



Input Regarding UN Human Rights Council Resolution 51/35 Related to Victim Assistance, Environmental Remediation, and International Cooperation and Assistance

The UN Human Rights Council has acknowledged the importance of addressing the human rights implications of the nuclear legacy in the Marshall Islands. Resolution 51/35 recognizes the adverse human and environmental impacts of nuclear weapons and calls for a response to these ongoing harms. This submission aims to inform the report of the Office of the High Commissioner for Human Rights on addressing the challenges and barriers to the full realization and enjoyment of the human rights of the people of the Marshall Islands in light of the state's nuclear legacy. The submission does not comment specifically on the situation in the Marshall Islands, but provides a framework and associated principles that can benefit that country and its people.

An effective way of approaching the challenges identified in Resolution 51/35 is through a combination of victim assistance, environmental remediation, and international cooperation and assistance. These activities are designed to remediate human suffering and environmental harm with the goal of ensuring that the people of affected countries, including the Marshall Islands, can fully enjoy their human rights.

The concepts of victim assistance, environmental remediation (clearance of remnants of war), and international cooperation and assistance are well-established in disarmament law. They emerged from a series of treaties,¹ and were recently adapted to nuclear weapons in the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW).² TPNW Articles 6 and 7 are obligations for states parties, and thus their humanitarian benefits are of particular value for affected states that have joined that instrument.³ The concepts also, however, provide a useful framework for states not party, affected or not, that seek to address nuclear legacies.

¹ The Anti-Personnel Landmine Convention, the Convention on Cluster Munitions, and Protocol V on Explosive Remnants of War to the Convention on Certain Conventional Weapons include victim assistance, environmental remediation, and international cooperation and assistance provisions.

² For more information on the application of victim assistance and environmental remediation principles to nuclear weapons in the TPNW, see Harvard Law School's International Human Rights Clinic (IHRC), "Victim Assistance and Environmental Remediation in the Treaty on the Prohibition of Nuclear Weapons: Myths and Realities," April 2019, https://humanrightsclinic.law.harvard.edu/wp-content/uploads/2022/10/TPNW_Myths_Realities_April2019.pdf.

³ See IHRC, "Submission to the *Nitijela*'s Standing Committee on Foreign Affairs and Trade Regarding Resolution 46 on the Treaty on the Prohibition of Nuclear Weapons," June 2018, http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nitijela_Submission_TPNW.pdf (explaining how these provisions would benefit the Marshall Islands if it joined the TPNW and why joining the treaty would not be legally incompatible with its Compact of Free Association with the United States).

Victim assistance, environmental remediation and international cooperation and assistance involve short- and long-term undertakings that require considerable dedication by and close partnerships among states and other stakeholders. Harvard Law School's International Human Rights Clinic, in conjunction with the Conflict and Environment Observatory, has put forward principles for implementing each that are rooted in humanitarian disarmament, international human rights law, and international environmental law.⁴ This submission lays out those principles, first discussing principles that cut across the three activities, and then discussing those specific to victim assistance and environmental remediation.

Common Principles

Purpose

Victim assistance and environmental remediation both seek to address the harm caused by nuclear weapons use and testing. Victim assistance directly mitigates the harm to humans, while environmental remediation deals with the root causes of the harm, i.e., the contamination nuclear weapons leave behind. They generally address the same types of harm although damage to the environment indirectly affects humans. Those types of harm include, but are not limited to, physical and psychological injuries and death, social marginalization, economic loss, environmental degradation, loss of biodiversity, loss of access to natural resources, obstacles to participation in cultural life, and displacement of local communities. These adverse impacts ultimately impair the realization of human rights, a major concern of Resolution 51/35.

Framework of Shared Responsibility

Victim assistance and environmental remediation combine with international cooperation and assistance to create a framework of shared responsibility for addressing nuclear legacies. Affected states take the lead. Their physical proximity to affected communities and contaminated areas makes it easier for them to assess the problem, deliver assistance, and remediate the environment. The approach also protects affected states' sovereignty and follows the precedent of international human rights and humanitarian disarmament law.

Other states should provide financial, material, technical, and/or other assistance to affected states to spread the burden and ensure the latter can meet their victim assistance and environmental remediation responsibilities. Given the range of types of assistance, all states should be able to provide some form of support. User and testing states have a particular responsibility to provide assistance to affected states. Assistance may be provided bilaterally or through the United Nations, international or nongovernmental organizations, or other actors. Nothing in this framework precludes affected states, such as the Marshall Islands, from seeking other forms of redress for their nuclear legacies, including through lawsuits or bilateral agreements.

⁴ For the full lists of and commentaries on these principles, see IHRC and the Conflict and Environment Observatory (CEOBS), *Confronting Conflict Pollution: Principles for Assisting Victims of Toxic Remnants of War* (September 2020), <http://hrp.law.harvard.edu/wp-content/uploads/2020/09/Confronting-Conflict-Pollution.pdf>; IHRC and CEOBS, *Facing Fallout: Principles for Environmental Remediation of Nuclear Weapons Contamination* (June 2022), <https://hrp.law.harvard.edu/wp-content/uploads/2022/06/Facing-Fallout-2022.pdf>.

Implementation Framework

States should begin the victim assistance, environmental remediation, and international cooperation and assistance processes by establishing a framework for implementation. Affected states should assess the needs of individuals affected by nuclear weapons use or testing in areas under its jurisdiction. States should assess the nature, extent, and effects of contamination from nuclear weapons use or testing in areas under their jurisdiction or control as well as any pathways through which communities might be exposed to unacceptable risk. Each state should also evaluate its national capacity to meet victims' needs and remediate the contaminated environment. Each affected state should use this information to prioritize its response, identify challenges, and request support from donor states. An initial gathering of existing knowledge should be followed by a more in-depth assessment.

Each affected state should also adopt a national victim assistance plan and national environmental remediation plan. As part of each plan, the state should designate a government focal point to ensure coordination and accountability, approve a budget with funds earmarked to each cause, and establish a timeline for its national victim assistance and environmental remediation processes. The state should, in addition, pass relevant implementation laws and policies.

Other states should develop mechanisms for providing international cooperation and assistance. An international trust fund is one such mechanism. Donors and affected states should work together to identify needs and mobilize resources. International cooperation and assistance should encompass measures to build affected states' capacity to ensure the latter can sustain victim assistance and environmental remediation activities over the long term.

States and non-state actors should exchange scientific and technical information related to the impacts of and responses to nuclear weapons use or testing. They should also share good practices and lessons learned regarding how to address nuclear legacies.

Guiding Principles

States, affected or not, should actively and meaningfully involve survivors, affected communities, civil society organizations, and other relevant stakeholders at all stages of the victim assistance, environmental remediation, and international cooperation and assistance processes. These stakeholders can provide information about, inter alia, the impacts of nuclear weapons use and testing, the needs of victims, and their preferences for how these needs and impacts are addressed. As part of promoting inclusivity, states should ensure programs are accessible, removing any physical and information barriers to access.

States should adhere to the principle of non-discrimination in planning and implementing victim assistance, environmental remediation, and international cooperation and assistance measures. States should ensure that they do not discriminate in these activities based on race, color, language, ethnicity, sex, sexual orientation, gender identity or expression, age, national origin, religion, disability, geographic location, socioeconomic class, or other status. Equality of representation on state delegations to diplomatic meetings is also important.

States should commit to transparency with respect to the design, administration, implementation, and evaluation of victim assistance, environmental remediation, and international cooperation and assistance programs. For example, regular reporting on the results of assessments and progress in implementation can allow for independent monitoring, promote accountability, and facilitate international support. These reports should be made available not only to states but also to civil society, international organizations, academics, affected communities, and other stakeholders.

Victim Assistance Principles

With regard to victim assistance in particular, states should implement a wide variety of measures to effectively address the broad range of victims' needs. For reasons discussed in the Framework of Shared Responsibility section above, affected states should take the lead on these activities but receive significant international support. As Resolution 51/35 suggests, affected states should make medical care and rehabilitation services for victims locally accessible. They should also offer psychological support and promote victims' social and economic inclusion. These states should provide other types of assistance, including: acknowledgement of harm, measures to facilitate participation in cultural life, remediation of contaminated environments, access to accurate and comprehensive information regarding the harms and risks associated with nuclear weapons, and measures to ensure victims can fully realize their human rights. By taking a such a victim-centered approach, states can best address the needs of individuals who have been affected by the use or testing of nuclear weapons and enable them to fully achieve their human rights.

Environmental Remediation Principles

States should take multiple steps to remediate the ongoing harms to the environment from nuclear radiation and contamination. These measures, like those related to victim assistance, should be led by affected states but supported heavily by other states. As noted in Resolution 51/35, nuclear waste, radiation and contamination remains a challenge and a barrier to the full realization and enjoyment of human rights, including the enjoyment of a clean, healthy, and sustainable environment. Affected states should start by assessing, surveying, and recording the nature, extent, and effects of contamination and any discernable exposure pathways at each site in order to prioritize their responses and develop effective action plans for remediation.

Throughout the remediation process, affected states should prevent exposure by keeping humans away from the source of contamination. For example, they should place warning signs, mark and fence contaminated areas, and provide risk education to local communities. Affected states should also address the contamination itself through treatment and containment measures, waste management, and long-term site management.

When planning for the remediation of a contaminated area, affected states should follow the principle of optimization. They should evaluate a range of potentially effective options and implement the one that produces the greatest benefit to the affected communities and the environment. Affected states should consider costs and benefits related to the environment, human health, society, culture, and the economy, and they should be guided by the preferences and goals of affected communities and other stakeholders.

Affected states should also take into account the following elements when implementing their environmental remediation measures. To account for and mitigate the limited understanding of nuclear weapons contamination, they should follow the precautionary principle and not postpone action due to scientific uncertainty. To respond to evolving knowledge and developing technology, they should take an iterative approach to remediation and be willing to review and update their plans and processes over time. In addition, affected states should adopt international standards and best practices, including ensuring worker safety, and use the best available technologies at each step of the environmental remediation process.

Conclusion

The Human Rights Council's resolution on the need to address nuclear legacies in the Marshall Islands is an important milestone that recognizes the ongoing harms of nuclear weapons use and testing. Victim assistance, environmental remediation, and international cooperation and assistance, which help ensure a comprehensive response to the harm caused by nuclear weapons, require immediate steps and a long-term commitment. By adopting the principles outlined above, states can make concrete progress toward addressing nuclear legacies in the Marshall Islands and elsewhere.