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Executive Director

Guam War Reparations Commission

JUL 09 1990

The Honorable Daniel K. Inouye
United States Senate
SH-722 Hart Senate Office Bldg.
Washington, D.C. 20510-1102

Dear Senator Inouye:

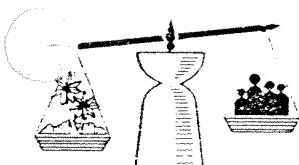
On behalf of the members of the Guam War Reparations Commission and the people of Guam, I would like to extend my sincere thanks and appreciation to you for your work on Guam War Reparations.

The Commission has carefully reviewed both the original bill as introduced by Congressman Ben Blaz, H.R. 2024, and the amendments to the act which you have proposed. In addition, we have obtained much testimony from the people of Guam who suffered during the occupation of our island more than 46 years ago. It was our desire in so doing to determine accurately the will of our people in the area of war reparations and to act accordingly.

There are many areas of concern which have been brought up in the course of our discussions, meetings and gathering of testimony on this issue and these concerns are outlined in the attached document. This listing of our concerns and proposed changes are intended to assist you in the further drafting of legislation that will at long last compensate the people of Guam for their suffering during World War II.

Once again, Senator, we appreciate the work you have done on this issue, particularly your personal visit to Guam earlier this year to hear first-hand the tragic story of suffering our people have endured. We know, as well, that you have been a friend of and champion of Guam in the U.S. Senate for many years and have a great desire to see that the obligation - both moral and financial - of the powerful nations to the people of Guam is recognized and addressed after 46 years.

As the people of Guam have no representation within the United States Senate, we have relied on you - as a friend of Guam - for assistance in that august body. The Guam War Reparations Act is no exception; therefore, any favorable consideration which you can give to the comments and concerns of the Commission in regards to the Act would be most appreciated, not only by myself and the Commission, but by all the people of Guam.

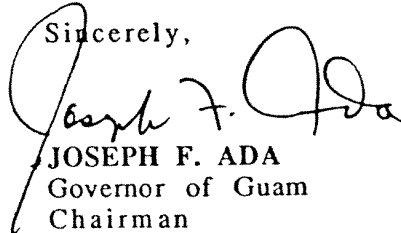


The Honorable Daniel K. Inouye
Page Two

We look forward to working closely with you - on a face-to-face level - to provide our people of Guam with compensation - and justice - after 46 years.

Thank you again and Si Yu'os Ma'ase.

Sincerely,



JOSEPH F. ADA
Governor of Guam
Chairman

CC: The Honorable Ron de Lugo, M.C.
The Honorable Robert J. Lagomarsino, M.C.
The Honorable Ben Blaz, M.C.
The Honorable Joe T. San Agustin

Enclosure

POSITION OF THE GUAM WAR REPARATIONS COMMISSION ON "INOUYE AMENDMENT" TO GUAM WAR REPARATIONS ACT

Sec. 36 (a). This Section shall apply to Guamanians who did not meet the one-year time limitation for filing of death or personal injury claims provided in Section 1 of the Act of November 15, 1945 (chapter 483; 59 Stat. 582), or, who suffered other compensable injuries contained in (b) (2) below, provided, however, that claimants otherwise meet the eligibility, time limitation for filing, and other criteria set forth in this section.

The Guam War Reparations Commission objects to the exclusion of Chamorros compensated under the Guam Meritorious Claims Act from receiving any further reparations compensation. Approximately 4,355 Chamorros received such payment under the Meritorious Claims Act. However, the Act primarily covered ~~compensation for property damages rather than personal injury~~ claims as requested by H.R. 2024, and the subsequent amendments made to the Bill by the Guam War Reparations Commission. It should be noted that less than 258 Chamorros - out of a population of approximately 19,000 Chamorros - received payment for personal injury through the Meritorious Claims Act; additionally, claims for more than \$5000.00 were required by the Act to be reviewed by the Secretary of the Interior. Naturally, few claims over \$5,000.00 were considered or paid.

The Commission further questions the process by which the Meritorious Claims Act was originally administered by the U.S. Navy, including the imposition of a one year time limitation that did not allow all eligible claimants to file, as well as the inconsistencies in compensation amounts for personal injury and death claims.

These concerns regarding the Guam Meritorious Claims Act were also raised by Congressman Ron de Lugo during the July 27, 1989 hearing before the Committee on Insular and International Affairs. At that time, Congressman de Lugo noted the existence of U.S. Navy documentation in this regard, documentation which at the time stated the Guam Meritorious Claims Act was seriously flawed and

further stated that recommendations to correct those flaws were ignored. Navy documentation noted that the Act covered property damage, death, and personal injury claims and did not include claims for forced labor, forced marches, and internment.

Documentation also noted that compensation was set at pre-war 1941 prices. The Forrestal Commission (1947) noted that such payments were nothing but a hollow gesture, a mere pittance.

It should also be noted that at the time of the passage and enactment of the Meritorious Claims Act, the Chamorro people of Guam believed the Act to be the initial "installment" in the discharge of the obligation of the powerful nations to our people upon whose soil the disputes of the powerful nations were fought. However, the 1950 Treaty of Peace with Japan, in which the United States Government, without consultation with or the consent of the Chamorro people, negotiated the rights of the Chamorros to seek any reparations compensation from the Government of Japan. The introduction over the years of new legislation to provide reparations for Guam has resulted from the inadequacies of the Guam Meritorious Claims Act to justly compensate the Chamorro people of Guam.

The Commission reiterates the position that the Guam Meritorious Claims Act did not adequately compensate the Chamorro people after World War II, and subsequently should not serve as the departure point for further reparations compensation.

Section 36 (b) (2): The term "compensable injury" means one of the following three categories of injury incurred during, or as a result of, World War II:

- (A) Death*
- (B) Personal injury*
- (C) Forced labor, forced march or internment*

The Commission objects to the listing of only three categories under the Inouye Amendment to H.R. 2024. In the July 11, 1989 amendments proposed by the Guam War Reparations Commission to H.R. 2024, The Commission recommended that an additional category for "forced march or internment" be included separate and apart from "forced labor". The Commission further recommended that each category be further defined as follows:

(3) The term "death" applies to any person who was killed or who died during enemy occupation or who thereafter died from a cause attributed to injury resulting from military operations by the liberating United States forces.

(4) The term "personal injury" means any injury inflicted upon a person's body or mental stability resulting from the occupation by the Japanese forces or military operations by the liberating United States forces.

(5) The term "forced march" means any movement on foot by a person or group of persons carried out by the occupation forces for detention in concentration camps, or forced to flee their homes for safety.

(6) The term "internment" means detention in prison or concentration camp during the occupation period or immediately thereafter following the liberation by United States forces.

The provision of the fourth category, in effect separating forced march or internment from forced labor, is due to the magnitude of the labor which the Chamorro people of Guam were forced to perform. This virtual slavery was of a magnitude and duration sufficient to require consideration as a reparable injury on its own merits.

Section 36 (2) (b): The claimant files a claim within one (1) year after the date of enactment of this section.

The Commission has no objection to the one (1) year deadline to file claims as long as sufficient attempts are made to contact all valid claimants.

Section 36 (3): The term "Guamanian" means any person who resided in the Territory of Guam during the period beginning December 8, 1941, and ending September 2, 1945, and who was a United States citizen or national during this period.

The Guam War Reparations Commission has no objection to the above listed dates but cautions Congress to take into consideration

Chamorros who were injured or killed by Japanese soldiers following the formal surrender by Japan on September 2, 1945. In the course of its public hearings on War Reparations, the Commission was informed of Chamorro individuals who suffered such injury or death at the hands of Japanese "stragglers" - soldiers who were in hiding and unaware of the end of formal hostilities - following September 2, 1945. The Commission has no objection to the specific dates of formal hostilities as long as language in the Bill can be revised so as to not exclude Chamorro casualties related to wartime activities that occurred after September 2, 1945.

Section 36 (c) (1): The Secretary of the Interior shall have the authority to receive, examine and render final decisions concerning claims which may be filed under this Section. In addition, the Secretary is authorized to certify and disburse payments from the Fund established in subsection (f) (1) to eligible claimants.

The Commission objects to the language that permits the Secretary of the Interior to render final decisions concerning claims filed with the Secretary. The Commission maintains its original proposed amendment to H.R. 2024 in section (i) that "The denial of any claim by the Secretary may be appealed, as to claimants residing in Guam, in the District Court of Guam, and as to any other claimants, in the Court of Claims."

It is the belief of the Commission that the granting of unchallenged authority to the Secretary of the Interior in this matter would be counterproductive and arbitrary. It should be noted that even decisions of the Internal Revenue Service can be appealed to the courts. The granting of unchallenged authority to the Secretary is further counter to due process as guaranteed by the United States Constitution.

Also further note that Public Law 100-383 (August 10, 1988, Title II, the "Aleutian and Pribilof Islands Restitution Act"), the Department of the Interior and the Bureau of Indian Affairs were designed as the administrative agencies to administer claims for the Aleutian and Pribilof Islands. The Bureau approves all claims for cash disbursements and there exists a formal appeals process for people who disagree with Bureau decisions.

The Guam War Reparations Commission recommends an appeals process through the courts be made available to eligible island residents in the event that challenges arise concerning reparation claims.

Section 36 (2) (A) The Claimant is a living Guamanian who personally received the compensable injury, except that in a claim for death, a claimant may be the heir or next of kin of the decedent Guamanian, and payment of the award shall be pro-rated among heirs or next of kin claiming for the same death as provided in Guam probate laws;

The Commission maintains its position that "a claimant may also be a next of kin or a surviving heir to a Guamanian eligible for compensable injury who died following the occupation period."

It should be noted that an extended period of time - nearly 46 years - has passed since the liberation of Guam by United States armed forces. During this time, the issue of war reparations has never been adequately addressed. Many Chamorros who resided in Guam during occupation and/or hostilities on their island have since passed away.

It should be further noted that at the time of the invasion and subsequent occupation of Guam, the Chamorro people of Guam were U.S. nationals - wards of the United States. As such, the Chamorro people of Guam considered themselves - and the Navy fostered this belief - to be under the protection of the United States of America. Therefore, the United States was obligated to ensure the safety and well-being of the Chamorro people of Guam. This was not done prior to the invasion of Guam; because of the limitations of the Meritorious Claims Act, it was not done following the war; because the Chamorro people of Guam are still awaiting justice and dignity even today, 46 years after the re-occupation of Guam by U.S. forces, the United States' obligation to our people has yet to be realized and properly addressed.

The Chamorro people of Guam have always been a trusting people. This was the case in 1941, this was the case in 1946, this is the case even today. We have always had full faith in the moral rightness of the United States of America; that our concerns would be recognized, that our needs would be addressed.

This faith was especially necessary because the Chamorro people of Guam had no representation whatsoever in Washington; even today, we do not have full representation in Washington.

It would be simple indeed for the United States government to abrogate its moral obligation and responsibility to the Chamorro people of Guam who suffered death, personal injury, forced labor, forced marches or internment by further delaying the application of justice to these people; another 46-year delay - or even ten years - may see the passing of the final Chamorro who survived hostilities on their island and thus conveniently remove any need for reparation.

For this reason, justice demands that the Chamorro people of Guam - as a sovereign people and as the indigenous people of Guam - whose island was used by powerful nations as the battlefield for their disputes - be compensated as a people. The Guam War Reparations Commission acknowledges that no precedent exists at present for reparation for descendants; however, the experiences of the Chamorro people of Guam are unique to world history, an unprecedented experience.

Justice requires no precedent.

Section 36 (2) (C) the claimant is able to furnish either proof of the compensable injury or is able to produce affidavits by two (2) witnesses to the compensable injury.

The Commission maintains that "the claimant is able to furnish proof of the compensable injury or is able to produce an affidavit(s) by at least one witness or, if no witness is available, by a sworn statement by himself attesting eligibility to the compensable injury."

It should be noted that it has been many years since the end of World War II. A large percentage of Chamorros who were witnesses to the atrocities committed during the war have since died. The current language of the proposed bill would make it difficult for claimants to be able to obtain two witnesses that can verify their injuries. It should also be further noted that many atrocities were committed away from the presence of witnesses - except for the several soldiers who committed the atrocities - and, additionally, it should be noted that in some cases, an individual may have survived

a mass execution - as in the case of Mrs. Beatrice Emsley - and thus there were no surviving witnesses save for the criminals themselves.

Section 36 (e) (1) The Secretary shall certify all awards for payment. The Secretary shall pay the following amounts to each eligible claimant from the fund established in subsection (f) (1).

- (A) \$20,000 for the category of death.*
- (B) \$5,000 for the category of personal injury.*
- (C) \$3,000 for the category of forced labor, forced march or internment.*

The Commission agrees to the amount of \$20,000 for the category of death but maintains that the following categories and amounts be included :

- (B) \$15,000 for the category of personal injury.
- (C) \$10,000 for the category of forced labor.
- (D) \$7,000 for the category of forced march or internment.

The Commission does not consider these amounts to be excessive in light of the payment of \$20,000 in reparations to individuals of Japanese ancestry under Public Law 100-383.

This public law provides under Title I, United States Citizens of Japanese Ancestry and Resident Japanese Aliens, compensation to individuals of Japanese ancestry who were evacuated, relocated and interned by the U.S. Government in the amount of \$20,000, and under Title II, Aleutian and Pribilof Island Restitution, provides each eligible Aleut a payment in the amount of \$12,000 for relocation by the U.S. during World War II.

In addition, the Aleuts were entitled under their reparations act, the use of their trust funds together with accrued interest, and other earnings to provide social programs and services that will benefit their elderly, disabled; provide for student scholarships; preserve Aleut cultural heritage and historical records; improve community centers in affected Aleut villages; and improve the condition of Aleut life, as determined by their trustees.

Further, in Section 106 of Public Law 100-383, individuals of Japanese ancestry received in their reparations act a Public Education Fund staffed by a board of directors to sponsor research and public educational activities so that events surrounding the evacuation, relocation, and internment of U.S. citizens and permanent resident aliens of Japanese ancestry be remembered.

The Inouye amendment does not provide any further compensation for a Chamorro trust fund for educational or social purposes. The amount of compensation is limited to direct individual compensation with no further obligation on the part of the United States Government to provide any additional reparations in the future.

The Guam War Reparations Commission is sympathetic to the sufferings of the Japanese Americans and the Aleutian Islanders during World World II. The Commission is further pleased that the Congress has recognized the justice in making reparations to these individuals. However, this does not lessen the need of the Chamorro people of Guam for reparations in their own right.

It must be noted once again that Japanese-Americans have received \$20,000 each for forced relocation and internment. The Chamorro people of Guam not only suffered forced relocation and interment - for which the Commission is requesting considerably less than \$20,000 - the Chamorro people of Guam also suffered personal injury, death, forced labor, forced marches, internment and the destruction of their homes.

The Guam War Reparations Commission, acting on behalf of and with the clear direction of the people of Guam, asks for reparations not for the sake of the payment itself but for the sake of justice and the recognition of the obligation of the United States government to ensure that justice is preserved for our people.

Section 36 (f) (3) There is authorized to be appropriated to the Fund such sums as are required to carry out this section.

The Commission requested in its amendments to H.R. 2024 that an initial sum of \$160,000,000 be appropriated and that there be authorized additional funds if needed to satisfy all approved claims for compensable injury. However, the Commission has no current objections to section (f) (3) as written in the Inouye amendment if

the four categories and requested amounts of the Commission be included in the amendment.

Section 36 (g) (1): Not later than 90 days after the date of enactment of this section, the Secretary shall give public notice in the territory of Guam and such other places as the Secretary deems appropriate of the time when, and the time limitation within which, claims may be filed under this section. The Secretary shall assure that the provisions of this section are widely published in the territory of Guam and such other places as the Secretary deems appropriate, and the Secretary shall make every effort to advise promptly all persons who may be entitled to file claims under the provisions of this section and to assist them in the preparation and filing of their claims.

Section 36 (g) (2): The Secretary shall act expeditiously in the examination, determination, and certification of submitted claims, but in no event not later than one year after the expiration of the time for filing claims under this section.

Section 36 (g) (3): The Secretary shall notify each claimant of the approval or denial of his or her claim in writing, as provided by regulations to be issued by the Secretary.

The Commission has no objections to the language permitting the Secretary of the Interior to notify claimants. The Commission further has no objections to sections 36 (g) (2) or 36 (g) (3) of the Inouye amendment.

Section 36 (h) (1): No later than 18 months after enactment of this section, the Secretary shall submit a report to Congress with a recommendation of a specific amount of compensation necessary to fully carry out this section. Said report shall include-

(A) a list of all claims, categorized by compensable injury, which were approved under this section; and

(B) a list of all claims, categorized by compensable injury, which were denied under this section, and a brief explanation for the reason therefor.

A copy of this report shall be transmitted to the Governor of Guam.

Section 36 (h) (2): Beginning with the first full fiscal year ending after submittal of the report provided in paragraph (1), and annually thereafter until submission of the report under paragraph (3), the Secretary shall submit an annual report to Congress concerning the operations under this section, the status of the Fund, and any request for an appropriation in order to make disbursements from the Fund. Such report shall be submitted no later than January 15th of each year.

Section 36 (h) (3): Once all eligible claims have been paid, the Secretary shall submit a report to Congress certifying-

(A) The total amount of compensation paid under this section, broken down by category of compensable injury; and

(B) The final status of the Fund, and, the amount of any existing balance thereof.

A copy of this report shall be transmitted to the Governor of Guam.

Section 36 (i): Any remuneration on account of services rendered on behalf of any claimant, or any association of claimants, in connection with any claim or claims under this section may not exceed 5 percent of the amount paid on such claim or claims under this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration in excess of the maximum permitted by this section, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in accordance with title 18, United States Code, imprisoned not more than 12 months, or both.

The Commission has no objection to these sections. However, the Guam War Reparations Commission offers its assistance in notifying affected island residents of reparation payments.

Section 36 (k): Nothing contained herein shall constitute a United States obligation to pay any claim arising out of war. The compensation provided in this section is ex gratia in nature and intended solely as a means of recognizing the demonstrated loyalty of the people of Guam to the United States during the Second World War.

The Guam War Reparations Commission objects strenuously to the language contained in Section 36 (k) as patronizing and as clearly designed to avoid the entire reason for war reparations.

The loyalty of the Chamorro people of Guam, while unquestioned, is not at issue in this regard. The people of Guam are not asking for reparation of their loyalty, we are asking for reparation for the suffering of the Chamorro people that directly resulted from hostilities between two powerful nations, the United States of America and Japan.

The Chamorro people of Guam did not ask that the dispute between these two nations be fought on our soil. Rather, this conflict was imposed upon us and our people suffered death, personal injury, forced labor, forced marches and internment as a result. Those who survived the hostilities took many years to recover; indeed, many never recovered fully.

Our people are still feeling the effects of World War II and its aftermath and have never been adequately compensated for these effects.

It should be further noted that the United States, through its treaties and agreements with Japan, has forever prevented the Chamorro people of Guam from seeking compensation or reparation from the nation directly responsible for much of the suffering suffered by our people. It must be noted once again that the Chamorro people of Guam did not have any form of self-government whatsoever at the time, that the Chamorro people of Guam had no representation whatsoever in Washington, and relied in full faith on the goodwill of the United States of America in this regard.

Instead, the United States negotiated away the right of the Chamorro people of Guam to seek reparations from those who caused injury to our people. Therefore, the United States, because it did so without the consent of - or even consultation with - the people of Guam, does have and must recognize its obligation to the people of Guam who now have no other recourse or option open to them.

The Commission recognizes the political realities of the time. The United States was engaged in the Korean War. The North Korean Army had American forces surrounded in the extreme southeastern corner of Korea, the Pusan perimeter. China had just fallen to the Communists just two years earlier; pressure was being applied to the remaining Nationalist Chinese in Taiwan. In Vietnam, Ho Chi Minh was fighting the French forces that had returned after World War II and within four years, the United States would begin sending "advisers" to that nation. In Malaya, Communist insurgents were fighting the British. There was a growing and active Communist movement in Indonesia. The Hukbalahap had yet to be exterminated in the Philippines.

Throughout Asia, there was a sense of rising Communist influence and aggression. Thus, it was a policy decision of the United States to conclude a quick treaty with Japan, to end the American occupation of Japan, to turn Japan into a valuable Asian ally and a bulwark against Communist expansion. In the midst of these important, world-changing considerations, one can see how the needs and concerns of a small population of Chamorros, on a small island in the Pacific, might be ignored.

However, even prior to the ratification of the 1950 Japanese Peace Treaty, Secretary of State and drafter of the treaty, John Foster Dulles stated, "United States nationals whose claims are not covered by the treaty provisions or by the legislation of other Allied Powers, must look for relief to the Congress of the United States." Even at that time, over forty years ago, the United States Congress was made aware that it would have a moral and legal responsibility to address the issue of reparations for the people of Guam.

Therefore, the Guam War Reparations Commission strongly insists that the language in Section 36 (k) be amended to reflect a recognition of United States obligation to the people of Guam in this regard.