



Submission by International Campaign to Abolish Nuclear Weapons (ICAN) on  
**Resolution 51/35 – Technical assistance and capacity-building to address the human rights implications of the nuclear legacy in the Marshall Islands**

**1. ICAN and ICAN’s work with communities affected by nuclear weapons**

The International Campaign to Abolish Nuclear Weapons (ICAN) was founded in 2007 to bring together civil society organisations to work for the common goal of banning and eliminating all nuclear weapons. In 2017, the campaign reached its first goal when 122 states adopted the Treaty on the Prohibition of Nuclear Weapons (TPNW) that entered into force 22 January 2021.

ICAN welcomes the resolution of the Human Rights Council and its recognition of the humanitarian and environmental consequences of nuclear weapons testing and how these consequences go beyond the effects of radiation and affect the enjoyment of human rights.

From our position of organising with civil society and states for the goal of eliminating nuclear weapons and our role in making the TPNW a reality, we share our recommendations on how engagement with the TPNW can benefit the full realisation and enjoyment of human rights of the people of the Marshall Islands. In, around and about the Marshall Islands we work together with MISA<sup>4</sup>, the Pacific, Marshallese Educational Initiative (MEI), Pacific Network on Globalisation (PANG) and Pacific Council of Churches. Our recommendations draw on previous stories, testimonies and materials shared by these organisations and other survivors and activists involved with ICAN or the TPNW.

Nuclear weapons testing in the Marshall Islands have caused harm and challenged the enjoyment of human rights for the Marshallese population beyond the medical harms caused by radiation. The medical effects of exposure to radiation and exposure to radiation from contamination of lands and water are clear consequences of the nuclear weapons tests. Following that comes the suffering of losing family members and loved ones to cancer, the loss of participation in economic and cultural life from increased burdens of caring for sick relatives, fears and risks related to childbearing, like stillbirths, congenital birth defects, infertility, and the exposure to contaminated environments that children will suffer in their lifetime.

Lack of availability of health care in the Marshall Islands means patients often have to travel overseas for treatment, and go through treatment while alone in a foreign place, a continuation of sorts of the forced displacement that started with the nuclear tests. Contamination of the soil and waters prevents using the lands and oceans to produce food in traditional ways. This leads to loss of cultural heritages and knowledge. It also necessitates importing foodstuffs which are often highly processed and this change in diets has caused an epidemic of diabetes among Marshallese inhabitants.<sup>1</sup>

The subjection to medical tests and experiments on Marshallese people is an added harm challenging the enjoyment of human rights, as is the lack of transparency over decades from the United States around the data from those tests and data on contamination from fallout that exacerbated the situation.<sup>2</sup> The secrecy surrounding nuclear weapons programmes is a problem for access to information that risks remaining for as long as nuclear weapons remain.

## 2. The Treaty on the Prohibition of Nuclear Weapons (TPNW)

In the lead-up to negotiations on the TPNW, three conferences on the humanitarian impacts of nuclear weapons were organised: in Oslo, Norway in 2013, in Nayarit, Mexico in 2014, and in Vienna, Austria in 2014. At the conferences, representatives of states, civil society, academia, and communities affected by nuclear weapons shared their expertise and demands regarding nuclear weapons, nuclear disarmament, and nuclear justice. This was part of shifting the international narrative on nuclear weapons from the sphere of national security and deterrence to the humanitarian and environmental consequences of nuclear weapons.

The acknowledgement of the harm done by nuclear weapons is built into the TPNW through this process of hearing survivors, and in the treaty. The preamble states that States Parties are “[d]eeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons” and “[m]indful of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons”. The TPNW is a humanitarian disarmament treaty and a human rights treaty, referencing the need to comply with international human rights law in the preamble and in Article 6.

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<sup>1</sup> See video recordings of the testimonies: from the 2022 Humanitarian Impacts of Nuclear Weapons Conference, 1h 48 mins into the clip: <https://www.youtube.com/watch?v=JbfEoaA01-k>; from the 2021 Nuclear Survivors Forum: [https://youtu.be/m\\_h6rF6X-VI](https://youtu.be/m_h6rF6X-VI); a webinar on the 69<sup>th</sup> anniversary of Castle Bravo: <https://www.youtube.com/watch?v=fkgpk8yPDMc>;

<sup>2</sup> Maclellan, Nic, *Preserving Nuclear Memories*, Inside Story (2023), available at <https://insidestory.org.au/preserving-nuclear-memories/> (accessed 2024-03-06)

Provisions of the TPNW especially relevant for addressing nuclear legacies and promoting the enjoyment of human rights in the Marshall Islands are the articles on prohibition of nuclear weapons, victim assistance and environmental remediation, and international cooperation and assistance, as well as the provisions on gender agreed to in the 2022 Vienna Action Plan.<sup>3</sup>

### *2.1 Prohibiting nuclear weapons*

Article 1 of the TPNW prohibits nuclear weapons and activities related to nuclear weapons for all States Parties. Prohibiting nuclear weapons is a fundamental tool in the work to eliminate nuclear weapons, a condition for the guarantee of non-recurrence of harm caused by nuclear weapons. TPNW prohibits nuclear weapons testing, and with the Comprehensive Test Ban Treaty (CTBT) not yet having entered into force, this makes the TPNW an important contribution to the international legal and normative framework to ensure no one has to live in fear of, or live through, nuclear testing again. The TPNW is the first multilateral treaty to prohibit the threat of use of nuclear weapons. Threatening to use nuclear weapons can also be a threat of repeating the trauma and harm of survivors of nuclear weapons use and testing.

In the United Nations Human Rights Committee's general comment 36 (2018), the threat or use of weapons of mass destruction, in particular nuclear weapons, is incompatible with respect for the right to life.<sup>4</sup> TPNW Article 1 is a concrete step towards removing the threat to the right to life that nuclear weapons represent.

The TPNW, unlike the Nuclear Non-Proliferation Treaty, does not discriminate between nuclear weapons states and non-nuclear weapons states. All States Parties must declare themselves nuclear weapons free and/or comply with the agreed and verifiable procedure for disarming their nuclear weapons. This leads the way towards achieving nuclear disarmament and ending the hierarchy of nuclear and non-nuclear weapons states, a step towards addressing the nuclear legacy and the post-World War II world order that helped shape them. Ending this hierarchy provides for improved influence for non-nuclear weapon states over their security environment and the possibility for self-determination regarding their exposure to the risks of nuclear weapons use or testing.

### *2.2 Victim Assistance, Environmental Remediation and International Cooperation and Assistance*

Article 6: Victim Assistance and Environmental Remediation and Article 7: International Cooperation and Assistance, make up the positive obligations of the TPNW. A summary of key aspects are:

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<sup>3</sup> Available at: [https://www.icanw.org/vienna\\_declaration\\_action\\_plan\\_overview](https://www.icanw.org/vienna_declaration_action_plan_overview)

<sup>4</sup> UN Human Rights Committee, *General Comment no. 36: Article 6, Right to life* (2018), paragraph 66, available at <https://digitallibrary.un.org/record/3884724?ln=en>

- Article 6.1 obligates States Parties to, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination.
- Article 6.2 states that States Parties, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons, shall take necessary measures towards the environmental remediation of areas so contaminated.
- Article 7 states that each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties, and that States Parties in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, and provide assistance for the victims of the use or testing of nuclear weapons. States parties that have used or tested nuclear weapons are required to provide adequate assistance to affected states.

The articles should be read together and provide a framework for victim assistance, environmental remediation and for States Parties to share the responsibilities of this work. Resolution 51/35 recognises that it is “the primary responsibility of States to promote and protect human rights and fundamental freedoms”. TPNW Articles 6 and 7 affirm the rights and responsibilities of affected states to determine the needs for and control of victim assistance and environmental remediation, which is consistent with human rights law, and a recognition of their sovereignty and of that their proximity and jurisdiction make them best suited to make such decisions.<sup>5</sup>

Resolution 51/35 recognises that the Marshall Islands does not have the technical capacity or resources to provide the necessary environmental cleanup or medical facilities. Articles 6 and 7 is also a recognition of the often limited capacity of states affected by nuclear weapons use of testing, and provides a framework of shared responsibility to address this. To not place an undue burden on affected states, Article 7 of the TPNW requires that all other States Parties in a position to do so shall provide support. States Parties with populations and territories affected by nuclear weapons testing are given a right to seek and receive support, recognising that this work requires support by other states.

The framework of shared responsibility can also be seen as a necessary and welcome framework for the international community to begin addressing the failure to end nuclear testing in the Marshall Islands while under UN Trusteeship.

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<sup>5</sup> Harvard Law School International Human Rights Clinic & Conflict and Environment Observatory, *Confronting Conflict Pollution: Principles for assisting victims of remnants of toxic remnant of war* (2020), pp. 28-29 available at <https://humanrightsclinic.law.harvard.edu/wp-content/uploads/2022/10/Confronting-Conflict-Pollution.pdf>

Victim assistance and environmental remediation are survivor centred and not dependent on the establishment of responsibility by an identified perpetrator.<sup>6</sup> The TPNW does not include a definition of victims, which allows for inclusive interpretations of who is considered a victim and receives assistance. A brief by the International Committee of the Red Cross refers to the broad agreement during negotiations of the TPNW of the broadest possible interpretation of the term victim.<sup>7</sup> This allows for addressing nuclear legacies without waiting for nuclear weapons states to accept their responsibility for the harms caused by their nuclear weapons programmes, while still establishing in Article 7.6 that states that have tested or used nuclear weapons shall have a responsibility to provide adequate assistance to affected States Parties.

The TPNW thus does not restrict the right to access assistance, or demand anything in return. Article 7.6 thus establishes international law that responsibility for assisting affected states shall lie in particular with the perpetrator state. The TPNW could provide a useful framework for addressing the lack of recognition and assistance for survivors in the Marshall Islands who fell outside the limitations set by the framing of the “four atolls”.<sup>8</sup>

Article 6.1 obligates states to provide adequate and gender- and age-sensitive assistance, without discrimination in accordance with international human rights law. Recognising that harm caused by radiation is suffered differently due to gender, both medically and socially, is important for ensuring women’s and girl’s enjoyment of human rights and grasp the full width of the harms done and assessing the needs of affected communities. Age-sensitive assistance is central both due to the way harms are felt differently depending on the age of a person, and also due to how intergenerational harm and trauma travels.

At the Second Meeting of States Parties of the TPNW, States Parties adopted templates for voluntary reporting on their needs and activities relating to victim assistance, environmental remediation and international cooperation and assistance. This increases transparency around needs and efforts and could provide a framework for learning, evaluation and improving efforts. It also raises awareness of the needs of States Parties. Engaging with this process could help raise international awareness of the needs in the Marshall Islands, exploring new ways of international cooperation and assistance in favour of victim assistance and environmental remediation, and provides a space for the Marshall Islands to contribute with their experiences and expertise in this field.

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<sup>6</sup> Confronting Conflict Pollution, pp. 28-29

<sup>7</sup> ICRC, *The Obligation to Assist Victims and Remediate the Environment within a Framework of Shared Responsibility under the Treaty on the Prohibition of Nuclear Weapons* (2023), available at <https://www.icrc.org/en/publication/4702-obligation-assist-victims-and-remediate-environment-within-framework-shared> pp. 3-4

<sup>8</sup> The Marshall Islands National Nuclear Commission, *Nuclear justice for the Marshall Islands: A Strategy for Coordinated Action FY2020-FY2023* (2019), available at <https://rmi-data.sprep.org/system/files/RMI%20NNC%20Strategy%202019.pdf>

### *2.3 How the TPNW represents examples of promising practices related to financing efforts to address the adverse impact of nuclear legacies on the effective enjoyment of human rights*

The TPNW has adopted an intersessional structure to implement the treaty. It is guided by decisions taken at the Meetings of States Parties (MSP), including in the Vienna Action Plan from the First MSP. This structure includes an informal working group of States Parties that is co-chaired by two countries affected by nuclear testing: Kazakhstan and Kiribati. The working group is currently discussing the decisions from the First and Second MSP on establishing an international trust fund for victim assistance and environmental remediation. The trust fund would be a mechanism through which States Parties affected by nuclear weapons could exercise their right to ask for and receive assistance (Article 6) and States Parties in a position to do so could uphold their obligations to provide assistance (Article 7).

### *2.4 Gender perspectives and inclusion aspects of the TPNW and its implementation that benefits the full realisation and enjoyment of human rights for communities affected by nuclear weapons*

The TPNW is the first nuclear disarmament treaty to acknowledge the gendered aspects of harm caused by nuclear weapons and the need for gender perspectives in and on nuclear disarmament work. To that end, the States Parties have appointed a gender focal point and gender perspectives, gender balance and research on gendered impacts of nuclear weapons are explored within the frameworks of the treaty.

This work is further strengthened by the high participation of civil society in shaping the treaty and its implementation. Marginalised groups are more often organised through civil society organisation and or other forms of self-organising, while underrepresented in state delegations and similar official organisations. The inclusive approach of the TPNW increases the possibilities for people from marginalised communities, like communities affected by nuclear weapons testing (and different groups within those communities for instance based on age, gender, ethnicity, or other shared experiences) to have their voices heard and influence nuclear disarmament. Being able to influence decision making and being heard in issues of nuclear disarmament, victim assistance, environmental remediation and international cooperation and assistance are important aspects of breaking with the nuclear colonialism of being subjected to nuclear weapons testing after decisions made by another state and without informed and prior consent.

The TPNW Article 6 states that victim assistance should be “without discrimination” and the active participation of a multitude of civil society organisations, most importantly organisations representing survivors of nuclear weapons use and testing, make up an important component in raising awareness on existing discrimination and working against discriminatory structures.

Engagement with affected communities and improving conditions for political, economic, social and cultural participation is central, but also asks a lot of people. It is necessary when international organisations, states or other actors engage with affected communities that they are mindful and respectful of the time and effort it takes to be active in such processes, and make every effort to make participation more accessible. This can involve logistics, compensation, and routines for information sharing that reduces the number of consultations held – while not limiting the impact of the information that members of affected communities share, or of their demands. It is also important to look at how engagement with affected communities involves long-term capacity building as a way of avoiding extractive practices.<sup>9</sup>

### 3. Conclusion and recommendations

Victim assistance and environmental remediation efforts are key to addressing the nuclear legacy and achieve the full realisation of human rights in the Marshall Islands. To ensure a break with the nuclear colonial order, a framework of shared responsibility where the affected state maintain their sovereignty but receives assistance, such as the one presented by TPNW:s Articles 6 and 7, would be beneficial.

ICAN recommends that:

- The Marshall Islands sign and ratify the Treaty on the Prohibition of Nuclear Weapons
- The United States sign and ratify the Treaty on the Prohibition of Nuclear Weapons
- The United States without delay provides adequate assistance to the Marshall Islands for the purpose of victim assistance and environmental remediation
- The Marshall Islands receive support to engage with the positive obligations of the Treaty on the Prohibition of Nuclear Weapons, including on national reporting, needs assessments, and on sharing its experiences and expertise on victim assistance, environmental remediation and international cooperation and assistance; and
- The Marshall Islands and other relevant actors support capacity building for Marshallese and regional civil society to create sustainable organisation around the issues of nuclear justice, and capacity to participate in TPNW and other relevant processes.

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<sup>9</sup> For more on this, see the Protocols developed by the Nuclear Truth Project: <https://nucleartruthproject.org/protocols/>