



COMMISSION ON DECOLONIZATION
Regular Monthly Meeting Minutes
July 11, 2023 | 3:00 p.m.

I. Call to Order at 3:13 p.m.

II. Roll Call

- a. Hon. Lourdes Leon Guerrero
- b. Hon. Therese Terlaje
- c. Hon. Tina Muña-Barnes (**Excused**)
- d. Hon. Frank Blas (**Excused**)
- e. Hon. Jesse Alig (**Excused**)
- f. Hon. Eddie Duenas (**Absent**)
- g. Dr. Michael Bevacqua (**Excused**)
- h. Adrian Cruz (**Absent**)
- i. Dr. Mary Cruz
- j. Dr. Kenneth Gofigan Kuper
- k. Ty Whitaker
- l. Victoria “Lola” Leon Guerrero
- m. Dewey Huffer (**Absent**)
- n. Others present:
 1. Alan Cepeda - Vice Speaker Muña-Barnes
 2. Hana Rae Flores (COD Summer employee)
 3. Nolan Flores (COD)
 4. Harmony Palaganas (COD)
 5. Noah Austin (Community Member)

III. Approval of Minutes - Regular Meeting April 4, 2023

- a. **Motion to approve by Governor Leon Guerrero.**
- b. **Second by Dr. Mary Cruz.**
- c. **Meeting minutes were approved by consensus.**

IV. Old Business

- a. Plebiscite Update & Strategy Discussion
 1. **Melvin Won-Pat Borja:** Reported that the COD team has compiled and sent research requested by the Board via email. During the April regular monthly board meeting, members agreed that once the research has been shared, Speaker Terlaje will create a list of items that must be addressed prior to moving forward with legislative action. Noted that the COD team can set up a separate special meeting to discuss the plebiscite.
 2. **Melvin Won-Pat Borja:** Gave an update from a meeting with Governor Leon Guerrero, Legal Counsel for the Office of the Governor, and Attorney Julian Aguon. Explained that during this meeting, a question was posed on the priority for the plebiscite—whether it is to get a vote as soon as possible or to defend the original stance of the Guam law to protect the native inhabitants’ right to vote. They discussed the possibility of drafting a new plebiscite law, however it may still be open to challenge. During this meeting, it was explained that if the Board would like to move forward with legislative action, they may want to seek a legislative fix at the Congressional level. Alternatively, there is an opportunity to bring the issue to the International Court of Justice (ICJ). However, if the Board decides that their priority is to have a vote as soon as possible, then the



ICJ may not be a viable option. A final option presented is to have the plebiscite conducted by a non-governmental organization (NGO). It was discussed that the Government of Guam cannot use public funds to have a Self-determination vote that imposes the Native Inhabitant eligibility requirement. However, if an NGO funds and holds a vote, they can determine the eligibility requirements including such things as voting age. The results of an NGO-run plebiscite may be transmitted to the Governor of Guam and Guam Legislature, who would acknowledge the results as valid. Recommended that the Board discuss this information and make decisions on the course of action. Emphasized that with any course taken, there must be continued education through the Commission on Decolonization. However, if the plebiscite will no longer be a responsibility of the Commission, there must be an amendment or a new law because the current law ties the Commission to the plebiscite.

3. **Governor Leon Guerrero:** Noted that the Board must first decide whether the vote will be open to all residents in Guam or limited to Native Inhabitants. Weighed the options of a government-run and NGO-run election. Suggested a special meeting to discuss the options for the plebiscite. Noted that her preference is to limit eligibility to native inhabitants. Legal Counsel has advised that if the government-run option is selected and a new mandate is created, it may go back to the courts which would delay a plebiscite again. Expressed her desire to hold a plebiscite either this or next year. This will require educating and rallying the people of Guam around the cause of Self-determination.
4. **Victoria-Lola Leon Guerrero:** Asked to confirm the assertion that unless a plebiscite is open to all registered voters, a new law will go back to the courts.
5. **Melvin Won-Pat Borja:** Clarified that Legal Counsel is concerned that revising the definition of Native Inhabitants, similar to the CLTC case, will not be enough to not be challenged.
6. **Victoria-Lola Leon Guerrero:** Agreed with the Governor on having a Native Inhabitant vote. The Commission continues to uphold the importance of a vote for native inhabitants as an act of restorative justice. Additionally, the Commission is mandated to uphold a native inhabitants vote. Noted several questions for an NGO-run plebiscite, 1) Who would run the plebiscite? 2) How would we ensure funding? 3) Would we ensure the protection of the ballots and booths with a United Nations (UN) visiting mission to monitor the election? What would it look like?
7. **Melvin Won-Pat Borja:** Responded to some of Lola's questions. Explained that if the Board chooses the NGO route, the Government of Guam cannot regulate the election or assist in areas such as funding. The Commission would have to remain separate from the NGO. Education to the community can continue and the Commission may discuss the plebiscite, but may not encourage people to vote. Acknowledged that a United Nations monitoring system would have to be negotiated with the UN and United States. If a visiting mission is conducted, the UN and U.S. may be interested in engaging with an NGO.
8. **Dr. Kenneth Gofigan Kuper:** Agreed with both Governor Leon Guerrero and Lola about having a native inhabitants vote. Asked if the Board will take the International Court of Justice (ICJ) route? If yes, what are the pros and cons of taking this route? What are the resources required? What are potential obstacles to taking this route?
9. **Melvin Won Pat-Borja:** Responded to Dr. Kuper's inquiries regarding the ICJ. Explained that Guam is not a member of the UN and that the ICJ requires a $\frac{2}{3}$ vote by the General Assembly. Therefore, it may be difficult but not impossible to get to the ICJ. Other non-members have been successful, such as the Chagos Islands. Their success was due to direct engagement with UN members to garner support. The Government of Guam



engages the UN three times a year. If the ICJ route is taken, Guam must increase their presence. Concurrently, Guam can continue to push for a Congressional fix.

10. **Victoria-Lola Leon Guerrero:** Asked what the Congressional route would look like, potential allies, and inclusion of Congressman Moylan in the conversation. Also asked questions about the NGO route, including funding for an election and the process for the results to be legitimized.
11. **Melvin Won Pat-Borja:** Reiterated that the Government of Guam must have limited involvement if the NGO route is selected. If the Commission is seen as potentially tampering with the process, it may open us to a legal challenge.
12. **Governor Leon Guerrero:** Asked for the Commission to schedule a special meeting and invite legal representatives.
13. **Melvin Won Pat-Borja:** Confirmed that the Commission can schedule a special meeting for the Board. Suggested outlining goals for the special meeting to begin making decisions on the route that will be taken.
14. **Governor Leon Guerrero:** Noted that all Board members must have an opportunity to express their opinion on a native inhabitant vote.
15. **Dr. Kenneth Gofigan Kuper:** Suggested that during this meeting, the Board can also explore opportunities to pursue more than one route simultaneously and the resources required to pursue these routes.
16. **Governor Leon Guerrero:** Suggested that once a route is chosen, the Board must stick with that route.
17. **Speaker Therese Terlaje:** Sought clarification on the decisions that must be made by the Board. Highlighted the mandate as the guiding document of the Commission's work. Asked for more information from the Governor's meeting with Legal Counsel to help the Board make an informed decision. Invited the Legal Counsel to meet with the Board. Noted that the Board has met with the Attorney General and the strategies currently being proposed differ from what was suggested.
18. **Governor Leon Guerrero:** Clarified that the Board is not being asked to make a decision during this meeting. A special meeting will help the Board discuss the routes available and make an informed decision. Identified the two eligibility options 1) native inhabitants only or 2) all residents in Guam. Reiterated that the native inhabitant eligibility requirement was found to be racially discriminatory in *Davis v. Guam*. Due to the Court's decision, the Board must decide how the plebiscite will be conducted which has led to the discussion on alternative routes. Explained that she called for a meeting with Legal Counsel and Attorney Aguon to obtain more clear, legal advice on the available routes, the consequences, and potential results. Reiterated the suggestion to invite the legal representatives to the special meeting to inform the Board.
19. **Victoria-Lola Leon Guerrero:** Explained that the legislative intent and function of the Commission is to ascertain the political status desired of the native inhabitants and to conduct educational campaigns to prepare for a plebiscite. The Guam Election Commission is mandated to run the plebiscite. Explained that the Commission should not be responsible for drafting a law. Asserted that the Guam Legislature should draft legislation to remedy the court's decision.
20. **Speaker Therese Terlaje:** Expressed disagreement with the explanation given by Lola.
21. **Governor Leon Guerrero:** Clarified that in her role as the Governor and the Board's Chair, she is gathering information to help make appropriate decisions and understand the situation from a legal perspective. Asserted that no information is being withheld from and no decisions are being made without the Board. Agreed with the explanation laid out by Lola. Reiterated that one concern of passing legislation to remedy the court's decision is whether it will be sufficient to not be challenged. Legal Counsel has suggested that it may be challenged. This must be considered if the Board decides to go the legislative route.



22. **Speaker Therese Terlaje:** Agreed that Board members should consult lawyers to gain more information. Requested that any information be shared directly with the Board. Would like to understand all available choices.
23. **Governor Leon Guerrero:** Added that no conclusions have been drawn on the plebiscite. Clarified that Director Won-Pat Borja was relaying information received from Legal Counsel and Attorney Aguon.

V. Adjournment

- a. Governor Leon Guerrero left the meeting for another prior engagement and quorum was lost. Updates will be sent via email.
- b. **Motion by Speaker Therese Terlaje to adjourn.**
- c. **Motion seconded by Victoria-Lola Leon Guerrero.**
- d. **Motion passed by consensus.**
- e. Meeting adjourned at 4:02 p.m.