**Input to Resolution 51/35 – Technical assistance and capacity-building to address the human rights implications of the nuclear legacy in the Marshall Islands**

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This contribution aims to provide an example of France’s legal response to the nuclear legacy in French Polynesia. Between 1966 and 1996, France conducted a total of 193 nuclear tests in the atolls of Moruroa and Fangataufa in the Tuamotu Archipelago. From 1966 to 1974, 41 nuclear tests were conducted in the atmosphere[[1]](#footnote-1). From 1975 to 1995, nuclear tests were conducted underground. Officially, those atolls were selected as nuclear testing sites due to their remote location, sparse population, geological characteristics of the ground, and the prevailing winds on the site[[2]](#footnote-2).

These tests had harmful effects on both the local population and the environment. However, French authorities took a considerable amount of time from 1974 and from 1995 to acknowledge the individual and collective negative effects on the local and employed population at the affected sites.

France has formally acknowledged and accepted the nuclear legacy of French Polynesia through the adoption of Organic Law[[3]](#footnote-3) n° 2019-706 of 5 July 2019. This law amends Organic Law n° 2004-192, adopted on 27 February 2004, addressing the autonomous status of French Polynesia. The amended Organic Law serves as the legal basis for the implementation of mechanisms and tools aimed at addressing the French nuclear legacy.

Article 6-1 of this Organic law explicitly recognizes that French Polynesia has been harnessed to develop the nuclear deterrence capabilities and national defense of France. Article 6-1 also guarantees compensation for individuals suffering from radiation-induced diseases resulting from exposure to ionizing radiation from French nuclear tests, with further elaboration on compensation conditions expected in subsequent legislation.

Furthermore, the same article 6-1 outlines the State's obligations to maintain and monitor the state of affected sites on the atolls of Moruroa and Fangataufa. Additionally, it commits to supporting the economic and structural transition of French Polynesia following the cessation of nuclear testing activities.

The French national law explicitly acknowledges only the individual health-related repercussions of nuclear tests, guaranteeing compensation for victims. However, it does not recognize the adverse impact of French nuclear testing on the environment of French Polynesia.

1. **The recognition and compensation of victims of French nuclear tests**

The issue of compensation of victims of French nuclear tests has been addressed earlier than the official legal recognition of the nuclear legacy of French Polynesia. Compensating victims of nuclear tests is a crucial component of a broader array of essential measures aimed at addressing the nuclear legacy and redressing the impacts caused or induced by nuclear tests.

On 5 January 2010, Law n° 2010-2 concerning the recognition and compensation of victims of French nuclear tests was adopted[[4]](#footnote-4). This law represents a significant step towards addressing the long-standing consequences of nuclear testing. However, a notable gap between exposure to radiation and the establishment of adequate compensation mechanisms should be noted.

The French Compensation Committee for Victims of Nuclear Tests, an independent administrative authority established by the aforementioned Law, is tasked with evaluating compensation claims and determining whether applicants meet the criteria outlined in the law.

To be recognized as a victim of French nuclear testing, the applicant must meet three conditions:

1. **Health condition** – suffering from one of the diseases listed as potentially radiation-induced, *i.e.* caused by exposure to ionizing radiation. The diseases are listed in a decree of 14 September 2014, which specifies the 23 pathologies recognized as partially radio-induced, in accordance with the studies acknowledged by the international scientific community, making individuals eligible for compensation.

Relevant pathologies: leukemias (except chronic lymphocytic leukemia, considered non-radiation-induced); myelodysplasias; breast cancer; thyroid cancer for exposure during the growth period; skin cancer except malignant melanoma; lung cancer; colon cancer; salivary gland cancer; esophageal cancer; stomach cancer; liver cancer; bladder cancer; ovarian cancer; brain and central nervous system cancer; bone and connective tissue cancer; uterine cancer; small intestine cancer; rectal cancer; kidney cancer; gallbladder cancer; biliary tract cancer; non-Hodgkin lymphomas; myelomas; biliary tract and gallbladder cancer.

1. **Location condition** – having been present in specific areas of the Sahara or in French Polynesia. This condition is fulfilled by presence in French Polynesia, regardless of the specific island or atoll. However, for individuals submitting a claim related to nuclear tests conducted in the Sahara, it is necessary to establish their presence at the Saharan Military Test Center or the Oasis Military Testing Center or “in the geographical areas surrounding these centers”.
2. **Temporal condition** – during the periods of nuclear testing.

The methodology employed relies on establishing a **causal link** between exposure to ionic radiation and the development of radio-induced diseases. Once the causal link is established, there is a **presumption of responsibility** on the part of French authorities and the claim is considered to be admissible. This presumption could be lifted if the Committee determine that the individual’s annual dose of ionizing radiation from French nuclear tests was lower than the effective dose limit for population exposure to ionizing radiation, which is set under 1 millisievert per year[[5]](#footnote-5) (as provided Article L. 1333-2 of the Public Health Code).

Composed of experts, the Committee applies the scientific approach in determining victim status. The Committee is in charge of investigating and gathering information not presented in the applicant’s claim (work conditions, assignments and etc.), hearing the victim’s testimonials.

The methodology followed by the Committee applies two principles: the **principle of humanity** et the **principle of equity**[[6]](#footnote-6). The principle of humanity entails listening to the presumed victims or their heirs and recognizing their profound suffering caused by diseases resulting from radiation exposure. The principle of equity ensures that applicants are guaranteed that decisions concerning them will be made based on equal rules for all, following a comprehensive review of their claims.

The Committee’s methodology categorizes individuals affected by nuclear testing into distinct groups: those who worked in the testing zones of the Center for Pacific Tests in French Polynesia; those present in the Sahara in the zones specified by the decree of 15 September 2014; and those present in French Polynesia but outside the Center for Pacific Tests. In regard to the latter group, the effects of radioactive fallout from atmospheric nuclear tests are evaluated using the concept of the committed effective dose, which considers both external exposure and internal contamination. This assessment is conducted using methods adopted by various international bodies such as IAEA, ICPR, WHO, EURATOM.

1. **The lack of recognizing the environmental impact of nuclear tests**

The Law of 5 January 2010 did not address the issue of the adverse consequences of nuclear tests on the environment. However, Organic Law[[7]](#footnote-7) n° 2019-706 of 5 July 2019 ensures that the State is responsible for maintaining and monitoring the state of the affected sites on the atolls of Moruroa and Fangataufa. It should be noted that these sites are classified as military areas[[8]](#footnote-8). Article L 1333-15 of the Defense Code specifies that the obligation to control nuclear installations and activities related to defense is governed by procedures that reconcile the principles of nuclear safety and radiation protection with the requirements of national defense.

The lack of consideration for environmental harm from French nuclear testing could be addressed by invoking the right to live in a balanced and healthy environment, which is a variation of the broader human right to a clean, healthy and sustainable environment recognized by resolutions 48/13 of the United Nations Human Rights Council in 2021 and 76/300 of the United Nations General Assembly.

Enshrined in Article 1 of the Environmental Charter of 2004, the right of everyone to live in a balanced and healthy environment holds constitutional value, as the preamble of the French Constitution of 1958 explicitly references the Environmental Charter. The Constitutional Council, drawing from Articles 1 and 2 of the Environmental Charter, has established a duty of vigilance regarding environmental harm that may result from its activities. This duty extends not only to public authorities and administrative bodies, but also to all individuals. Moreover, the French Council of State[[9]](#footnote-9) affirmed that the right of everyone to live in balanced and healthy environment holds a character of a fundamental freedom. This key ruling enables individuals who believe that administrative actions are infringing this fundamental freedom to file an urgent claim before a judge responsible for deciding interim measures.

Recently, the Constitutional Council recognized[[10]](#footnote-10) that the right to live in balanced and healthy environment guaranteed by Article 1 of the Environmental Charter, entails that the Parliament, when adopting measures that could cause serious and lasting harm to the environment, must ensure that the choices aimed at meeting present needs do not compromise the ability of future generations and other peoples to meet their own needs, while preserving their freedom of choice. In this decision the Constitutional Council recognized that allowing the storage of radioactive waste in an underground facility is likely to cause serious and lasting harm to the environment.

The substantial components of right to live in a balanced and healthy environment, similarly to the human right to a clean, healthy and sustainable environment, as outlined by the Special Rapporteur on the Environment and Human Rights[[11]](#footnote-11) and emphasized by UN bodies[[12]](#footnote-12), include clean air, a safe climate, healthy and sustainably produced food, access to safe water and adequate sanitation, non-toxic environments in which to live, work and play, healthy ecosystems and healthy biodiversity. These elements provide a framework for addressing and mitigating the environmental impacts of nuclear testing. Together with procedural components such as access to information, public participation and access to justice, they play an instrumental in ensuring this right and addressing the nuclear legacy in French Polynesia.

The right to live in a balanced and healthy environment could be invoked to demand comprehensive environmental assessments and remediation efforts for areas affected by nuclear testing, ensuring the long-term health and safety of local communities and ecosystems. Moreover, this right empowers local communities and environmental activists to raise awareness about the environmental and health impacts of nuclear testing in French Polynesia. It also provides a legal basis for public participation in decision-making processes related to nuclear legacy issues, promoting transparency by enabling affected communities to demand the disclosure of information classified as defense secret. By allowing affected communities to voice their concerns regarding contamination risks, this right facilitates their contribution to developing solutions.

**ANNEX**

**LAW No. 2010-2 of January 5, 2010, regarding the recognition and compensation of victims of French nuclear tests**

**Link to the original French text of the LAW:**

<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000021625586/>

**Article 1**

I. - Any person suffering from a radiation-induced illness resulting from exposure to ionizing radiation from French nuclear tests and listed on a list established by decree of the Council of State in accordance with the works recognized by the international scientific community may obtain full compensation for their damage under the conditions provided by this law.

II. - If the person has passed away, the request for compensation can be made by their heirs. If the person died before the promulgation of Law No. 2018-1317 of 28 December 2018, the Finance Law for 2019, the request must be submitted by the heir before 31 December 2024. If the person dies after the promulgation of the same law, the request must be submitted by the heir no later than 31 December 2020 of the sixth year following the death.

III. - When a compensation claim based on Section I of Article 4 has been rejected by the Minister of Defense or by the Compensation Committee for Victims of Nuclear Tests before the entry into force of Law No. 2017-256 of 28 February 2017, on real equality overseas and other provisions on social and economic matters, the applicant or their heirs, if deceased, may submit a new compensation claim before 31 December 2020.

**Article 2**

A person suffering from a radiation-induced pathology must have resided or stayed in:

1. Either between 13 February 1960, and 31 December 1967, at the Saharan Center for Military Tests or between 7 November 1961, and 31 December 1967, at the Oasis Center for Military Tests or in the peripheral areas of these centers.
2. Or between 2 July 1966, and 31 December 1998, in French Polynesia.

A decree by the Council of State defines the peripheral areas mentioned in 1.

**Article 3**

The applicant, if necessary with the assistance of the relevant administrations, substantiates that the person referred to in Article 1 has resided or stayed in the areas and during the periods specified in Article 2, and that they suffer from one of the diseases listed in accordance with Article 1.

**Article 4**

I. - Compensation claims are submitted to the Compensation Committee for Victims of Nuclear Tests, which issues a motivated decision within eight months following the submission of the complete file.

II. - The Compensation Committee, which is an independent administrative authority, consists of nine members appointed by decree:

A president, whose function is performed by a member of the Council of State or a magistrate of the Court of Cassation, proposed, respectively, by the Vice President of the Council of State or the First President of the Court of Cassation.

Eight qualified individuals, including at least five doctors, among whom at least:

* two doctors appointed on the proposal of the High Council for Public Health due to their expertise in the field of radiopathology;
* one doctor appointed on the proposal of the High Council for Public Health due to their expertise in the field of bodily injury compensation;
* one doctor appointed on the proposal of the High Council for Public Health due to their expertise in the field of epidemiology;
* one doctor appointed, after receiving the opinion of the High Council for Public Health, on the proposal of associations representing victims of nuclear tests.

The eight qualified individuals include four women and four men.

Substitute members for these qualified individuals are designated under the same conditions. They replace the titular members in case of absence or impediment.

The president may appoint a vice-president from among these qualified individuals.

The term of office for committee members is three years. This term is renewable, subject to the eighth paragraph of this II.

In the event of a tie vote, that of the committee's president is decisive.

In the exercise of their duties, committee members receive no instructions from any authority.

III. (Abolished)

IV. The president of the Compensation Committee for Victims of Nuclear Tests is authorized to act in court on behalf of the committee.

V. - This committee examines whether the **conditions are met**. When they are met, the individual benefits from a **presumption of causation**, unless it is established that the annual dose of ionizing radiation from French nuclear tests received by the individual was lower than the effective dose limit for population exposure to ionizing radiation set under the conditions provided for in 3° of Article L. 1333-2 of the Public Health Code.

The committee conducts or has conducted any scientific or medical investigation deemed useful, and professional confidentiality cannot be invoked against it.

It may request from any state service, public authority, social benefit management organization, or insurer the communication of all information necessary for the examination of the request. This information cannot be used for purposes other than this examination.

Committee members and designated assisting agents must be authorized, under the conditions defined for the application of Article 413-9 of the Penal Code, to be aware of the information mentioned in the preceding paragraphs.

In the examination of requests, the committee respects the principle of adversarial proceedings. The applicant may be assisted by a person of their choice.

VI. ― The operating procedures of the Compensation Committee for Victims of Nuclear Tests, the elements that the file presented by the applicant must contain, as well as the procedures for processing requests, including the methods ensuring compliance with the principle of adversarial proceedings and the right to a defense, are set by decree of the Council of State. They must include the possibility for the requester to defend their request in person or through a representative.

VII. - (Abolished)

**Article 5**

Compensation is paid in the form of a lump sum.

Any compensation already received by the applicant for the same damage, including the updated amount of any pensions granted, shall be deducted from the amounts paid under the compensation provided for by this law.

**Article 6**

Acceptance of the compensation offer constitutes a settlement within the meaning of Article 2044 of the Civil Code and a waiver of any ongoing legal action. It renders inadmissible any other legal action seeking compensation for the same damages.

1. De Vathaire F., “Health Outcomes of the Nuclear Tests in French Polynesia”, Press Release from the INSERM Center for Research in Epidemiology and Population Health, 15 May 2023, available online, <https://presse.inserm.fr/en/consequences-sur-la-sante-des-essais-nucleaires-en-polynesie-francaise/67100/> [↑](#footnote-ref-1)
2. To explore the impact of French Polynesia’s colonial status on France’s choice of a nuclear testing site, along with arguments supporting the recognition of such an impact, see, Poirat F., « Essais nucléaires et statut colonial de la Polynésie Française : la rhétorique indépendantiste au sein de l’Organisation des Nations Unies », *in Le traitement juridique contemporain. Du fait nucléaire en Polynésie Française*, Calley G. et Poirat F., Éditions A. Pedone, 2023, pp. 341-363. [↑](#footnote-ref-2)
3. According to French law, an ‘organic law’ is a general provision that establishes rules specific to the organization public powers. They modify or supplement the Constitution and are adopted by the French Parliament. [↑](#footnote-ref-3)
4. Please refer to the annex for the English translation of the Organic Law. [↑](#footnote-ref-4)
5. The level of 1 mSv per year is derived from international consensus built on the report of the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) and the statement of the International Commission on Radiological Protection (ICRP). This permissible dose level is endorsed by various international organizations: the World Health Organization (WHO), the International Atomic Energy Agency (IAEA), the International Labour Organization (ILO) and the EURATOM. See, *Methodology followed by the Compensation Committee for Victims of Nuclear Tests (CIVEN)*, Annex to Resolution n° 2020-1 of 22 June 2020, p. 9, available online: <https://www.gouvernement.fr/upload/media/organization/0001/01/sites_default_files_contenu_piece-jointe_2020_06_methodologie_suivie_par_le_civen_-_22_juin_2020.pdf> [↑](#footnote-ref-5)
6. See, *Methodology followed by the Compensation Committee for Victims of Nuclear Tests (CIVEN)*, Annex to Resolution n° 2020-1 of 22 June 2020, available online: <https://www.gouvernement.fr/upload/media/organization/0001/01/sites_default_files_contenu_piece-jointe_2020_06_methodologie_suivie_par_le_civen_-_22_juin_2020.pdf> [↑](#footnote-ref-6)
7. According to French law, an ‘organic law’ is a general provision that establishes rules specific to the organization public powers. They modify or supplement the Constitution and are adopted by the French Parliament. [↑](#footnote-ref-7)
8. Decree n° 1878/DOM of 4 August 1964. A decree of 1 August 1980 of the delegation of the Minister of Defense classified these sites as “protected areas of national defense”. [↑](#footnote-ref-8)
9. Council of State, Ruling n° 451129, 20 September 2022. [↑](#footnote-ref-9)
10. Constitutional Council, *Association Meuse Nature Environnement and others (Storage of radioactive waste in deep geological repositories)*, Decision n° 2023-1066, QPC of 27 October 2023. [↑](#footnote-ref-10)
11. See, SR-Env reports on “Clean air and human rights”, A/HRC/40/55, 2019; “Human rights and a safe climate”, A/74/161, 2019; “Human rights depend on healthy and sustainable food systems”, A/76/179, 2021; “The global water crisis and human rights”, A/HRC/46/28, 2021; “Human rights depend on a non-toxic environment”, A/HRC/49/53, 2022; “Human rights depend on a healthy biosphere”, A/75/161, 2020; “Human rights depend on a healthy biosphere: good practices”, Annex to A/75/161, 2020. [↑](#footnote-ref-11)
12. Committee on the Rights of Child, General Comment No. 26 on children’s rights and the environment, with a special focus on climate change, CRC/C/GC/26, 2023. OHCHR, UNEP, UNDP, Information Note, *“What is the Right to a Healthy Environment?”*, 2023, p. 9. [↑](#footnote-ref-12)