would also force the United States to fulfill the obligation that they have as an administering Power of a Non-Self-Governing Territory (United Nations Charter, Chapter 11). Decolonization would allow Guam to enter the world stage as either: (1) an integrated state with the United States, (2) a freely associated state with the United States, or (3) an independent, sovereign state, thus removing Guam from the list of Non-Self-Governing Territories.



## What is Guam's Current Legal Status?

Guam was officially classified as an unincorporated Territory in the 1950 Organic Act. Unincorporated territories are possessions of, but not an integral part of the United States. Any and all decisions pertaining to unincorporated U.S. territories are subject to Article IV, Section 3 of the U.S. Constitution which states that, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." As an unincorporated Territory of the U.S., Guam is considered by many scholars to be "foreign in a domestic sense" and "domestic in a foreign sense." This legal doctrine sets forth the way in which Guam is treated within the United States system of government. Simply put, in all foreign matters, territories are considered to be domestic parts of the U.S., whereas in all domestic matters, territories are considered to be foreign parts of the U.S. Within the U.S. legal system, Guam is therefore seen as important to, but not an integral part of the U.S.

*Under the status quo, Guam's future will continue to be shaped not by Guam's interests but by what others want for Guam and from Guam. Is it good enough for Guam's children and grandchildren that their future is being shaped by others?*

*The people of Guam have the responsibility to learn and understand what each option means for their island so that they can make a decision based on what they envision for the future of their home.*

## **What's Wrong With the Status Quo?**

Guam is one of 17 remaining Non-Self-governing territories in the world. The status quo has brought Guam impediments and benefits. It has also brought continuing change to Guam, change that its people have no voice in shaping. History has proven that the status quo has been detrimental to Guam's people, by hindering their economic, political, and cultural development. These challenges have come to Guam's shores with little to no input from the people of this island. The only way out of colonization is decolonization. Achieving Self-governance and ending the status quo will finally allow Guam to reach its fullest potential.

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## **Why Change?**

Talking about Guam's history of colonialism and the present-day acts of colonialism can be emotionally and mentally challenging. However, without education to help understand colonization, the people of Guam will never realize the change they seek in their society. The island's political, economic, social and cultural landscape is changing every day. Much of the island's governance and development is often hindered by the decisions that are made thousands of miles away, and the culture, language and natural resources of Guam continue to be exploited by outside forces. Self-government can be the solution to these problems, and Self-determination is the means to achieve that.

## **What Is Self-determination?**

Self-determination is the process by which the people of a colonial territory express their desire for a Self-governing status. The expression of their desire for a decolonized status forms the basis of actions/negotiations to implement a self-governing status. The foundation of the principle of Self-determination in international law comes from the process of decolonization, or (1) the affirmation of a peoples' right to be self-governing and (2) the right to be free from undemocratic external decision making.

## **What Status Options are Available to the Chamoru People?**

The attainment of a Self-governing status is achieved when a colony's status has been changed and that change provides for the former colony to be either (1) an independent nation/state, (2) integration with a sovereign nation (e.g. statehood in U.S. system), or (3) a freely-associated state; an independent state that retains its sovereignty while negotiating aspects of its relationship (e.g. diplomatic, economic, and military relations) in an agreement with another sovereign nation.

While these statuses are common wisdom, they have been the international basis for evaluating whether a territory has attained full Self-government in accordance with the United Nations Charter. The United States was the principal proponent of these status options being adopted in U.N. General Assembly Resolution 1541 (1960).

## **Which Status is Best for Guam?**

Each status option will come with its own pros and cons. But the ability to choose between independence, free association, or statehood gives the native inhabitants of Guam the opportunity to choose for ourselves. It is our responsibility to explore all the information available and to make up our own minds about which status is best for Guam.

As with all change, each of the three status options will inevitably bring some positive and negative changes to the island. But the ability to choose between independence, free association, and statehood gives the native inhabitants of Guam the opportunity to chart their own course for their future and the futures of their children.

## **What Happens After the Vote?**

A Self-determination vote is just the beginning of the process of decolonization. After the people of Guam exercise their right to Self-determination through a plebiscite, decolonization will not happen overnight. After the vote, Guam will continue to pursue other critical milestones in the process including decisions on what the chosen status will look like. No nation is identical and even nations with the same status, have unique characteristics and challenges. The people of Guam will also need to engage in diplomatic negotiations with the United States federal government and possibly other nations that the people may want to develop relationships with. Guam and the U.S. will eventually need to negotiate a transition and the people of Guam will need to draft of a constitution. During this process, all who call Guam home will have a chance to participate in creating a new governing system for the island.

# GUAM'S POLITICAL DEVELOPMENT: 500 YEARS OF COLONIZATION



## Guam's Fight for U.S. Political Rights Begins

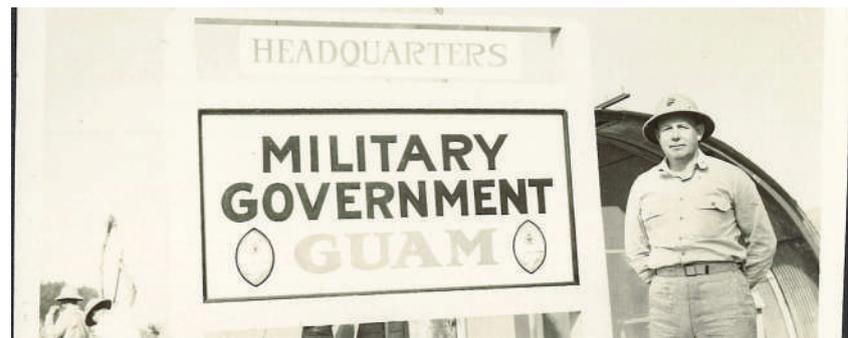
It did not take long for Guam's CHamoru people to learn about the American system of government. This eventually led to a desire for a greater degree of Self-Government than what was provided under Guam's early Naval Government. In an effort to limit Naval authority over Guam, petitions for U.S. citizenship began in 1902 but it would be a long, slow battle. In response to the continuing expression of Guam's desires, however, the First Guam Congress was established from 1917-1930 to serve as an advisory board between the CHamoru population and the U.S. Naval administration.

Guam has been inhabited by the indigenous CHamoru people for thousands of years. Our island's history is deeply-rooted in indigenous values and traditions, but we are also heavily influenced by our colonial experience. The CHamoru people have been colonized for approximately 500 years, under three different colonial powers: Spain, Japan, and the United States. As an unincorporated Territory, Guam remains a colony under the administration of the United States. Despite making the people of Guam United States citizens and granting limited Self-government.

*The island remains under the unilateral authority of the federal government and U.S. citizens in Guam don't have the same rights as their counterparts in the states.*

Each colonial authority introduced different challenges for the CHamoru people. Religious beliefs and cultural practices were heavily influenced by the Spanish. At the end of the Spanish-American War in 1898, the Treaty of Paris was signed, forcing Spain to transfer its territories (Guam, Cuba, the Philippines, and Puerto Rico) to the United States as a spoil of war. With the transfer of the territorial administration of Guam from Spain to the United States, the civil rights of Guam's native inhabitants also became the responsibility of the U.S. Congress.

Upon becoming a territory, Guam was deemed to have critical strategic military value to the U.S. Due to its strategic location in the western Pacific, Guam became a highly valuable piece of real estate to American military planners and the rights of the native inhabitants took a backseat to that cause. Guam was used as a U.S. outpost in the Pacific for different military engagements under the colonial administration of the US naval authority.



The Second Guam Congress was formed in 1931 and played a similar role as its predecessors but was better organized. Again in 1936, Guam petitioned the U.S. Congress for citizenship and an improved political status for the people of the island. This effort was led by B.J. Bordallo and F.B. Leon Guerrero but was quickly halted by the onset of World War II.

During the war, Guam became another pawn in international politics when Japan invaded the island shortly after the attack on Pearl Harbor in December 1941. For the next three and a half years, Guam fell under Japanese control, and the CHamoru people were victimized by a war that they had no involvement in. After evacuating all US military personnel and abandoning the island prior to the Japanese invasion, U.S. Marines came back to Guam in 1944 to reclaim the island.





## The Organic Act Falls Short

The status of “unincorporated Territory” was created by the U.S. Supreme Court in the Insular Cases, specifically *Bidwell v. Delima* and *Downes v. Bidwell*, as a way to identify the status of the islands that were ceded to the United States in 1898.

The U.S. Supreme Court found that former Spanish territories were not promised a path to become an integral part of the United States. Where the U.S. Constitution had been the standard of governance in earlier acquisitions, Congress alone would determine how the offshore territories would be governed. Although the United States extended civil government to Guam, along with limited U.S. citizenship, Leland Bettis former Executive Director of Commission on Self-determination states, “by defining these new possessions as ‘unincorporated territories,’ the Supreme Court ruled that the United States could continue to possess and control them without ever having to incorporate them as full and equal parts of the United States.”

With the decisions set forth by the Insular Cases, Congress utilized the Territorial Clause (Article 4, Section 3, Clause 2) to make any and all decisions pertaining to the territories. However, Constitutional lawyer Arnold Leibowitz, argues that this authority over the territories, with no intention of granting them statehood, contradicts the “underlying principle of territorial evolution in the US law and tradition: that the goal of all territorial acquisition eventually was to be Statehood.” The Territorial Clause gives the U.S. Congress the power to “dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States” (U.S. Const., 4-3-2.) This Clause, in combination with the Insular Cases, provides the U.S. Congress complete power over Guam.

Although outdated and contradictory to the principle of democracy in many ways, the Insular Cases and the Territorial Clause continue to define the relationship between the United States and Guam. The imbalance of this relationship has been repeated time and again in judicial reviews of the applicability U.S. legal standards to Guam.

*Although the 1950 Organic Act of Guam provided citizenship and a limited form Self-government, as an unincorporated Territory, the U.S. Congress still maintains authority over Guam and can override decisions made by Guam’s local government.*

*Just as the people of Guam sought representation and rights through the Organic Act, the people of Guam today continue to push for full Self-governance.*

## The People of Guam Desire a Voice

While Guam was recovering from the destruction of war, Self-determination movements began to surface around the world. Guam’s loyalty and patriotism to the United States did not go unnoticed, but the people became frustrated by the limitations set by the U.S. Navy on local leadership like the Guam Congress. This political inequality led to the “walkout” of the local assemblymen in 1949, which brought this injustice to the attention of the nation. The continued discontent of the people of Guam, resulted in the U.S. Congress passing the Guam Organic Act of 1950, which was signed into law by President Truman. The 1950 Organic Act provided for a civilian appointed Governor, an elected Legislature, and a judicial branch. It [The Organic Act] also granted U.S. citizenship to those “native inhabitants” who traced their ancestry to the 1898 Treaty of Paris between the U.S. and Spain. By granting citizenship, the U.S. Government established a legal mechanism to justify the federal taking of over 1/3 of the land in Guam. Also, for the first time in U.S. law, Guam was designated as an “unincorporated Territory” of the United States.

The passing of the 1950 Organic Act did not come without criticism. The creation and implementation of the Act was not negotiated between Guam and the U.S. Despite establishing citizenship for the inhabitants of Guam.

*The Act was seen as another overextension of the federal government’s power and begged the question of whether civil government means Self-government.*

Questions also arose as to whether the statutory U.S. citizenship granted in the Organic Act truly afforded the protections that many believed it would. Despite the passage of the Organic Act of 1950, Guam continued to push for a more equal, bilateral relationship with the United States. Guam leaders felt that although the Organic Act bound them to the United States, it did not provide full Self-governance, thus leaving Guam in territorial limbo.

## The First Plebiscite

Guam's movement towards a more improved status with the United States has always been pursued at the local level. The first attempt was held in 1957, with the island's unofficial plebiscite on the reunification of the Marianas islands. Guam, the first to vote, decided against reuniting with the Northern Mariana Islands. The NMI vote came a week later, with the NMI people expressing their desire for a unified Marianas Islands. In 1976, Guam held its first political status plebiscite to determine its future relationship with the United States. With an 81% voter turnout, 51% of the population chose to maintain their relationship with the U.S. but with more improvements to their political status. That same year, the U.S. government authorized the drafting of a Guam Constitution within the confines of Guam's existing territorial relationship and U.S. sovereignty. Guam leaders were adamantly against this, as the federal government's conditions forced Guam to acknowledge federal supremacy. Former Governor Carl Guterrez argued that none of the 50 states were held to that same standard. In 1979, under United Nations observation, and followed by pre-approval by the U.S. Congress, the people of Guam put the proposed Constitution to a vote. 80% of Guam's voters rejected the proposed Constitution, primarily due to the fact that the Constitution did not allow for a change in Guam's territorial status. It was clear that the people of Guam didn't just want a better deal, they wanted to choose a political status that was right for them.

## The Push for Commonwealth

In 1980, the Commission on Self-determination was created by the Guam Legislature to guide and educate the people in preparation for a vote on Guam's political status. During this time, the continued presence of the US military created an atmosphere of contention and began to stifle the island's economic growth and prosperity. In response, the Guam Legislature drafted Resolution 395 which called for the "removal of Federal constraints on the economic, political and social development of the island." Guam's most recent plebiscite held in 1982, again received an 81% voter turnout.

This time 73% of the voters opted for Commonwealth as Guam's future political status. But as Guam's quest for Self-governance and autonomy continued, the island's political status discussions at the federal level were once again met with resistance. Congress took particular issue with two articles of the Commonwealth Constitution: one which would allow Guam to control immigration and the other which would prevent the US Government and US Military from taking any action in Guam without mutual consent of the people. Many who were close to these negotiations between the federal government and the Government of Guam assert, that despite repeated attempts to pass the Commonwealth Draft Act, by removing these two particular articles, Governor Joseph F. Ada refused to revise the document, saying that it was voted on and approved via referendum, therefore

he was bound to the document in its entirety. During these negotiations in committee, Governor Ada claimed, "without mutual consent, my people can never be truly empowered." The document never made it out of committee and was never heard on the voting floor.

*This obstruction and blatant lack of recognition showed Guam leaders that their demands for more autonomy and Self-government were not being taken seriously and a new path would need to be forged if they were to continue.*

Guam saw the success of CNMI's commonwealth negotiations, and wanted a similar political relationship that would create closer ties with the United States. The Commonwealth Draft Act called on the U.S. to recognize the rights of Guam's colonized people. After ten years of unsuccessful discussion and negotiation with Washington D.C. on issues of concern to Guam, Congress made it clear that Commonwealth status for Guam was not going to be realized.

**PERSPECTIVE**

### Commonwealth still a colonial status

Chamorro-only self-determination vote is the only way to resolve the issue of a captive Guam

BY HOPE ALVAREZ CRISTOBAL

Colonialism in all its forms and manifestations is an international crime. Colonialism's characteristics of criminality is clearly reflected in its impact on colonial people.

Colonialism universally, and on Guam results in the following:

1. The denial of the colonized people to freely determine their destiny.
2. The denial of colonized people of freely determine how they wish to be governed.
3. The confiscation and exploitation of the natural resources belonging to the colonized people.
4. The colonial peoples participate and benefit the least from the economic system designed and controlled by the colonizer.
5. To insure the aims of the colonizer, programs and policies are developed and promoted to achieve cultural disintegration and historical disconnection.

The profound impact of colonialism on a colonized people demands special consideration by the international community. Today, the U.N. has far fewer national constitution, absent full and equal membership in their union, represents the continuation of a colonial

*We are emphatic and resolute in our opposition to the administering power's insistence that any changes in our colonial status must fall within the parameters of their national constitution, and within the narrow confines of their military and economic interests.'*

38 Pacific Business News, December 18, 1994

## Guam Seeks Justice Beyond the United States

In light of the unsuccessful efforts of the Commonwealth Draft Act, the Commission on Decolonization was created in

1997 under Guam P.L. 23-147. The Commission was established to give the colonized people of Guam the opportunity to exercise their right to Self-determination and select a political status that would give them full Self-government. The law also established three Task Forces charged with educating eligible voters on the three political status options available for Guam (independence, full integration (statehood), or free association).

As stated in the law, a plebiscite is to be held to afford Guam's "native inhabitants," as defined by the United States in the Treaty of Paris, the opportunity to exercise their right to Self-determination. The "native inhabitants" of Guam are those defined by the United States as having been granted U.S. citizenship on August 1, 1950, or persons who trace their ancestry from a person who was in Guam on or before the signing of the Organic Act of 1950.

# STATUS QUO

**IMMIGRATION** As an unincorporated territory, the island of Guam does not control its immigration policies. The entry requirements for Guam are the same as for any U.S. destination. In general, citizens of most other countries must have a valid passport with a U.S. visa based on state departments such as the U.S. Department of State and the U.S. Department of Homeland Security.

**LAND** Guam's property distribution is divided between federally owned land, land controlled by the Government of Guam and privately-owned land. Guam has received more than 2,767 acres of U.S. Federal unused land as a result of the Guam Excess Land Act. But as a result of our unincorporated territorial status, many of these lands still remain under the control of the federal government through its own agencies. One example is the transfer of Litekyan to the federal agency U.S. Fish and Wildlife Service.

**DEFENSE** The island's strategic location is important to U.S. international affairs. All of the island's defense decisions are handled at the national level with little to no input from the local government.

**INDIVIDUAL RIGHTS** The 1950 Organic Act of Guam granted statutory citizenship to the people of Guam. As distinct from natural born and naturalized citizens outlined in the U.S. Constitution, the rights of statutory citizens are subject to Congress and the U.S. Supreme Court.

**CULTURAL** CHamoru Culture has been altered by the acceptance of multicultural backgrounds, with a tendency toward assimilation of outside cultural traits especially from mainstream American culture. This change has resulted in the gradual displacement of CHamoru cultural significance.

**HEALTH** The island's healthcare falls into three categories; public, private and federal. Three hospitals, numerous private clinics and a government Public Health facility cater to the island's health needs. DPHSS, Guam's public health system has continually struggled to meet the needs of the island. Many of the shortfalls of this system can be attributed to the island's political status. Because of the U.S.' COFA agreements, its migrants have the ability to receive healthcare with little to no federal support to supplement for these services leaving the Government of Guam to absorb these costs.

**LEGAL & JUDICIAL FRAMEWORK** The Organic Act of Guam and the Guam Code continue to protect the legal rights of the people of Guam with limited applicability of the U.S. Constitution. Guam's status as an unincorporated territory, restricts the island from enacting legal reform without permission from U.S. Congress. Guam's current legal system uses two court systems; the Superior Court of Guam and the District Court of Guam. The decisions passed down from either court can be overturned by the United States Court of Appeals for the Ninth Circuit.

**EDUCATION** K-12 education is available at public, private and charter schools with higher education available through Guam Community College and the University of Guam. Territorial schools are heavily reliant on federal funding that comes with the caveat to adopt American curriculum and standards to maintain this funding. Guam has been undergoing a cultural renaissance that has advocated for the creation and implementation of culturally relevant programs.

**ECONOMIC IMPACT (TRADE, COMMERCE)** As an unincorporated territory, Guam's potential for increased economic growth is primarily hindered by the U.S.' unilateral application of federal mandates to the island's government. A prime example of this forced compliance with federal laws is the Merchant Marine Act of 1920, otherwise known as the Jones Act, which has burdened the island with high shipping costs, an inflated cost of living, and limited opportunities to expand economic activity.

**NATIONALITY** Guamanian national identity is intertwined with an American identity and the mainstream culture. The indigenous CHamoru identity is being displaced by this new Guamanian identity along with American and other immigrant identities. Guamanian and CHamoru identities exist as minority groups within U.S./American national demographic. Institutions of socialization (education, government, media) are primarily based on American values.

**FOREIGN AFFAIRS** Guam is officially represented by the U.S. in all international political forums and included in the terms of all international treaties as a part of the U.S. Guam has little to no influence on U.S. policy positions or negotiations. Guam's request for inclusion in regional organizations and negotiations are largely denied or ignored. The island's participation is limited to an observer status in some international forums.

**NATURAL RESOURCES** The use of natural resources are subject to U.S. environmental policies and controls. The U.S. retains the right to restrict the use of property, including returned excess to federal property and the Exclusive Economic Zone. The U.S. also maintains the power of eminent domain over all lands in Guam. The lack of control on immigration continues to put a strain on natural resources.

**CITIZENSHIP** The people of Guam were granted U.S. citizenship in the 1950 Organic Act of Guam. U.S. citizens in Guam do not have full Constitutional rights and protections. Only fundamental rights are given to U.S. citizens in Guam. U.S. citizens in Guam also do not participate in the democratic processes through voting in federal elections or representation in Congress. U.S. citizens do not pay taxes to the federal government.

**TRAVEL** Travel restrictions follow U.S. federal guidelines.

# INDEPENDENCE

**IMMIGRATION** Guam would retain exclusive control over its immigration policies. Emigration for U.S. citizens will be unrestricted. An independent Guam will also allow for its visa restrictions to be created in support of the growth of island's economic and professional industries or other needs of the island. Travel agreements with other countries will have to be negotiated.

**LAND** Federally controlled land will be returned to the Government of Guam. The Government can enter into lease agreements with the U.S. or another country for a combination of monetary fair market value and long-term economic development aid. The island will be able to enact laws for the preservation of land that hold value to CHamoru culture and heritage. Lands owned by private landowners can remain.

**DEFENSE** Guam can enter into a treaty with the U.S. or another country for defense. Guam can also take part in a regional defense pact led by the U.S. that can include access to land for military bases. U.S. may sponsor Guam's participation in biand multilateral pacts for regional defense.

**INDIVIDUAL RIGHTS** Individual rights will be determined by the people and outlined in a constitution. Individual rights can align with international human rights and those of similar democratic states.

**CULTURAL** Would give Guam the absolute control over its policies concerning CHamoru programs and cultural preservation. Giving the island the ability to integrate the CHamoru culture in its governance, education and economic development.

**HEALTH** A new healthcare system including health and insurance programs can be created. Policies for licensing programs can allow for more medical professionals and state of the art medical facilities in partnership with nearby countries. Guam can build a medical tourism industry as a means to fund additional healthcare programs.

**LEGAL & JUDICIAL FRAMEWORK** A constitution would outline the powers and policies for a legal and judicial system. Guam could enact policies that mirror existing laws or create an entirely new code.

**EDUCATION** An Independent Guam will have the flexibility to adopt curriculum and standards for an educational system without outside interference. The Government will also retain control of the structure, budget and certification requirements for educators. With the potential to receive funding through international aid.

**ECONOMIC IMPACT (TRADE, COMMERCE)** Guam would have the highest degree of latitude in implementing policies and shaping its economic future; the island will likely prepare a comprehensive set of laws and regulations that will guide its economy upon becoming independent. Initial economic instability is highly likely due to uncertainties related to the island's system of governance, economic system, and other major changes, as well as the need for Guam to takeover aspects of government that are currently handled by the U.S. (e.g. public assistance).

**NATIONALITY** Highest degree of latitude over language and culture preservation efforts in government, policy, and institutions of socialization. National identity can will be rooted in history, culture, and values of the people of Guam.

**FOREIGN AFFAIRS** An Independent Guam will gain access to membership and participation in regional and international organizations including the United Nations. Guam and U.S. can exchange diplomatic representatives enabling economic cooperation and easy resolution on most matters. Mutually agreed treaties will allow for the creation of new economic and political alliances in exchange for defense and security. The potential for new investment and additional sources of economic growth is possible through negotiations with Asia-Pacific governments.

**NATURAL RESOURCES** Guam will retain exclusive control over all-natural resources including land and waters within its Exclusive Economic Zone. The ability to control immigration will help reduce the strain on natural resources.

**CITIZENSHIP** Guam will establish guidelines for citizenship including rights and responsibilities. Current U.S. citizens may be allowed to establish dual citizenship based on negotiations with U.S. U.S. citizenship for future generations is unlikely, and U.S. citizenship for non-U.S. citizens of Guam at the time of a political status change is unlikely.

**TRAVEL** Citizens of Guam will need to obtain proper visas to travel to foreign countries. Travel agreements can be negotiated with other countries.

## FREE ASSOCIATION

**IMMIGRATION** Guam would need to implement visa programs in the areas of tourism, education, work and visitor stays in order to control how long individuals are allotted to stay. Travel agreements with other countries will have to be negotiated.

**LAND** Guam's constitution can define land tenure for foreign nationals and commercial interests. Guam will have negotiated a COFA contract that may allow the U.S. access to their current federal properties in exchange for economic development and defense aid. Lands owned by private landowners can remain.

**DEFENSE** Maintaining U.S. strategic dominance in this region is the primary objective. The island's geopolitical location will play a major role in its COFA negotiations. U.S. may negotiate for limits to foreign access to Guam in case of a military emergency in exchange for economic aid over the long-term.

**INDIVIDUAL RIGHTS** Individual rights will be determined by the people and outlined in a constitution. Individual rights can align with international human rights and those of similar democratic states.

**CULTURAL** Cultural preservation may be subject to what is negotiated with the U.S. in a COFA agreement. This relationship also has the potential to create and/or fund cultural programs. English language may remain the common means of communication for public and other external affairs.

**HEALTH** Access to the U.S. healthcare system will be subject to the terms of the COFA negotiation. Guam will have access to international aid to assist in establishing our own health programs that may be limited under the parameters of the Compact.

**LEGAL & JUDICIAL FRAMEWORK** A constitution would outline the powers and policies for a legal and judicial system. Guam could enact policies that mirror existing laws or create an entirely new code. COFA negotiations may limit some domestic jurisdiction.

**EDUCATION** The Government of Guam will have some flexibility to adopt curriculum and standards for an educational system. Outside funding will be based on the COFA agreement negotiations. The opportunities for scholarships and grant funding from the U.S. or other countries may limit control over the education system. The parameters of control including the granting of education visas will need to be negotiated in the Compact.

**ECONOMIC IMPACT (TRADE, COMMERCE)** Similar to independence, a COFA relationship with the U.S. will allow for financial support from the U.S. to be highly likely. U.S. influence, guidance, and/or control over certain aspects of external affairs is likely under the terms of the Compact including trade with foreign nations if it impacts defense agreements. A period of initial instability is likely.

**NATIONALITY** Similar to independence with likelihood of continued assimilation with American identity and culture. High degree of autonomy over policy, governance, and culture. Nationbuilding needed, but likely influenced by American ideals.

**FOREIGN AFFAIRS** Gives Guam the ability to engage in treaty negotiations with other independent countries in exchange for security, defense and/or economic benefit. Participation in regional/international organizations such as United Nations membership is possible. Treaties and relations with other Nations is contingent on what is negotiated with Guam's main alliance.

**NATURAL RESOURCES** Control over natural resources including land and waters within its Exclusive Economic Zone will be subject to Compact negotiations. Continued relationship with the U.S. government for environmental programs is possible. The ability to control immigration can help reduce the strain on its resources but will be subject to negotiations between Guam and the U.S.

**CITIZENSHIP** Guam will establish guidelines for citizenship including rights and responsibilities. Current U.S. citizens may be allowed to establish dual citizenship based on negotiations with U.S. U.S. citizenship for future generations is unlikely, and U.S. citizenship for non-U.S. citizens of Guam at the time of a political status change is unlikely.

**TRAVEL** Travel agreements with the U.S. can be negotiated into the Compact for citizens of Guam. U.S. citizens living in Guam will maintain unrestricted travel to U.S. Citizens of Guam will need to obtain proper visas to travel to foreign countries. Travel agreements can be negotiated with other countries but may be limited by the terms of the Compact.

## STATEHOOD

**IMMIGRATION** Immigration policies will remain aligned with U.S. policies. Guam will remain a point of entry for immigration including from the FAS. Statehood will ensure that all U.S. diplomatic policies and travel restrictions will apply to the island and its citizens.

**LAND** Property rights in Guam will be defined by Guam law in accordance with the U.S. Constitution. The CLTC program settlement with the U.S. DOJ amended regulations to align with the U.S. Fair Housing Act. One example is the new additional lowing land trust leaseholders to designate their spouse of seven or more years, who would otherwise not be an eligible land trust leaseholder, to receive a life-estate for their home on land trust property.

**DEFENSE** Guam could continue to be a U.S. base with the U.S. maintaining responsibility for the island's defense. The political influence of the military leadership can be reduced by Guam's voting representative in the U.S. Congress. This would give the island more of an influence on the implementation and application of military policies and strategy.

**INDIVIDUAL RIGHTS** The full extent of citizen rights outlined in the U.S. Constitution will apply to citizens living in Guam.

**CULTURAL** Culture will continue to experience the same or increased levels of change due to new populations immigrating to Guam for a piece of the American Dream.

**HEALTH** Guam would see an increase in the Federal Medical Assistance Programs (Medicaid) and other social welfare programs as a result of taxes paid to the federal government. Guam will remain a COFA jurisdiction and will continue to experience the same funding shortfalls as Hawaii and other state jurisdictions.

**LEGAL & JUDICIAL FRAMEWORK** Similar to status quo with full applicability of the U.S. Constitution and legal framework.

**EDUCATION** Little change will be needed as Guam's educational system already aligns with U.S. federal guidelines. More funding may be available with the payment of federal tax dollars. Guam will remain a COFA jurisdiction with the existing shortfalls on U.S. federal reimbursement.

**ECONOMIC IMPACT (TRADE, COMMERCE)** Similar to status quo with all Federal Mandates including the Jones Act still applying to Guam. The potential of increased economic growth due to greater military spending, access to labor resources, and construction activity. Economic growth and rise in incomes and standards of living will be offset by greater taxation, with more government revenues going to the U.S. federal government. Guam would have the lowest degree of autonomy in external affairs related to trade.

**NATIONALITY** No distinct nationality from the United States. Guam would continue to be influenced by mainstream American culture with all others including CHamoru remaining minority cultures. The ability to establish CHamoru culture and values in governance, policy and education could be hindered by federal interference, national influences and population shifts.

**FOREIGN AFFAIRS** Similar to the status quo except that Guam will have greater influence in U.S. policy positions and negotiations because of representation of a voting member in the U.S. Congress.

**NATURAL RESOURCES** U.S. guidelines and regulations over land and waters within the Exclusive Economic Zone will apply. Access to assistance and funding for preservation will be available. The U.S. will continue to maintain the power of eminent domain over all lands.

**CITIZENSHIP** U.S. citizens in Guam will have full citizen rights and responsibilities as outlined in the Constitution. Naturalization laws would apply for alien residents seeking citizenship.

**TRAVEL** Travel restrictions follow U.S. federal guidelines.

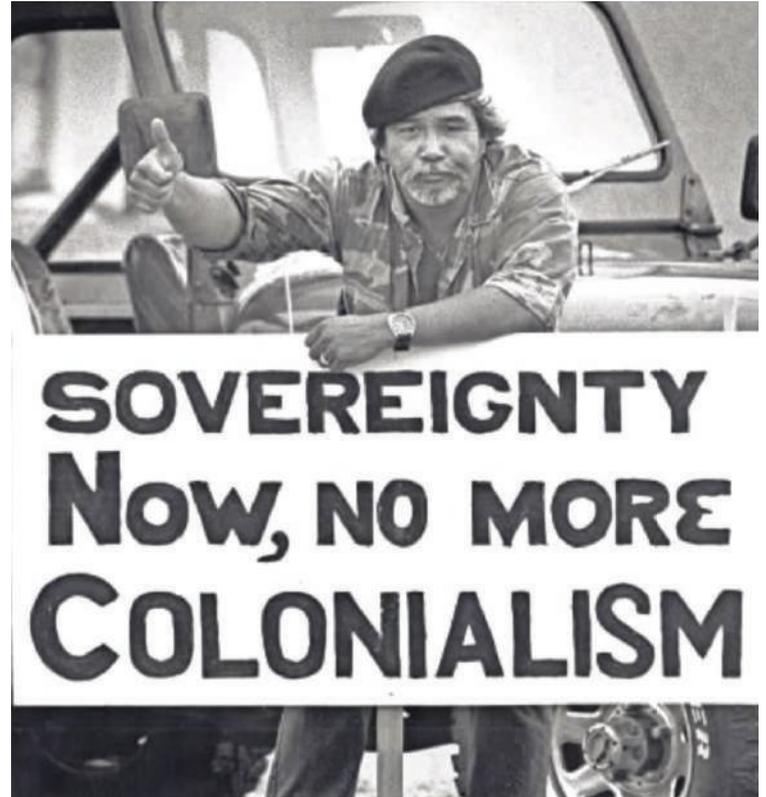
## INTERNAL & EXTERNAL FACTORS

Guam's colonial status has always been contentious in terms of the legal standards and practices that flow from the United States' territorial relationship with Guam. Guam remains on the United Nations' list of Non-Self-Governing territories. While U.S. domestic law categorizes Guam as an organized, unincorporated Territory, a change in Guam's status can also change its identification internationally. Though in theory, the United States supports Guam's desire for Self-determination, our respective governments have often had conflicting perspectives when it comes to how this right will be exercised and what happens next.

In a general sense, the United States views Guam's Self-determination as a domestic issue, that should be handled internally and exclusively between the Government of Guam and the federal government. However, the history of relations with Guam and the U.S. has proved that we have some fundamental differences in perspective, which have required Guam to take a different approach. The United States has consistently argued that any Self-determination efforts undertaken by Guam must be conducted according to U.S. law and within the confines of the U.S. legal system. This insistence has been the basis of numerous conflicts between Guam and the United States. For example, with the Commonwealth Draft Act, the United States opposed the inclusion of a "mutual consent" clause, as it challenged U.S. sovereignty.

*Although the CNMI received mutual consent authority with its Commonwealth Act, the United States refused to give Guam the same, as doing so would compromise Guam's military significance to the U.S.*

Similarly, programs such as the CHamoru Land Trust, which exists to provide land to those whose lands were taken by the U.S. military and federal government, have been accused of being racially discriminatory and challenged in court. Although the CHamoru Land Trust seeks to provide justice and right a historical wrong for CHamoru who lost their land, it was found to be a form of race-based discrimination by U.S. courts. For the CHamoru Land Trust program to continue, Guam entered into a settlement that removes any race-based language.



Guam's political status plebiscite law, which outlined eligibility for a CHamoru Self-determination vote, faced similar challenges within the U.S. legal system. In 1997, the Guam Legislature passed the plebiscite law and set forth eligibility for "Chamorro People," which was defined as "all inhabitants of Guam in 1898 and their descendants who have taken no affirmative steps to preserve or acquire foreign nationality." In 2000, this law was amended to define eligibility as "Native Inhabitants of Guam". Following a lawsuit by Arnold "Dave" Davis, a non-CHamoru resident of Guam, the U.S. District Court found the "native inhabitants" eligibility requirement to be a proxy for race, thus violating the Fifteenth Amendment of the U.S. Constitution. In July of 2019, the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's ruling. The Government of Guam filed a Writ of Certiorari to the U.S. Supreme Court in December 2019, seeking the Court's review of the Davis Case. The request was denied on May 5th, 2020, leaving Guam and the CHamoru people with no remedy for their exercise of Self-determination within the U.S. legal system. The Davis case stands as a perfect example of the injustices caused by Guam's status as an unincorporated Territory. Due to the U.S. Congress's authority over Guam, it can selectively choose which parts of the U.S. Constitution apply to Guam. In this case,

*The 15th Amendment, which protects the right to vote in a democracy, is being used to deny an entire people their right to vote in a plebiscite on their political future.*

*The United States' insistence that Guam's Self-determination process adheres to U.S. domestic law and be resolved exclusively between Guam and the United States directly contrasts international standards and procedures for Self-determination and decolonization.*

Although administering Powers (in our case the United States) are obligated to assist and prepare Non-Self-Governing territories for Self-determination and ultimate full Self-governance, administering Powers cannot dictate the manner in which non-selfgoverning territories and their peoples exercise their right to Self-determination.

*If Guam exercised Self-determination within the confines of U.S. law and the requirements set forth by the Courts of the United States, we would be decolonizing at the terms of our colonizer. We will not decolonize at the terms of our colonizer.*

In light of the Davis ruling and the U.S. Supreme Court's denial of review, there exist no further avenues of resolution of Guam's plebiscite within the U.S. legal system. As set forth and recognized by the United Nations and numerous international organizations, this means that Guam has exhausted domestic remedy of its quest for Self-determination and decolonization.

*Guam must now turn to the international community for help in ending the continued injustice brought on by its unincorporated Territory status.*

## **International Affairs: The United Nations**

Territories who seek to decolonize from their administering Powers and elevate their status of Non-Self-Governing territory set out on different paths in their quest for Self-determination. Many of these territories have sought the international leverage of the United Nations to further their cause. At the international level, Guam's push for full Self-governance and autonomy was fueled by the U.S.' membership in and promotion of the United Nations after World War II. The United Nations was created,

- “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom”  
- Preamble of the United Nations Charter

This Preamble preceded the Charters that continue to guide the United Nations in their mission to sustain and practice international peace and security.

As members of the United Nations, administering Powers have an obligation to promote political, economic, social and cultural development in the territories, to include aiding in the protection of their land and resources. The UN General Assembly strongly discourages administering Powers from allowing their territories to receive and retain migrant and settler populations. The UN supports the preservation of “cultural identity” and “national unity” within the territories. As a result, the UN General Assembly adopted guidelines for administering Powers that will aid in the Territory achieving full Self-governance. To this day, Guam is recognized by the U.N. as one of the last 17 Non-Self-Governing territories that have yet to attain full Self-governance.

The basis of the rights of the people of Non-Self-Governing territories (NSGT) is found in Article 73 of the United Nations Charter, which states that “administering Powers accept as a sacred trust the obligation to promote to the utmost.... wellbeing of the inhabitants of the territories, and to this end: The ‘Administering Members’ promise to develop the political, economic, social and educational advancement of the territories, and to develop self-government, while taking into account the political aspirations of its people.”

Two important UN resolutions guide actions taken towards decolonization: UN Resolution 1514 and Resolution 1541. The Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514) recognizes the international desire to put an end to colonialism. It also understands that the continued existence of colonialism prevents the development of international cooperation while hindering the growth of the territories at the social, cultural and economic development levels. Resolution 1541 guides members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter and serves as a basis to recognize the 3 statuses of Self-governance: a independent State, free association with an independent State, and Integration with an independent State.



CREDIT: Cece Carpio

## UNITED NATIONS CHARTER ARTICLE 73

### *What does it say?*

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.

### *How does it apply to Guam?*

Establishes the United States' obligation, as Guam's administering Power, to promote the wellbeing of our people until we attain "a full measure of self-government" through Self-determination and decolonization.

## UN GENERAL ASSEMBLY RESOLUTION 1514 XV, 1960

### *What does it say?*

1. "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation."
2. "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."
3. "Immediate steps shall be taken, in Trust and Non-Self-Governing Territories...to transfer all power to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire (...).

### *How does it apply to Guam?*

1. Asserts that colonization denies people of their fundamental human rights and is ultimately harmful to the UN's goals of world peace and cooperation among all peoples and countries.
2. Establishes the right to Self-determination as a means for all peoples to freely decide and secure their future. Reinforces the basis of the CHamoru people's right to Self-determination.
3. Reaffirms the obligation of the United States, who holds Guam as a Non-Self-Governing territory, to transfer power to Guam's people through Self-determination and decolonization, as desired by its people.

## UN GENERAL ASSEMBLY RESOLUTION 1541 XV, 1960

### *What does it say?*

Principle VI: A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free Association with an independent State; or
- (c) Integration with an Independent State

"Principle VII: Free Association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes...and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes."

"Principle IX: Integration with an independent State Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government." should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government."

### *How does it apply to Guam?*

Declares and outlines the three political status options that Guam can achieve to attain full self-government. Guam law, however, specifies that the Integration and Free Association options are specifically Free Association with the United States and Integration with the United States (Statehood). Guam law can be amended to include Free Association or Integration with any independent state.

Mandates that a plebiscite be conducted democratically and with adequate education. Asserts that even in Free Association, as an independent state, Guam retains the right to change that status through democratic means and constitutional processes.

## Why the CHamoru People?

According to UN Resolutions 1514 and 1541, “the people” of NSGTs became known as “colonial peoples” and peoples under “colonial and alien domination.” This characterization of the peoples of NSGTs makes it even more clear that “the people” were those who were displaced by colonization. Based on this, to right the injustice of colonization, the colonized the native inhabitants of Guam and their descendants have the inherent right to Self-determination.

The CHamoru people’s frustrations with their colonization and demands of Self-determination date as far back to Guam’s days as a Spanish colony. Chief Hurao’s famous speech spoke of the CHamoru people’s discontent with the negative impact of the lives of his people brought on by the Spanish introduction of new animals and diseases.

*Since Guam’s voluntary inclusion on the list of NSGTs, the U.S. has made no effort to prepare Guam for Self-governance, nor has it aided Guam in attaining Self-government.*

Over time, International Law has become more specific with respect to the rights of the people of NSGTs, but the United States continues to push back in recognition of these laws/ rights and their significance and importance.

The migration policies of colonial powers have long been seen as a traditional practice of colonial control; either to assume control over the peoples of colonial territories, or to assimilate their populations. International standards in regard to being an instrument of colonialism were made even clearer by the U.N Plan of Action for the Implementation of the Declaration in 1980 which noted:

**“Member States shall adopt the necessary measures to discourage or prevent the systematic influx of outside immigrants and settlers into Territories under colonial domination, which disrupts the demographic composition of those Territories and may constitute a major obstacle to the genuine exercise of Self-Determination...by the people of those Territories. The United Nations’ vision for protecting territorial indigenous groups from colonial settler populations is a conversation that Guam is all too familiar with. Guam as an unincorporated Territory has no control over its immigration. As a result, Guam’s diversity is heavily influenced by the presence of military members & their families; COFA (Compacts of Free Association) migrants, due to Guam’s status as a COFA jurisdiction; and other immigrants.”**

In regard to COFA migrants, like other ports of entry for citizens of the Freely Associated States, Guam has not received the level of federal funding needed to support the influx of migrants. Citizens of COFA nations are allowed to live, work and study in the United States under their compact. Based on the U.S. Census Bureau, Guam’s position as a COFA jurisdiction has the island supporting 18,874 regional migrants, 11% of the island’s population.

If Guam were to move forward with a vote that is inclusive of these non-indigenous groups, the Self-determination vote would be heavily influenced by a population that was not part of the colonization of the island and its indigenous peoples.

From its first reports to the United Nations, the United States clearly understood that the people of Guam were the CHamoru people. The follow up U.S. reports from the 1940s and 1950s to the U.N. did not identify military personnel, white civil servants, or other immigrants as part of the people of Guam. Even in the 1960s, when questioned at the U.N. about military personnel stationed in Guam, U.S. representatives made a point that they were not participatory in Guam politics (Leland Bettis, Executive Director, Guam Commission on Decolonization, 1997).

With the US military already occupying 1/3 of Guam’s landmass, comes another complicated issue: the U.S.’ relocation of its bases and military personnel from Okinawa to Guam. If the base relocation occurs before a Self-determination plebiscite more than 9,000 U.S. military members and their families will be relocated to the island, thus further obstructing the Self-determination process.



CREDIT: Michael Lujan Bevacqua, Ph.D.

## CURRENT EFFORTS

### What About the Davis Case?

Davis v. Guam is an important court case which addresses the question of who is able to participate in the Self-determination process for Guam's future political status. The case, which was challenged in the U.S. District Court of Guam, and then the U.S. Court of Appeals for the Ninth Circuit has held the island's quest for Self-determination hostage and impeded future efforts. In a final push for remedy within the U.S. legal system, Guam sought review of the case by the U.S. Supreme Court. The Supreme Court denied Guam's request, upholding the ruling of the District Court and permanently forbidding the Government of Guam from conducting a plebiscite based on the Native Inhabitants definition. Guam's appeal for Certiorari; a process to obtain judicial review from the Supreme Court of a decision from its lower courts, was ultimately denied by the Supreme Court, thus ending any chance of Guam finding a solution to Self-determination within the U.S. legal system.

Arnold "Dave" Davis was a non-CHamoru resident of Guam who was denied the ability to register with the Decolonization Registry because he was not a Native Inhabitant of Guam. Native inhabitants are defined by Guam law as "persons who became US citizens by virtue of the authority and enactment of the 1950 Organic Act" and their descendants. Davis contested the registry on the premise of it being race-based and discriminatory, and infringing on his 5th, 14th and 15th amendment rights in the U.S. Constitution.

Attorney Julian Aguon, who represented the Government of Guam and the Guam Election Commission, argued that:

*"It [Self-determination] is a remedy to restore a right that was taken away. This cure is meant for a particular harm that was inflicted on a particular group of people. US Congress itself defines this group as those who were made citizens by the enactment of the 1950 Organic Act of Guam and their descendants."*

On March 2017, Guam District Court Judge Frances Tydingco-Gatewood ruled in Davis's favor, stating that Public Law 25-106, which instituted the Decolonization Registry, was unconstitutional and that the Native Inhabitant definition violates the 14th and 15th amendments of the U.S. Constitution. In October 2018, the Government of Guam appealed the decision to the Ninth Circuit court in Hawaii.

In July 2019, the Ninth Circuit issued its opinion which affirmed Judge Tydingco-Gatewood's decision. The court's opinion stated: "Despite its limited immediate impact, the results of the planned plebiscite commit the Guam government to take specified actions and thereby constitute a decision on a public issue for 15th Amendment purposes." The U.S. Supreme Court later denied a request for certiorari, upholding the ruling of the Ninth Circuit. Although all U.S. domestic avenues of justice for the indigenous peoples of Guam have been exhausted, the fight for the right of Self-determination continues.



CREDIT: Michael Lujan Bevacqua, Ph.D.

## DECOLONIZATION IS A PROCESS, NOT AN EVENT

*Guam is not just a geo-political strategic location. We are an island, a culture, an ancient civilization, and a people with the right to control our political, economic, and cultural development. Self-determination and decolonization are our basic human rights and the United States has a responsibility to honor their international and moral obligations to Guam.*

A political status plebiscite is just one key step in Guam's decolonization process, which is meant to empower our island community to make decisions that protect our people, natural resources and serve our best interest.

One common fear is that after a vote, the United States would immediately pick up and leave Guam. This is simply untrue and completely unrealistic. There are ways for Guam to distance themselves from the United States or even separate entirely (if that is what we desire), but even in that case, it would happen over a period of time and not abruptly. Each political status option has the potential for Guam to have an even closer and more equitable relationship with the United States. A political status plebiscite is meant to allow the colonized people of Guam to express their desires and exercise their right to Self-determination. The plebiscite would be a non-binding vote meant to voice the will of the CHamoru people. After the vote, the entire local community would have to determine how the Government of Guam will pursue a change in status.

Depending on the status we choose and the direction we want to go, the Government of Guam would have to engage with the United States and negotiate the terms of changing status and how that transition would occur. If the people desire a closer relationship with the United States or desire a new relationship with another country, each would look different for Guam and each would take some time to achieve. However, before Guam's political status actually changes, the island would move into a transitional period which would allow our Government and our people to prepare for a new status. Transitioning from our current dependency government into a full measure of Self-government is also the responsibility of the United States and our two governments will need to work together to ensure a smooth transfer of powers.

During the transitional period, the United States federal government will work with our local government to transfer control of lands, agencies, services, and infrastructure operated by the federal government. The transitional period can also include training and collaboration and can last more than ten years.

Prior to the U.N. Charter, the United States negotiated political status agreements with the Philippines, Alaska, and Palau, just to name a few. Each nation transitioned from one status to a new one and each took a significant amount of time to fully achieve their final status. In the case of the Philippines attaining independence, the former territory first went into a commonwealth-type government for 10 years before becoming fully independent. In the case of the FSM, RMI, and Palau negotiating a compact of free association or Alaska becoming a state — neither happened overnight and each had to negotiate their agreements on their own terms. No country or nation is identical and each case will be different, but history has shown us that a change in political status will not happen overnight. During Guam's transitional period, the entire island would have to come together and draft a constitution that would ensure the protection of the rights of all people who call Guam home.

Since the U.N. Charter was signed, the world experienced an accelerated decolonization period in which nations around the world began to Self-determine and choose their political futures. Guam remains one of the last 17 Non-Self-Governing territories in the world that has not yet exercised this most sacred human right. The UN Charter and its other decolonization mechanisms, have created an organized process to attain a full measure of Self-government and how governing powers could change. Should Guam choose independence, the U.S. is obligated to transfer Self-governing powers to Guam. Under free association, the sharing of powers would be a negotiated process, while statehood would require the approval of the United States Congress. The United States, through the U.N. Charter and its subsequent ratification of the International Covenant on Civil and Political Rights (1993) is obligated to support a Self-governing status for Guam. Part of the U.S. obligation in the transfer of powers to Guam is to ensure that the status Guam chooses - and the Constitution that Guam establishes - satisfies international standards of human rights. Thus, as Guam develops its Constitution it is assumed that the document would conform to the internationally accepted standards of universal franchise (voting rights) and the equal protection of the rights of all citizens without regard to race, sex, or religion.

The hope of Self-government, which has remained alive even through almost four hundred years of colonial rule, awaits our informed decision.

*“Our hope for Self-determination is not a lack of patriotism,” Calvo said. “Rather, it’s the opposite; it’s our hope to experience the ideals of democracy, liberty, opportunity and equality that are the foundation of the American dream – the same ideals for which many sons and daughters of Guam have proudly fought, and have died for, and continue to fight for as members of the United States’ armed forces.”*

- Eddie Baza Calvo, Former Maga'låhen Guåhan (Governor of Guam)

## Where We Stand After Davis v. Guam.

When the U.S. Supreme Court denied Guam’s request to appeal the Davis vs. Guam case, it meant two things for CHamoru Self-determination in Guam:

1. The 9th Circuit Court of appeals ruling stands - the Government of Guam’s current law violated Davis’s 15th amendment rights and
2. All “domestic remedies” have been exhausted and therefore Guam now has access to other international options.

## What Does This Mean For Us?

1. It means that if we want to move forward and hold the vote, the current law must be amended or repealed (and replaced with a new one). This process can become complex: lawmakers and the general public will have to figure out how to balance the court ruling against the rights and values we are defending.
2. Guam can now bring its case before the International Court of Justice, for an advisory opinion. This would give our issue global attention and could help create pressure on both the United Nations and the United States to cooperate in the advancement of our political status and Self-determination.

## When Will We Vote?

In light of the District Court’s ruling and the Supreme Court’s denial to hear the case of Davis v. Guam, we cannot set a date for a plebiscite without either amending or repealing the current law to the satisfaction of the U.S. court. However, we do have the ability to continue our educational efforts as we prepare for a vote.



*The Government of Guam remains committed to defending the rights of the CHamoru people and the Native Inhabitants of Guam in their pursuit of justice and equitable treatment.*

We must continue to explore every option available until Guam joins the sovereign nations of the world as equals.

## Why is Education Important?

Changing our political status is a huge undertaking that will impact every aspect of our lives. If done properly, Guam could come out stronger and more capable than ever before, but it will require a lot of work, sacrifice, and a lot of planning. Any of the three status options would drastically increase Guam’s potential for growth, because each status features a higher level of sovereignty (or control) over our land, our ocean, our natural resources, and our people.

The Commission on Decolonization (COD) is tasked with educating the community on the process of decolonization and Self-determination and raising awareness about our current status as well as past and present efforts to change it. The COD also manages three task forces which are responsible for education and advocacy for the different political status options for Guam (independence, free association, and statehood). These task forces are meant to serve as resources for our community to learn more about how Guam could benefit from becoming either the next State in the Union, a Freely Associated State, or an Independent country. Once a status is chosen, the entire island must get involved to realize this vision for the future. Choosing Guam’s political status will be the biggest decision we may ever make - let’s make it an informed decision!

## CHECK OUT OUR WEBSITE AT [DECOL.GUAM.GOV](http://DECOL.GUAM.GOV)

To find more resources and to read *Giha Mo'na: A Self-Determination Study for Guåhan*

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