**Input to Resolution 51/35 – Technical assistance and capacity-building to address the**

**human rights implications of the nuclear legacy in the Marshall Islands**

Submission of the International Center for Advocates Against Discrimination (ICAAD)

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**About ICAAD**

ICAAD is a registered 501(c)(3) with special consultative status with the United Nations Economic and Social Council. Established in 2013, ICAAD works at the intersection of legal innovation and design justice to create evidence based programs with organizations and communities to combat structural discrimination. By taking an integrated approach, we are able to improve resilience, safety, and equity across systems.

ICAAD’s key activities include:

* Partnering with local NGOs and governments to build capacity while using our expertise and resources as a means of enhancing their advocacy efforts.
* Leveraging legal and policy expertise to advocate and reform discriminatory laws, policies, and cultural norms.
* Exploring how emerging technologies can be effectively integrated into human rights practice.
* Providing data and research to fill gaps in knowledge for judiciaries, NGOs, governments, and other international bodies.

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1. The harm caused by the U.S. nuclear weapons testing program in the Republic of the Marshall Islands (RMI) is expansive, ongoing, and remains largely without proper remedy by the U.S. This information is not new, and reports abound documenting the extent of the harm as well as the physical, psychological, and economic impacts on the Marshallese people which has undermined their full realization of human rights.[[1]](#footnote-0) Gaps exist primarily where the U.S. has been tasked with the responsibility of assessing their own damage and negative impacts on communities, be they environmental contamination or the ongoing health risks from radiation. These gaps will be addressed in responses two and three as they relate to promising practices and challenges to addressing impacts and international and multilateral cooperation and rights-based approaches.

In an attempt to contribute relevant data not recorded in other international human rights reporting, our response will detail the radiation exposure and impact on two of the affected mid-range atolls as a clear indication of the need for a full independent assessment of the adverse human rights impacts on the entirety of the RMI, and perhaps the northern Pacific more broadly. The exclusion of mid-range atolls, before declassified documents revealed the wider impacts of the U.S. nuclear weapons testing program, represents the political interests of the U.S. in narrowing the scope for compensation and accountability.

In the attempt to provide final redress for the U.S. nuclear weapons testing program in the RMI, Section 177 of the Compact of Free Association established the terms of what damage was worthy of compensation in 1986. The agreement explicitly named the damage and initial compensation to only four atolls: Bikini, Enewetak, Rongelap, and Utrik (Article II, Sections 2-5). It also set the terms for the Nuclear Claims Tribunal and established the mechanism which can be used to petition the U.S. Congress for additional assistance, the Changed Circumstances Petition. The expansive number of claims before the Nuclear Claims Tribunal, meant that the allocated $150 million was wholly insufficient to address the number of awarded claims, which till today, have gone unpaid.

In 1994, the U.S. Advisory Committee on Human Radiation Experiments (ACHRE) declassified thousands of documents pertaining to the U.S. nuclear weapons testing program. These documents substantiated the arguments made by mid-range atolls who experienced the effects of radiation but were excluded from redress. This information was not known to the RMI government during the initial Compact negotiations, which included the 177 Agreement which set the narrative of what happened during the U.S. nuclear weapons testing program.

In light of this documentation to substantiate the lived experiences of residents of mid-range atolls, several affected atolls put forward claims to the Nuclear Claims Tribunal that were never adjudicated. In the Changed Circumstances Petition of 2004, these atolls were included; however, the U.S. refused to recognize any changed circumstances despite it being clear that the threshhold was met.[[2]](#footnote-1)

As an example, two of the atolls, Ailuk and Likiep, experienced real time and ongoing radiation exposure with little to no prior information, healthcare access, or redress from the U.S. government.[[3]](#footnote-2) There is significant documentation to explain the impacts on these atolls in their Nuclear Claims Tribunal (NCT) claims, interviews with residents, and now declassified documents.

Of the 67 tests in total during the U.S. nuclear weapons testing program, the Bravo test caused the most significant damage accompanied by the highly unethical planned human radiation studies (Project 4.1). However, there were still more than a dozen other tests surpassing the size of the Hiroshima bomb.[[4]](#footnote-3)

On Ailuk, residents were exposed to external whole-body radiation of about 50,000 mrems from the Bravo shot with similar thyroid doses to those received in Utrik (one of the four atolls included in Section 177). Ailuk residents were not: informed about the U.S. nuclear weapons testing program, warned about the Bravo test, instructed to remain indoors or avoid consuming contaminated foods or water, offered healthcare, nor evacuated. Remaining on Ailuk only increased residents’ overall exposure.[[5]](#footnote-4) The island population at the time was 401, and declassified documents reveal that they were likely not evacuated because they had a larger population than neighboring Utrik (154) and Rongelap (82) which were easier to evacuate.[[6]](#footnote-5)

The residents of Likiep faced similar conditions. The U.S. did not inform the residents of Likiep of any tests in the nuclear weapons testing program, including warnings, information, or instructions to avoid contaminated food and water. Similar to residents of Ailuk, residents of Likiep suffered from radiogenic illnesses as a result of exposure. Women experienced reproductive problems and were stigmatized as adulterers or witches because no one knew what could have caused the problems.

Likiep was used for human radiation studies as well, and the U.S. Navy came on shore to take blood samples from every child without explaining the U.S. nuclear weapons testing program nor providing medical care.[[7]](#footnote-6)

“The USS Wheeling brought some scientists to show us maps and charts of the route of the nuclear fallout as it was carried downwind. The movements of the fallout were so funny to us because the lines actually zigzagged between Likiep, Ailuk, and other atolls. I actually saw the charts and we were wondering how the radioactive poison could navigate itself between these islands without touching them! They thought we were a bunch of idiots! … I told them in nasty words, because I was mad, I told them why didn’t they do their experiments in their own country. In America there are deserts, there is no much unused public land. Instead, they chose some small islands to poison and kill the people. I was furious. They didn’t listen to us. They said it was nothing to worry about. Every word we said was ignored.” (Quote from Tempo Alfred in an interview on Sept. 8, 1994[[8]](#footnote-7))

In 2011, there was a push in RMI government talks with the U.S. to include Ailuk, Likiep, and other mid-range atolls at least in the 177 Agreement healthcare program which includes both monitoring and care. However, no progress has been made. The U.S. has consistently held that no other atolls besides the four included in Section 177 were affected, contradicting the U.S.’s own declassified documentation from the nuclear weapons testing program.

In 2004, the State Department reported that “the weight of expert scientific evidence indicates that the present impact of radioactive fallout on the Marshall Islands is limited to the more northerly atolls and islands.”[[9]](#footnote-8) Former president of the RMI, Kessai H. Note, rightfully pointed out that “the terms of Section 177 represent a political determined settlement rather than either a good faith assessment of personal injury or property claims.”[[10]](#footnote-9)

Acknowledging the political interests of the U.S. in restricting the negative impacts of the nuclear weapons testing program they take responsibility for, it is a critical first step that this OHCHR report make full use of the available documentation. In addition to the reporting already done on these matters including interviews with survivors and documentation in the unpaid Nuclear Claims Tribunal Claims, in 2021, ICAAD made the trove of 13,213 declassified documents searchable on a public database.[[11]](#footnote-10) While there is a significant number of redactions and missing pages that suggest there are missing documents, the example of the impact on mid-range atolls demonstrate the presence of incredibly relevant data for this report that requires an independent systematic review.

1. As noted in the 2012 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, there is a lack of scientific consensus on the intensity of the causal link between the impacts of nuclear radiation and cancer. This can largely be attributed to the U.S.’s role in this research as an interested party that has consistently attempted to evade compensation obligations. This pattern extends beyond the RMI. Recalling the General Assembly resolution 60/147 on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law[[12]](#footnote-11), the U.S. was one of a small number of countries to abstain on the grounds that they did not want the right to compensation to be hard law.

A promising practice for the OHCHR to recommend is independent research particularly on rates of cancer and radiogenic diseases and the causal link with radiation exposure in the RMI. This independent research will provide critical insights about the scope of harm caused as well as the persistent healthcare needs stemming from these historical harms. The assessments from U.S. institutions, namely the Department of Energy, regularly contradict the lived realities on the ground.

Advocates have faced relentless challenges to the U.S. funding or adequately implementing programing to address the adverse impacts of the nuclear weapons testing program. Independent research, financed by international and multilateral partners, would go a long way in supporting these ongoing efforts to make clear the impacts to the to U.S., as the entity ultimately culpable for the damage.

1. The 2012 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes reminds us that the international community placed the RMI under the trusteeship of the U.S. from which the international community bears an obligation to bring about a just resolution for the Marshallese people.

While compensation from the U.S. remains a critical priority to address the adverse impacts of the nuclear weapons testing program, the OHCHR can specifically advance efforts by coordinating technical assistance for independent research on the causal link between cancers and radiogenic diseases and radiation in addition to capacity building for environmental radiation monitoring.

Issues related to contamination from the Runit Dome are of specific interest to the region as a whole and the entire international community as it relates to their reliance on the Pacific Ocean. In 1977, the U.S. Army built a temporary structure on Runit Island, called the Runit Dome, to contain nuclear waste from testing in the Enewetak and Bikini atolls. It currently holds over 3.1 million cubic feet of radioactive waste which presumably does not include 130 tons of radiated soils from Nevada which were transported to the Marshall Islands to cover a failed test site.[[13]](#footnote-12) Many of the 4,000 U.S. civilians and military service members who worked to build the dome were not aware that they were working with radioactive materials.[[14]](#footnote-13)

While it has always been a concern that the Runit Dome would be insufficient to contain the nuclear waste, there has been recent attention on the danger of storm surges and rising sea levels exposing the region to expansive contamination. The National Defense Authorization Act (NDAA) of 2020 required a report to Congress on the condition of the Runit Dome as well as its effects on the environment.[[15]](#footnote-14) The initial report was released in June 2020 and indicated from only a visual assessment of the Dome and long-term projections that the area is safe and of little concern.[[16]](#footnote-15) While the Department of Energy will be conducting a groundwater radiochemical analysis program as a requirement under the Insular Areas Act of 2011, they cited none of the existing evidence, for example, the soil samples from 2017-2018 that indicate significant levels of all five radionuclide concentrations observed.[[17]](#footnote-16)

Given the biased position of the Department of Energy and the U.S. government on issues of nuclear justice in favor of ignoring the harm caused by nuclear testing, the RMI National Nuclear Commission, among others, have called for a third party assessment of the safety and structural integrity of the Runit Dome. The U.S. has indicated that management of the Runit Dome is the responsibility of the RMI government which, again, is a move to evade responsibility for nuclear waste created by the U.S. nuclear weapons testing program, dumped and stored unsafely in the RMI, and mismanaged since its initial creation.

The U.S. government’s persistent lack of accountability is a regional and international environmental and human rights crisis in violation of the right to a clean, healthy, and sustainable environment. This call for technical assistance and capacity building can be directed at IAEA and UNEP echoing previous recommendations from the 2012 Special Rapporteur report that have yet to be fulfilled. One recommendation called for the IAEA to support via an “independent, comprehensive radiological survey of the entire territory” (including Runit Dome) and another for the UNEP to help address nuclear and chemical waste management.[[18]](#footnote-17) Given the delay in meeting these recommendations in over a decade and the increasing risk of further environmental contamination with rising sea levels, international and multilateral partners must act urgently.

1. No response.
1. Georgescu, C., *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, UN HRC (2012) at 1, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/163/76/PDF/G1216376.pdf?OpenElement. [↑](#footnote-ref-0)
2. Congressional Research Service, *Republic of the Marshall Islands Changed Circumstances Petition to Congress* (May 16, 2005). [↑](#footnote-ref-1)
3. Document: 0410289, Atolls Upon Which Significant Nuclear Fallout Could Have Occurred from the Pacific Proving Grounds During Atmospheric Testing (DRAFT, no final version), 1973, <http://data.alexwellerstein.com/mindd/PDF/0410289.pdf>; Document: 0411456, Radioactive Debris from Operation Castle: Islands of the Mid-Pacific, 1955, <http://data.alexwellerstein.com/mindd/PDF/0411456.pdf> [↑](#footnote-ref-2)
4. Barker, H., *Bravo for the Marshallese,* Wadsworth (2013) at 152. [↑](#footnote-ref-3)
5. Amicus Curiae Brief Opposing Set-off of Lost-use Damages, NCT No. 23-06103. [↑](#footnote-ref-4)
6. Takemine, S., *Invisible Nuclear Catastrophe Consequences of the U.S. Atomic and Hydrogen Bomb Testings in the Marshall Islands: Focusing on the “Overlooked” Ailuk Atoll*, Hiroshima Peace Science (2017) at 51. [↑](#footnote-ref-5)
7. Claims for Compensation on Behalf of the People of Likiep Atoll, NCT No. 23-06980-B. [↑](#footnote-ref-6)
8. *Supra* note 4, at 57. [↑](#footnote-ref-7)
9. Department of State, *Report Evaluating the Request of the Government of the Republic of the Marshall Islands Presented to the Congress of the United States of America* (2004), <https://2001-2009.state.gov/p/eap/rls/rpt/40422.htm>. [↑](#footnote-ref-8)
10. *Supra* note 6, at 56. [↑](#footnote-ref-9)
11. ICAAD, *RMI Nuclear Justice Documents*, available at <https://rminucleardocs.icaad.ngo/>. [↑](#footnote-ref-10)
12. United Nations General Assembly resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>. [↑](#footnote-ref-11)
13. Rust, S., *How the U.S. betrayed the Marshall Islands, kindling the next nuclear disaster*, L.A. Times (Nov. 10, 2019), https://www.latimes.com/projects/marshall-islands-nuclear- testing-sea-level-rise/. [↑](#footnote-ref-12)
14. *Id.* [↑](#footnote-ref-13)
15. National Defense Authorization Act (NDAA) of 2020. [↑](#footnote-ref-14)
16. Department of Energy, *Report on the Status of the Runit Dome in the Marshall Islands*, (Jun, 2020) at 4, https://www.energy.gov/sites/prod/files/2020/06/f76/DOE-Runit-Dome- Report-to-Congress.pdf. [↑](#footnote-ref-15)
17. Abella, M. K. I. L., et al., *Background gamma radiation and soil activity measurements in the northern Marshall Islands*, 116 PNAS 15425 (Jul. 30, 2019), available at https://doi.org/10.1073/pnas.1903421116. [↑](#footnote-ref-16)
18. *Supra* note 1. [↑](#footnote-ref-17)