

December 2002

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Recommended Citation

Souki, Jesse K. (2002) "The Forgotten Heroes: Reparations for Victims of Occupied Guam During WWII," *Seattle Journal for Social Justice*: Vol. 1: Iss. 3, Article 54.

Available at: <http://digitalcommons.law.seattleu.edu/sjsj/vol1/iss3/54>

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The Forgotten Heroes: Reparations for Victims of Occupied Guam During World War II

Jesse K. Souki

INTRODUCTION

So as we were sitting there, someone interrupted and came in and started investigating us, whether we're waiting for the American, whether we love the American. Do you understand the American ain't gonna find nothing but just flies?¹

The September 11, 2001 attacks and the December 7, 1941 air raid on Pearl Harbor are not the only occasions when an enemy has attacked the United States on its own soil. Guam was a territory of the United States for over forty years when the Imperial Japanese Army drove United States forces off the small island and violently occupied Guam for nearly three years during World War II. Throughout the occupation, the enemy Japanese military brutalized and killed hundreds of Guamanians. Despite torture and other war crimes, the Guamanians refused to assist the enemy in locating American soldiers who had remained in hiding on the island and refused to succumb to Japan's forced program of assimilation. However, at war's end, by signing the Treaty of Peace with Japan,² the United States barred potential Guamanian claimants from directly seeking redress for war crimes perpetrated by Japanese soldiers.

The purpose of this paper is to bring to light the injustice suffered by the people of Guam during the Japanese occupation, and the persistent failure of the United States government to redress that injustice. Section II of this paper will look at how the relationship between Guam and the United States has developed, which is vital to understanding why reparations to Guamanians are the responsibility of the United States government. Section III surveys some of the atrocities suffered by Guamanians through first-

hand accounts. Section IV focuses on the reasons why Guamanians have not achieved any measure of justice due to the failure of early legislation. Finally, Section V compares the development of Guam restitution bills, initially introduced in 1986 by the first Guam delegate to Congress, with reparations paid by the United States government to similarly affected victims of WWII. That section ends by looking at legislation that President George W. Bush recently signed into law.³

GUAM'S COLONIAL PAST

The island of Guam is located 3,700 miles west-southwest of Honolulu; Hawai'i 1,500 miles east of Manila; Phillipines and 1,500 miles south-southeast of Tokyo, Japan.⁴ From this isolated location, the Chamorro people of Guam have discovered an assortment of wayward Westerners without having moved an inch. Initial Western contact with Guam occurred in 1521, when Ferdinand Magellan reached the southernmost Mariana Islands during his circumnavigation of the globe.⁵ Subsequently, General Miguel Legaspi claimed Guam and the other Mariana Islands for Spain in 1565, renaming the island, *Ladrones*, or Island of Thieves.⁶

Spanish Occupation

Spanish colonization commenced in 1668.⁷ At that time, the Spanish estimated the Chamorro population to be 50,000 inhabitants throughout the Mariana Archipelago. However, the introduction of diseases and the Spanish-Chamorro wars decimated the Chamorro race, reducing the number of inhabitants to fewer than 2,000 by 1700.⁸ Guam served as a way station for the Spanish Acapulco-to-Manila galleons from 1668 to 1815.⁹ After 1815, the island's infrastructure slowly devolved into a state of disrepair as Spain lost interest in Guam because of its isolated location and lack of resources.¹⁰

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The United States

The Spanish regime ended in 1898 when American forces took Guam during the Spanish-American War. The Treaty of Paris officially ended the Spanish-American War and Spain ceded its Pacific possessions, including Guam, to the United States.¹¹ Thereafter, Guam became a territory of the United States.¹² Under Article IV, section 3 of the Constitution, the United States may acquire a territory by treaty, govern it and make all needful rules and regulations respecting the territory or other property belonging to the United States.¹³ However, the power to govern Guam was initially subject to the dictates of the President of the United States. On December 23, 1898, President McKinley issued an Executive Order making the Department of the Navy temporarily responsible for governing Guam.¹⁴ The Order empowered the Secretary of the Navy to “take such steps as necessary to establish the authority of the United States over Guam and to give it the necessary protection and Government.”¹⁵

The United States Navy was responsible for the administration of Guam until June 30, 1950, when Congress passed the Organic Act of Guam (“OAG”).¹⁶ The OAG provided, *inter alia*, that:

It establishes a democratic local government for the island, and guarantees human freedoms under the authority of the Congress rather than the executive branch. American citizenship would be conferred on the approximately 27,000 native Guamanians who gave such valiant proof of their loyalty to the United States and American traditions in two world wars, including 4 [sic] years of enemy occupation by the Japanese armed forces.¹⁷

Under the OAG, Guam became an unincorporated territory of the United States.¹⁸

Despite Guamanians becoming citizens in 1950 and having an organized government, the President of the United States continued to appoint the governor of Guam until 1970. This changed when President Lyndon Johnson signed legislation on September 11, 1968, empowering

Guamanians to elect a governor and lieutenant governor.¹⁹ Subsequently, in 1973, the people of Guam elected their first nonvoting delegate to the United States Congress.²⁰ Congress allowed Guam to elect one Congressional Delegate to sit in the House of Representatives. Guam's Delegate may introduce legislation and vote in committees, but he or she may not vote on the floor of the House. Because of Guam's scant representation in Congress, it has been an uphill battle for delegates seeking redress for WWII victims.

OCCUPATION OF A UNITED STATES TERRITORY AND SUBSEQUENT ATROCITIES

Japan turned its forces on Guam the day after Japan bombed Pearl Harbor in Honolulu, Hawaii on December 8, 1941.²¹ American forces were not in the immediate area because military resources had been concentrated in the Philippines. Additionally, due to the threatening situation in the Pacific during WWII, the U.S. military had evacuated all American dependants from the island months earlier. Less than 450 ill-equipped Marines, a few Guamanian soldiers, and 22,000 Guamanian civilians remained on the island.²² Prior to military forces landing on Guam, the Japanese air force dropped several bombs on Agana, Guam's major city, quickly rendering Guam's meager defenses ineffective.²³ On December 10, 1941, an estimated 5,000 enemy Japanese troops landed on Guam, forcing the island to surrender.²⁴ Immediately, the few remaining American residents were compelled to march a distance of over five miles to Piti, where they were loaded onto a ship and sent to prison camps in Japan.²⁵ Next, Japan incorporated Guam into its Greater East Asia Co-Prosperty Sphere doctrine.²⁶ The Japanese renamed the island from Guam to *Omiyajima* (Great Shrine Island) and its city Agana became *Akashi* (Red or Bright Stone).²⁷ Indoctrination tactics included forbidding the use of any language except Japanese and creating compulsory Japanese language schools for Guam's youth.²⁸ Soldiers used corporal punishment on men, women, and

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children to enforce tedious rules, which included slapping and kicking people for not bowing properly.²⁹ Japanese soldiers punished Guamanians to the brink of death as they attempted to route out the few American soldiers who remained in hiding thanks to the aid of many patriotic Guamanians.³⁰ In one incident, soldiers forced civilians to march over eight miles to watch the execution of two men who allegedly assisted the American soldiers.³¹ The following section details some of the war crimes inflicted on the Guamanian people.

Testaments to Suffering

In the final six to seven months of occupation, the Japanese military's use of Guam changed from forcing integration and assimilation to using Guam as an engine of production for the Japanese military.³² During this period, the Japanese army was supplemented with several thousand Japanese soldiers including 5,100 Japanese Navy soldiers relocated from central China.³³ The soldiers closed all schools and forced men, women, and children of all ages into the fields to increase food production.³⁴ Japanese soldiers built camps where women were forced into sex, and the frequency of beheadings increased.³⁵

The Japanese army used killings as a tool to break the will of the Guamanian people. A poignant case arose in the killing of Father Duenas, a spiritual leader who was killed in order to frighten the Guamanian people and crush their spirit. Father Duenas was born in Guam, studied under American Jesuit priests in Manila, Philippines, and returned to Guam in 1938.³⁶ Father Duenas was not cooperative with the occupying forces. On one occasion, he defied censorship of his sermons; on another, he chastised fellow Catholic priests from Japan who attempted to win over the Guamanians by telling them that the American forces were defeated.³⁷ On July 2, 1944, the Japanese accused Duenas and his thirty-one year old nephew of assisting one of the American soldiers in hiding; they were beaten and tortured for an entire day. The torture culminated in the public

beheading of both men.³⁸ The Guamanians hold Father Duenas in the highest regard; Father Duenas Memorial High School was named in his honor.³⁹

In an infamous case of abuse and torture, soldiers drove more than thirty young men and women into a cave near Fena, Guam and threw grenades into the cave, killing all but a few people who feigned death.⁴⁰ Cave massacres happened on more than one occasion. Manuel Charfauros, a surviving victim, tells his story here:

...Certain that I was dead, the officer dropped the sword. Then picked up half a dozen hand grenades and threw them one after another into the cave. There were confused sounds of explosions, cries and groans, and a man staggered to the entrance begging for mercy. The officer paused, took out his bayonet and said: 'Maila' (come).

'Please have mercy and excuse...'

The officer said again: 'Maila.'

As soon as the man revealed himself at the entrance, there was a thud and the victim dropped—beheaded.

Then another man, Jose Acfalle, came begging also for mercy and the officer repeated: 'Maila.'

When Acfalle too reached the entrance, the officer thrust at this throat with the sword and the man dropped, but not dead. Seeing the sword he had leaned swiftly backwards and was struck on the shoulder. He lay still where he dropped and played dead. A third man, not so fortunate, was also beheaded at the entrance.⁴¹

In yet another first hand account of brutality, Beatrice Flores Emsley tells of how she survived an attempted beheading at the age of thirteen:

So we agreed with them. They say we're liars, and they start slapping us around. By almost daylight, a bunch of the soldiers all dressed up and well equipped like they're going to war, and they call us all out and line up.

To each one of us, we had two guns with a rifle and something like a bayonet in front, and they march us down just a little ways. And that place where my grave is at is now got McDonald's.

They push us into this hill, and on top of the hill there's a bunch of soldiers. There was an officer with a long saber. He was standing right by the hole.

The first thing they did is they separate the seven men. And when my uncle pull me, they pull him away and they march them in the other side of the jungle. All us four girls hear is like somebody chopping down the forest, and moaning for God, for mother, and I'm dying, and all that.

Since then...I didn't have any feeling. I'm standing there like I'm just out in a cloud. So then after they finish and everything is quiet, they come back and went by us and they all have a bloody uniform. Their rifle and everything are all blood.

Then finally they start calling Diana Guerrero, the oldest woman, who walked up to this officer, and the only thing I seen, and it start to get blurr, was he cut this front and start sawing off her breast.

Then the sister next to her came running up to try to help. They do just everything they can with what they got. And the third one was Toni, because I was the youngest one and the last. They march her up, and the only thing they did is slice down her stomach and everything come out.

When it comes to me, when they took me out, I was walking in air. As soon as they let go of me, I fall down to the ground. Then one Japanese soldier came toward to me and asked me about his half-cast Japanese girlfriend, whether she had a baby.

I said, I don't know because when the Americans start bombing back the island, everybody is out to the jungle, about two, three family in one big tree, praying and praying and praying.

So finally when they are finished with me, he pushed my head down and he hit me in the back of my neck. And all I did is, I feel a splash down on my body, and I was gone.

The next thing, I know, I was trying to struggle because I was buried in that hole. I was struggling for air because I was losing breathing.

Then I found this hand was shaking loose, and I start to reach and scratch my face. When that face was open and I start breathing, I look up on that hill and there was this young man standing, calling, who is alive, to come with him.

Then he said, there comes the Japanese. All I did is I closed my eyes. They come, and I hear them say Bonsai three times, and took off because it's getting daylight.

During daylight, the Japanese is not out. They're all hiding. Only at night.

So then I start digging myself. I look at that certain particular person I saw, and he ain't there. I was just there in that hole.

Then I start digging myself and I hear somebody moaning next to me. It was that girl that has been cut up. She wanted some water. She's thirsty.

So what I did is I crawl over to her and I just felt something wet on that ground, and we just start drinking it.

I passed out until the sun was hitting it and it was so hot and I wake up and I look around, and I said, "Toni," and she was already stiff.

I started to crawl up the hill to get away from that area. When I got up to the hill, I fell down because I'm so weak. When I fell back down there, I wait for a while until I get enough strength to climb up.

I climb up and I start crawling over to where I hear them Chamorro men crying and hollering for God and help.

I happened to look, and the only thing that I seen on my uncle is that leg that got wounded. The reason why, Mr. Chairman, I know this is his is because the half of that pants that he was wearing they're so filthy.

So then I just look and I continue. I don't know where I'm going. I don't know what happened to me. I don't know nothing. I just keep going.⁴²

Liberation: July 21, 1944

Over two years later and after several days of bombarding the island, United States troops finally moved in and retook control of the island.⁴³ In Japan's defeat, victory revealed the carnage inflicted on the Guamanian people. Marine scout, Private First Class Joe Young, related what the landed troops found:

Suddenly we came to a clearing. There, spread out on the ground, were about forty bodies of young men. They had their legs drawn up against their chests and had their arms tied behind their backs. They lay in awkward positions—on their sides and their stomachs, and on their knees—like swollen, purple lumps. And none of them had heads, they had all been decapitated. The heads lay like bowling balls all over the place.

There was a truck nearby with more bodies and lopped-off heads in it. It looked as if the Japs had been loading all the bodies and heads into the truck, but had been frightened away and had left everything behind.⁴⁴

The following day, American soldiers found twenty-one more beheaded men from the same village where a concentration camp near Yona was located.⁴⁵

In sum, the Japanese occupation had lasted some two and half years, from December 10, 1941, to July 21, 1944. The Japanese military had killed hundreds of people and maimed and brutalized thousands more. Children were bloated and malnourished.⁴⁶ During the rebuilding of Guam, 18,000 residents sought assistance for basic health and nutritional needs from the United States Navy. On July 21 of every year, Guamanians in Guam and across the United States, observe the Liberation of Guam by United States forces.⁴⁷ Liberation Day should be a reminder to all that

one's freedom can vanish, even when protected and governed by the awesome power of the United States.

GUAM'S ATTEMPTS AT REPARATIONS

In his law review article, Professor Eric K. Yamamoto notes that reparations claims have been successful where 1) the government perpetrators and victims are identifiable, 2) direct causation is established, 3) damages are certain and limited, and 4) payment means finality.⁴⁸ By example, Professor Yamamoto highlights that Japanese-American reparation claims from World War II have been successful because:

...(1) their challenge addressed a specific executive order and ensuing military orders; (2) the challenge was based on then-existing constitutional norms (due process and equal protection); (3) both a congressional commission and the courts identified specific facts amounting to violations of those norms; (4) the claimants were easily identifiable as individuals (those who had been interned and were still living); (5) the government agents were identifiable (specific military and Justice and War Department Officials); (6) these agents' wrongful acts resulted directly in the imprisonment of innocent people, causing them injury; (7) the damages, although uncertain, covered a fixed time and were limited to survivors; and (8) payment meant finality.⁴⁹

Here, the victims of occupied Guam clearly meet the requirements necessary to receive reparations. First, the Guamanian victims are an identifiable class. This class is restricted to those who lived in Guam but were not United States citizens when Japan occupied Guam from December 10, 1941 to July 21, 1941. Moreover, the government agents are easily identifiable – the United States Navy had a duty to protect the Guamanians. Second, damages are determinable and would be limited. Third, payment for these injuries will represent finality.

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Finally, the people of Guam suffered definite harm and injury by the many horrible atrocities at the hands of their Japanese invaders during World War II including forced marches, torture, and random executions. The United States government failed to fulfill its duty to protect Guamanians during Japanese occupation. The United States is directly responsible for the abuses that the people of Guam suffered during Japanese occupation, because at the time of the Japanese invasion, Guam was a territory of the United States and the President McKinley had delegated authority to the Navy to protect Guam.⁵⁰ Because the Navy failed in its duty, the people of Guam were injured.⁵¹ Nonetheless, as a non-state, it may be argued that Guam was not guaranteed the Constitutional protection afforded to states under Article VI, section 4, which states the “United States shall guarantee to every State in this Union...protect[ion]...against invasion.”⁵² In general, the guaranties of the Constitution extend to territories only as Congress has made those guaranties applicable through its exercise of legislative power.⁵³ However, while Guam did not have a statutory relationship with the United States at the time of occupation, Guam was protected and governed under Navy administration. When President McKinley delegated power to the Navy to protect Guam, it created a duty for the Navy to protect Guam.

Notwithstanding the occupied Guamanian’s domestic claim, the United States government specifically barred victims from seeking war reparations directly from Japan when the United States conferred citizenship to Guamanians when Congress’ passed the Guam Organic Act in 1950.⁵⁴ The passage of this Act was a bittersweet victory for Guam because on one hand, Guam was no longer under the direct rule of the Navy. Instead, Congress allowed Guam to organize its own government and extended United States citizenship to the Guamanians. On the other hand, the United States’ Treaty of Peace with Japan, signed a year later in 1951, stated:

Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any

actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.⁵⁵

The language of the Treaty bars direct litigation between Guam and its former captors because the United States waived the ability for its citizens, as well as, its nationals during occupation, to seek reparations from Japan.⁵⁶

The Guam Meritorious Claims Act: A Near Miss

Congress recognized the need to make the people of Guam whole, and passed three remedial Acts but only one, the Guam Meritorious Claims Act (GMCA) of 1945, specifically addressed reparations.⁵⁷ Two other acts passed by Congress, which did not address specific claims for war atrocities, were the Land Transfer Act and the Guam Rehabilitation Act.⁵⁸ The former allowed Guamanians to purchase land from the Government, and the latter provided \$6 million for infrastructure, eighty percent of which was infrastructure that the United States military destroyed by bombardment before its land invasion.⁵⁹

The GMCA's stated purpose was to grant "immediate relief to the residents of Guam by the prompt settlement of meritorious claims arising in Guam."⁶⁰ However, the process for filing claims was cumbersome and ineffective. While claims for less than \$5,000 were reviewed by a claims commission composed of officers of the Navy or Marine Corps appointed by the Secretary of the Navy, all claims above \$5,000 and all claims for death or personal injury needed to be forwarded to Congress for consideration.⁶¹ Only if such claim passed Congress, would the claimant get relief.⁶² In addition, the GMCA placed a strict statute of limitations on the claims; victims of World War II occupation needed to present claims to the Commission one year after the occurrence of the incident, which must have taken place after December 6, 1941, but prior to December 1, 1945.⁶³

As a result of the limitations set by the GMCA, out of 20,000 Guamanians subject to enemy hostility for two and a half years, only 759

war claims were submitted to the commission by the deadline of December 1, 1946, 320 of which were for deaths, 217 for property damage, and 258 for injuries.⁶⁴ Adding to the claimant's' discontent, the Commission placed a ceiling of \$5,000 on each property claim and \$4,000 on each death or injury.⁶⁵ By 1957, the Navy Commission paid out only one maximum death claim.⁶⁶ The GMCA envisioned immediate relief for Guam's residents, yet large property owners fared better since property claims paid out more than injury claims.⁶⁷ While land claims were necessary for developing a post-war market-economy, the GMCA fell short of providing justice to hundreds of claimants for injury and loss of life.

The United States government itself harshly criticized the application of the GMCA as applied by the Navy Secretary.⁶⁸ On June 3, 1947, former Secretary of the Interior Harold Ickes testified before the House Committee on Public Lands, strongly criticizing the Department of the Navy for its "inefficient and even brutal handling of the rehabilitation and compensation and war damage tasks."⁶⁹ Secretary Ickes termed the procedures as "shameful results" where the Navy had only processed 5.8 percent of the estimated value of the claims.⁷⁰ In addition, a letter dated March 25, 1947 from the Hopkins Committee indicated that the "[Navy] Department's confusing policy decisions greatly contributed to the programs' deficiencies and called upon the Congress to pass legislation to correct its mistakes and provide reparations to the people of Guam."⁷¹

Claims Paid to Similarly Affected WWII Victims

While Congress has provided reparations for similarly affected victims of World War II caused by the United States government, it has not provided similar reparations to the people of Guam. The territory of Guam was the responsibility of Congress for forty-three years before the Japanese occupation and the President had ordered the Navy to provide protection to the people of Guam prior to occupation.⁷² Moreover, the Guamanian's' dedication to protecting the lives of American soldiers during occupation,

their patriotism to the United States, and the use of Guam and its resources by the United States military, implores a Congressional remedy for the United States' leaving Guam defenseless.⁷³ However, while Congress continues to provide reparations for other victims of World War II because of the actions of the United States government, it has not addressed Guamanian reparations for the Navy's failure in its duty to protect Guam. Under the War Claims Act (WCA) of 1948, the United States government provided reparations to other similarly affected victims when Congress provided monetary remedies to United States citizens and Filipinos who assisted American soldiers in the Philippines for injury caused by enemy forces during World War II.⁷⁴

First, the WCA excluded Guamanians by using statutory language that extended reparations to all United States *citizens*.⁷⁵ For the purposes of the WCA, "the term 'civilian American Citizen' means any person who, being a citizen of the United States, was captured by the Imperial Japanese Government on or after December 7, 1941 at...Guam..."⁷⁶ However, when the Japanese occupied Guam, the people of Guam were nationals, not United States citizens. Therefore, the people of Guam were unable to seek recourse through the WCA.

Secondly, the WCA permits claims by "any religious organization...in the Philippine Islands and affiliated with the United States," as well as claims by any Philippine organization that provided services to armed forces or civilian Americans.⁷⁷ Similarly, many Guamanians died trying to protect the secrecy of American service members hiding in Guam. Moreover, the Philippines had gained its independence from the United States in 1946.⁷⁸ During occupation, both the Philippines and Guam were territories.⁷⁹ In other words, the 1948 WCA made an exception for the Philippines but not Guam. As a result, Guamanians are left without redress when both the Philippines and Guam provided similar protections to American soldiers.

More recently, Congress granted reparations to Japanese-Americans and Aleuts who were injured by United States policies during World War II.⁸⁰ The Civil Liberties Act of 1988 signed by President Reagan provided for a presidential apology and an appropriation of \$1.25 billion for reparations which resulted in a \$20,000 payment awarded to most internees, evacuees, and others of Japanese ancestry who lost liberty or property because of discriminatory wartime actions by the government.⁸¹ In addition, the Act set aside \$5 million for reparations which awarded \$12,000 to individual relocated Aleuts.⁸² With respect to the Aleuts, Congress recognized that:

The United States failed to provide reasonable care for the Aleuts, and this resulted in widespread illness, disease, and death among the residents of the camps; and the United States further failed to protect Aleut personal and community property while such property was in its possession or under its control. The United States has not compensated the Aleuts adequately for the conversion or destruction of personal property, and the conversion or destruction of community property caused by the United States military occupation of Aleut villages during World War II.⁸³

By analogy, this language also applies to the victims of Guam. Where the government failed to provide reasonable care for the Aleuts, the US government similarly failed to provide protection to the occupied Guamanians.⁸⁴ While the Aleuts were United States citizens and the abuse occurred in the State of Alaska, as part of the United States, under the Constitution and by executive order, the Navy was responsible for the administration and protection of Guam. The Navy failed to protect the health and safety of the Guamanians in dereliction of these duties.

While the damage caused by the United States military was active in the Aleut's case, the government has granted reparations in instances when it failed to prevent loss of life and property. Reparations provided by the State of Florida arising from the 1923 Rosewood Massacre illustrate an example where reparations were offered when the government failed to provide protections and, as a result, such failures were the direct cause of

the loss of life and property.⁸⁵ In Rosewood, residents of a nearby white town accused a black man of assaulting a white woman.⁸⁶ A posse formed and proceeded to terrorize the African-American town of Rosewood, which culminated in the razing of the 120-person town.⁸⁷ The State of Florida compensated nine survivors \$150,000 and each of the 145 descendants of residents between \$375 and \$22,535.⁸⁸ In the Rosewood case, the Sheriff and Governor were aware of the violence but neglected to, or chose not to, protect the Rosewood community.⁸⁹ In Guam's case, the Navy overextended itself in the Pacific by choosing to focus its forces in other parts of the Pacific, left meager defenses in Guam, and did not liberate its people for two and half years.

LEGISLATIVE RECOURSE

With the possibility of direct claims against Japan barred by the Treaty of Peace and the failure of the Guam Meritorious Claims Act, there is at present no venue other than going through Congress for over 3,500 claimants. Since 1986, Guam delegates to Congress have introduced eight bills that address Guamanian claims arising out of World War II occupation⁹⁰; however, no legislation has passed Congress that implements a reparations claims process. On December 16, 2002, the President signed the Guam War Claims Review Commission Act into law, as discussed *infra*; this Act merely creates a fact-finding committee.⁹¹ The following is a description of the development of Guam claims legislation.

Legislative History

Of the first six bills introduced into Congress addressing Guamanian claims arising from Japanese occupation, each started with the establishment of a reparations commission. For example, consider H.R. 5187, the first bill introduced by a Guam Congressional delegate on July 7, 1986.⁹² The language of that bill created a commission that would (1) examine and render a final decision on Guam claims for damages suffered

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during occupation, (2) provide hearings for claimants and notification of the committee's decision, (3) establish a schedule of compensation, and (4) create a Guam Claims Fund in the United States Treasury from which claims were to be paid.⁹³ Given the Guamanian experience with the GMCA, the authors of the bill were careful to ensure that a source of funds was available for claims and that the hearing process was streamlined and impartial.

Two subsequent bills, H.R. 3191 and H.R. 2024, were substantially similar except that in H.R. 3191, the Guamanian delegate inserted language that specified loss of life, physical injury, forced labor, internment in concentration camps, loss of property without compensation, and sexual assault or abuse from which claims could arise.⁹⁴ This exhaustive list was a prelude to the streamlined language included in the last bill introduced by this delegate, H.R. 2024. The bill was significant in that it specified that claims were to be made for "compensable injuries," which were defined as loss of life, physical injury, forced labor, forced march, or internment,⁹⁵ unlike the GMCA, which had not named these injuries. This language was used in all subsequent Guam claims bills.⁹⁶

During his term, the most recent Congressional delegate, Robert Underwood, introduced five Guam claims bills. The first three bills, H.R. 4741, H.R. 2041, and H.R. 2200, were similar to their predecessors in that that the bills included provisions for a restitution commission that would award claims for compensable injuries.⁹⁷ The difference in Underwood's bills was that his bills created a more diverse method for distributing funds, a technique successfully used in the Civil Liberties Act of 1988.⁹⁸ For example, a successful claimant or his or her heir could use the money for a post-secondary education scholarship or for medical expenses. This mechanism for distributing funds is a shift from the method employed by the GMCA, which allowed a claimant to receive in-kind reparations like food and clothing, towards language more like that included in the Civil Liberties Act of 1988, where monies may be used for students in need of

scholarship assistance.⁹⁹ In addition, H.R. 2041 directed the President to submit to Congress, a list of recommendations of spending cuts or other measures that would provide, over the next five years, enough savings to carry out the Act.¹⁰⁰ This approach was likely to make the legislation more appealing because monies would merely be rearranged in the budget, instead of Congress taking additional money out of the Treasury.

Having evolved over ten years, the last piece of legislation specifically addressing Guam war claims, H.R. 2200, would have been especially effective.¹⁰¹ This bill called for an amendment to the Guam Organic Act¹⁰², and specified payouts of \$20,000 for claims based on death, \$7,000 for personal injury, and \$5,000 if the claim was based on forced labor, forced march, or interment.¹⁰³

Unfortunately, the six bills introduced by Underwood and his predecessor, calling for a reclamation committee and reparation fund, did not reach the President for signature. The bills usually just languished in the committees. This is disappointing, as the Guam Delegates had, on several occasions, presented to Congress an opportunity to address the problem the government had caused by its passivity in allowing the occupation of Guam and the brutalization of Guamanians by these Japanese forces for several years.

There is no record of negative feedback on these bills so one can only speculate as to why these bills never made it out of Congress. Some factors identified in reparations literature include the statute of limitation, absence of directly harmed individuals, the absence of individual perpetrators, the lack of direct causation, or the indeterminacy of compensation amounts.¹⁰⁴ However, none of these factors appears to be significant in this particular case. First, although it has been estimated that reparations funds will require at least \$4 million, it does not amount to much per capita.¹⁰⁵ Assuming that all of the 3,500 Guamanian claimants were to be compensated equally, each would receive just \$1,142. By comparison, interned Japanese-Americans received \$20,000 and Aleuts \$12,000 for their

World War II claims, which were based on “internment.”¹⁰⁶ The Guamanians suffered not only internment, but also suffered rape, torture, and even death. One does not want to draw out the comparison too far, as the denial of liberties and the indignity suffered by Japanese-Americans and Aleuts are beyond valuation. In fact, Congress may likely be remunerating those victims too little. Nevertheless, the inaction of the Navy to liberate occupied Guam in the face of its duty, and the resulting atrocities, seems at least equally unconscionable. Given these circumstances, how can the government substantiate compensation for Guamanians that is four times less than that provided for similarly situated persons?

The Bill that Passed

In contrast to the first six bills introduced in Congress regarding reparations, the bill that recently passed, H.R. 308, takes a much different tact.¹⁰⁷ The change in approach started with H.R. 755, introduced in February 11, 1999.¹⁰⁸ H.R. 755 was approved by the House and entered the Senate. The bill did not call for a claims fund or a commission to distribute compensable injury claims; instead, it established a Guam War Claims Review Commission.¹⁰⁹ The Commission would be composed of nine members: three appointed by the Secretary of the Interior, one selected by the House, and one selected by the Delegate of Guam.¹¹⁰ The purpose of the Commission is to (1) review past implementation and administration of the GMCA, (2) review laws, testimony, and the Federal Archives regarding payments for World War II claims, (3) receive oral testimony from those who were there during occupation, (4) determine parity of claims paid to Guam claimants compared with similarly affected citizens and nationals in Japanese occupied territories, (5) advise Congress on whether compensation may be necessary to compensate those that endured personal injury, forced labor, forced march, internment, and death, and, finally, (6) to report this information to Congress and the Secretary of the Department of Interior.¹¹¹

In addition, the House authorized \$500,000 for the Commission to carry out its mission.¹¹²

While the Commission will not actually pay reparations because it is merely a fact finder, it appears that the Act may move one step closer to providing reparations in the future. First, the Act forces the Secretary of the Interior, who has been delegated the authority over Guam by Congress, to become educated and focus some energy on this issue. Because of the political power that the Department has in Insular Affairs, granting the Secretary a greater stake in the makeup of the Commission might create inertia for this process. Through its reporting function, the Act also educates Congress, another instrumental player, of the events and resulting suffering that occurred during the Japanese occupation of Guam. Next, the Act gives the Commission a definite timeline of nine months in which to prepare its report. Time is essential here because the claims arise from war crimes that occurred over sixty years ago. For instance, Beatrice Flores Emsley, who describes her brush with death, was thirteen when that event occurred. She would be seventy-three today, if she had not recently passed away. While the appropriate legislative model would allow heirs to receive reparations of behalf of their relative, one of the foundations of a reparations claim is justice, and Ms. Emsley will not be alive to see that justice come to fruition. Therefore, Congress must fashion some form of legislation that pays reparations to Guamanians promptly.

Because Guam is a Territory under the general authority of Congress and because all other forums are closed to reparations, the only avenue for Guamanians seeking reparations is through Congress. The Act lays the political groundwork to encourage Congress to create some type of Guam reparation legislation in the future. The Act does this by drawing comparisons between others who received reparations during Japanese occupations around the Pacific.¹¹³ If the Commission finds that Guam survivors received less than similarly affected recipients of World War II reparations, then the case can be made for making that valuation fairer. It is

crucial to foster this sentiment in Congressional members, because it is these members who will vote on the issue of Guam reparations legislation in the future. In addition, by focusing compensation on death, personal injury, forced labor, forced march, and internment, the Act reinforces the purpose of the reparations. The Act is not for personal gain, but it addresses injury and harm which resulted from occupation.

Unfortunately, a shortcoming of the Act includes its limited purpose, which merely establishes a commission. The Delegates of Guam have made many passionate floor speeches, accumulated piles of evidence, and have continued beating the drums of justice for over sixty-eight years. But most importantly, the facts surrounding Guam's occupation fit into the rubric of reparations. How will an Act that seeks to accomplish more of the same make any inroads? Past bills have been through both Democratic and Republican controlled political battlefields and the message seems to be clear: the government is uninterested or is unwilling to redress an obvious injustice that it allowed to occur more than sixty years ago. However, it is promising that twenty-two representatives co-sponsored H.R. 2200 and that the Guam War Claims Review Commission passed into law. It shows that at least some lawmakers are willing to consider the idea of providing reparations to Guamanian victims of the WWII occupation by Japan, thus insuring that the commission created by this Act will take the next step into creating a reparations process like the Civil Rights Act of 1988.

CONCLUSION

After more than sixty-eight years of mismanagement by the government, Congress is finally starting down the path towards realizing the intent of the Guam Meritorious Claims Act of 1945, which was enacted to grant

immediate relief to the residents of Guam by the prompt settlement of meritorious claims arising from World War II occupation. The unfortunate reality is that the Guam War Claims Review Commission Act is just a small step in that direction, by creating an official record of the atrocities suffered by Guamanians in World War II. However, how will this improve upon the sixteen years of introduced bills, testimony, and evidence heaped upon Congress by Guam's Congressional Delegates since 1986?

Reparations must be paid to the Guamanians because the United States government failed to meet its duty to protect those living in a US territory. The responsibility of the Territory of Guam during Japanese occupation fell directly upon Congress under the Constitution, and upon President McKinley, when he ordered the United States Navy to give Guam protection in 1898. Guam has been a faithful territory of the United States in times of war and in times of peace. Its men and women have served dutifully in the United States military. Guam's people suffered horrifying war crimes committed during the Japanese occupation of Guam. Guamanians never gave up American soldiers hiding on the island. But Congress prevented Guam from seeking direct claims for war crimes perpetrated by Japan by signing the Treaty of Peace. Congress has provided for individual Guamanian claims that are less than four times the reparations offered other claimants who were similarly affected. Even then, only a fraction of claims have been processed, leaving over 3,000 claimants without redress. It is due justice for Congress to provide the remedy the Guamanian people seek.

¹ *The 50th Anniversary of the Liberation of Guam*, 140 CONG. REC. 16480-5 (1994), at *H5649 (statement of Beatrice Flores Emsley).

² Treaty of Peace, Sept. 8, 1951, U.S.-Japan, art. 14, 3 U.S.T. 3169.

³ Guam War Claims Review Commission Act, Pub. L. No. 107-333, 116 Stat. 2873 (2002).

⁴ U.S. Dept. of Interior, Office of Insular Affairs, *Fact Sheets: U.S. Insular Areas and Freely Associated States*, at <http://www.doi.gov/oia/facts2000.html#guam> (last visited Apr. 4, 2003).

⁵ U.S. Dept. of Interior, *supra* note 4; *see also* PAUL CERANO & PEDRO SANCHEZ, *A COMPLETE HISTORY OF GUAM* 30 (1964).

⁶ CERANO & SANCHEZ, *supra* note 5, at 42; *see also* U.S. Dept. of Interior, *supra* note 4.

⁷ U.S. Dept. of Interior, *supra* note 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Treaty of Paris, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754, 1900 U.S.T. 33.

¹² *Id.*

¹³ *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 673-74 (1945).

¹⁴ Exec. Order No. 108-A (1898).

¹⁵ *Id.*

¹⁶ Organic Act of Guam, Pub. L. No. 81-630, ch. 512, 64 Stat. 384 (1950) (codified as 48 U.S.C. § 1421).

¹⁷ *Id.*

¹⁸ *See* Anthony F. Quan, Note, “*Respeto I Taotao Tano:*” *The Recognition and Establishment of the Self-Determination and Sovereign Rights of the Indigenous Chamorros of Guam Under International, Federal, and Local Law*, 3 *ASIAN-PAC. L. & POL’Y J.* 56, 69-81 (2002). In general, an “unincorporated territory” is one that Congress has not fully incorporated into the United States, and not all provisions of the U.S. Constitution apply in that territory. An “unorganized territory” is one that Congress has not granted an organic law or constitution. Typically, the U.S. Department of the Interior, which has plenary authority, administers these insular areas. The Department may in turn allow the local people to draft their own constitution. Therefore, they have an organic law, but it did not come from Congress, nor do they do have representation in Congress. For a Territory to become a State the people must petition for it, Congress must provide an Enabling Act to allow the people to draw up their own state constitution, and Congress and President must approve that constitution. *Id.*

¹⁹ Guam Elective Governor Act, Pub. L. No. 90-497, H. Rep. No. 90-1521 (1968) (after the signing of the Act, election of Guam’s first Governor was postponed until 1970 in order to prepare for the election).

²⁰ Guam and the Virgin Islands: Delegate to the House of Representatives, Pub. L. No. 92-271, 82 Stat. 842, 842 (1972) (Delegate Antonio Won Pat was Guam’s first Delegate to Congress).

²¹ CERANO & SANCHEZ, *supra* note 5, at 269.

²² *Id.* at 269.

²³ *Id.* at 270.

²⁴ *Id.* at 272.

²⁵ *Id.*

²⁶ *Id.* at 273.

²⁷ *Id.*

²⁸ *Id.* at 283.

²⁹ *Id.* at 274 (bowing was not a custom practiced by Guamanians before the Japanese occupation).

³⁰ HARRY GAILEY, *THE LIBERATION OF GUAM: 21 JULY – 10 AUGUST 1944*, 29–30 (1988).

³¹ CERANO & SANCHEZ, *supra* note 5, at 275.

³² GAILEY, *supra* note 30, at 36.

³³ *Id.* at 38.

³⁴ *Id.*

³⁵ *Id.* at 39.

³⁶ CERANO & SANCHEZ, *supra* note 5, at 285.

³⁷ *Id.* at 285–86.

³⁸ *Id.* at 286.

³⁹ Father Duenas Memorial High School, *History: Father Jesus Baza Duenas*, at <http://www.fatherduenas.com/history.htm> (last visited Apr. 4, 2003).

⁴⁰ Departments of Defense and Energy—Appropriations, Pub. L. No. 106–398, § 2886, 114 Stat. 1654 (2000) (through this Act, Congress appropriated funds for the creation of a memorial near the Fena Caves in Guam intended to honor those Guamanian civilians who were killed during the occupation of Guam during WWII and to commemorate the liberation of Guam by the United States Armed Forces in 1944).

⁴¹ GAILEY, *supra* note 30, at 40.

⁴² *The 50th Anniversary of the Liberation of Guam*, 140 CONG. REC. H 5645–01 (1994), at H5649 (statement of Beatrice Flores Emsley).

⁴³ GAILEY, *supra* note 30, at 1–3, 51. Guam was not retaken sooner for several reasons, Guam had minimal forces due to forty years of neglect of the island’s defenses by the U.S. government; the Japanese had been building forces in the Pacific since 1930 and were actively using bases on what is now known as the Common Wealth of the Northern Mariana Islands, which are sister islands of Guam; General MacArthur favored recapture of the Philippines and lobbied his idea to President Roosevelt as late as July 1944. *Id.*

⁴⁴ *Id.* at 184.

⁴⁵ *Id.*

⁴⁶ *The 50th Anniversary of the Liberation of Guam*, 140 CONG. REC. H 5645-01 (Delegate Underwood providing testimony that in a postwar study of the children of Guam, those who were born after the war were an average of two inches taller than those who were born during the occupation).

⁴⁷ *LIBERATION: GUAM REMEMBERS* (Golden Salute Committee ed., 1994) (part of Local Legacies Collection, Archive of Folk Culture, American Folklore Center, Library of Congress).

⁴⁸ Eric K. Yamamoto, *Racial Reparations: Japanese American Redress And African American Claims Reparation*, 40 B.C. L. REV. 477, 490 (1988).

⁴⁹ *Id.*

⁵⁰ Exec. Order No. 108-A, (1898).

⁵¹ *Id.*

⁵² U.S. CONST. art. IV, § 4.

⁵³ *Hooven*, 324 U.S. at 674.

- ⁵⁴ See Organic Act of Guam, Pub. L. No. 81-630, ch. 512, 64 Stat. 384 (1950) (codified as 48 U.S.C. § 1421).
- ⁵⁵ Treaty of Peace, Sept. 8, 1951, U.S.—Japan, art. 14, 3 U.S.T. 3169.
- ⁵⁶ *Id.* See also U.S. CONST. art. VI, cl. 2, (stating as part of the Supremacy Clause, a treaty becomes “the supreme Law of the Land,” as are the Constitution and Congressional statutes).
- ⁵⁷ Guam Meritorious Claims Act, Pub. L. No. 79-224, ch. 483, 59 Stat. 483 (1945).
- ⁵⁸ Guam Transfer Of Land Act, Pub. L. No. 79-225, ch. 485, 59 Stat. 584 (1945); Navy Lands in Guam Act, Pub. L. No. 79-594, ch. 738, 60 Stat. 803 (1946).
- ⁵⁹ See ROBERT F. ROGERS, *DESTINY’S LANDFALL: A HISTORY OF GUAM* 208 (1995).
- ⁶⁰ Guam Meritorious Claims Act, Pub. L. No. 79-224, 59 Stat. 582, 582 (1945).
- ⁶¹ *Id.*
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ ROGERS, *supra* note 59, at 214.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ *Id.*
- ⁶⁸ 145 CONG. REC. S2216-01 (1999).
- ⁶⁹ *Id.* (Sen. Inouye quoting Ickes during discussions of The Guam War Restitution Act).
- ⁷⁰ *Id.*
- ⁷¹ *Id.* (In 1947, the former Secretary of the Navy, James Forrestal, established the Hopkins Committee to assess the Navy’s application of the GMCA).
- ⁷² Exec. Order No. 108-A (1898).
- ⁷³ See generally, Paul Lansing & Peter Hipolito, *Guam’s Quest for Commonwealth Status*, 5 ASIAN PAC. AM. L.J. 1, 11 (1988) (Guam sent Chamorro delegations to Congress in 1902, 1914, 1927, and 1950 asking for citizenship and closer ties to the United States).
- ⁷⁴ War Claims Act of 1948, Pub. L. No. 80-896, § 5, 62 Stat. 1241 (1948).
- ⁷⁵ *Id.* § 7.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ CENTRAL INTELLIGENCE AGENCY, *WORLD FACT BOOK 2002: PHILIPPINES* (2002), available at <http://www.cia.gov/cia/publications/factbook/geos/rp.html>.
- ⁷⁹ *Id.* (The Philippines was also a territory obtained by the United States through the Spanish-American War).
- ⁸⁰ The Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988).
- ⁸¹ *Id.* §§ 104(e), 105(a).
- ⁸² *Id.* §§ 205(c), 206(a).
- ⁸³ *Id.* § 2(b).
- ⁸⁴ Exec. Order No. 108-A (1898)..
- ⁸⁵ See Chad W. Bryan, *Precedent for Reparations? A Look at Historical Movements for Redress and Where Awarding Reparation for Slavery Might Fit*, 54 ALA. L. REV. 599, 602-06 (2003).
- ⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Yamamoto, *supra* note 48, at 490.

⁸⁹ See C. Jeanne Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 FLA. ST. U. L. REV. 503 (1994).

⁹⁰ H.R. 5187, 99th Cong. (1986); H.R. 3191, 100th Cong. (1987); H.R. 2024, 101st Cong. (1989); H.R. 4741, 103th Cong. (1994); H.R. 2041, 104th Cong. (1995); H.R. 2200, 105th Cong. (1997); H.R. 755, 106th Cong. (1999); H.R. 308, 107th Cong. (2001) (this does not include concurrent resolutions in the Senate, as those were exactly like bills drafted by the Guam delegates in the House).

⁹¹ Guam War Claims Review Commission Act, Pub. L. No. 107-333, 116 Stat. 2873 (2002).

⁹² H.R. 5187, 99th Cong. (1986).

⁹³ *Id.*

⁹⁴ H.R. 3191, 100th Cong. (1987); H.R. 2024, 101st Cong. (1989).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ H.R. 4741, 103rd Cong. (1994); H.R. 2041, 104th Cong. (1995); H.R. 2200, 105th Cong. (1997).

⁹⁸ The Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988).

⁹⁹ *Id.* § 205(c)(2)(B).

¹⁰⁰ H.R. 2041, 104th Cong. (1995).

¹⁰¹ H.R. 308, 107th Cong. (2001).

¹⁰² Act of Guam, Pub. L. No. 81-630, ch. 512, 64 Stat. 384 (1950).

¹⁰³ *Id.*

¹⁰⁴ Yamamoto, *supra* note 48, at 491.

¹⁰⁵ As proposed in H.R. 2024, 101st Cong. (1989).

¹⁰⁶ 50 App. U.S.C. § 1989(2).

¹⁰⁷ See H.R. 308, 107th Cong. (2002).

¹⁰⁸ H.R. 755, 106th Cong. (1999).

¹⁰⁹ *Id.* § 2.

¹¹⁰ *Id.* § 2(f)(3)(A).

¹¹¹ *Id.*

¹¹² *Id.* § 8.

¹¹³ The Guam War Claims Review Commission Act, 1999 Pub. L. No. 107-333, 116 Stat. 2873 (1999) (stating, “determine whether there was parity of war claims paid to the residents of Guam under the Guam Meritorious Claims Act as compared with awards made to other similarly affected United States citizens or nationals in territory occupied by the Imperial Japanese military forces during World War II.”).