

Implementing Victim Assistance and Environmental Remediation under the Treaty on the Prohibition of Nuclear Weapons

The First Meeting of States Parties (1MSP) to the Treaty on the Prohibition of Nuclear Weapons (TPNW) provides an important opportunity for countries to establish victim assistance and environmental remediation as core priorities of this humanitarian disarmament treaty and to begin the process of meeting their obligations under Articles 6 and 7 (excerpted below). The meeting should be followed by long-term measures to address the effects of nuclear weapon use and testing. This fact sheet, which updates two July 2021 fact sheets:

- Recommends measures states parties should commit to at the 1MSP,
- Lays out a framework to guide victim assistance and environmental remediation over time, and
- Provides a list of additional resources.

Relevant Treaty Provisions

Article 6: Victim Assistance and Environmental Remediation

1. Each State Party shall, 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, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.
2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.
3. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.

Article 7: International Cooperation and Assistance

1. Each State Party shall cooperate with other States Parties to facilitate the implementation of this Treaty.
2. In fulfilling its obligations under this Treaty, each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties.
3. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.
4. Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices.
5. Assistance under this Article may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, or national Red Cross and Red Crescent Societies, or on a bilateral basis.
6. Without prejudice to any other duty or obligation that it may have under international law, a State Party that has used or tested nuclear weapons or any other nuclear explosive devices shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation.

Recommendations for the First Meeting of States Parties

The TPNW's 1MSP should stress the importance of victim assistance and environmental remediation in its discussions and outcome documents. It should also adopt a final report, a declaration, and an action plan, in which states parties agree to initiate implementation of their Article 6 and Article 7 obligations. In particular, states parties at the 1MSP should commit to the following measures.¹

1. Assess Needs and State Capacity

Each state party should assess, in its territory, the needs of affected individuals; the nature, extent, and effects of nuclear weapons contamination; and its national capacity to meet victims' needs and remediate the environment. An affected state party should use this information to prioritize its response, identify challenges, and request support from donor states parties. An initial gathering of existing knowledge should be followed by a more in-depth assessment.

2. Create a National Infrastructure

Each affected state party should adopt national victim assistance and environmental plans with timelines, designate government focal points to ensure coordination and accountability, pass relevant laws and policies, and approve a budget with funds earmarked for the positive obligations. Other states parties should develop frameworks to provide international cooperation and assistance that will help affected states parties meet their Article 6 responsibilities. While the infrastructure will evolve as information and technology changes, the 1MSP should set a deadline, ideally by the 2MSP, for taking initial steps.

3. Establish an Informal Intersessional Working Group

States parties at the 1MSP should establish an informal positive obligations working group to examine the challenges of victim assistance and environmental remediation in more depth. The body could develop voluntary reporting guidelines and hear updates on victims' needs, the status of environmental contamination, and progress in meeting the positive obligations. It could also provide a forum for facilitating international cooperation and assistance, discussing a trust fund, exchanging best practices, and developing relevant international standards.

4. Promote Inclusivity

States parties should actively involve affected individuals and communities, civil society organizations, and other stakeholders at all stages of victim assistance and environmental remediation. They should also ensure the 1MSP and all future formal and informal TPNW meetings are fully inclusive. These stakeholders can provide information about, inter alia, the impacts of nuclear weapons use and testing and the ways in which victim assistance and environmental remediation programs can meet victims' needs and preferences.

5. Uphold Guiding Principles of Implementation

States parties should commit to upholding the principles of accessibility, non-discrimination, and transparency, in addition to inclusivity, as they implement their victim assistance and environmental remediation obligations.

¹ Bonnie Docherty, "From Obligation to Action: Advancing Victim Assistance and Environmental Remediation at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons," *Journal for Peace and Nuclear Disarmament*, vol. 3(2) (2020).

Framework for Future Implementation

While TPNW states parties should commit to initiating implementation of Articles 6 and 7 at the 1MSP, addressing the effects of nuclear weapons use and testing is a long-term process. The below framework for victim assistance and environmental remediation can help states parties fulfill their obligations over time. It can also serve as a guide for states not party that seek to mitigate the consequences of nuclear weapons. The framework includes principles common across the positive obligations as well as those specific to victim assistance and environmental remediation. The principles are informed by humanitarian disarmament, international human rights law, and international environmental law precedent.²

Common Principles

Shared Responsibility

Affected State Responsibility

Affected states parties should assist individuals and remediate the environment affected by nuclear weapons use or testing in areas under their jurisdiction or control.

International Cooperation and Assistance

Other states parties, including states parties that have used or tested nuclear weapons, should provide financial, material, technical, and/or other assistance to affected states parties.

Exchange of Scientific and Technical Information

States parties and other actors should share information with affected states parties regarding the potential effects of nuclear weapons contamination and possible responses.

Capacity Building

States parties and other actors should promote capacity building to ensure long-term and effective implementation of victim assistance and environmental remediation.

Types of Harm

Victim assistance and environmental remediation should address harm caused or aggravated by nuclear weapons, including but not limited to: physical injuries and death; psychological injuries; social marginalization; economic loss; environmental degradation; loss of biodiversity; loss of access to natural resources; obstacles to participation in cultural life; displacement; and infringement of human rights.

Implementation Measures

National Strategies

Affected states parties should develop, implement, and periodically review and update national victim assistance and environmental remediation strategies.

Information Collection, Dissemination, and Preservation

Affected states parties should collect and disseminate information regarding the presence and effects of nuclear weapons contamination and associated responses, and preserve it for the conceivable radiological life of any waste.

Guiding Principles

Accessibility

Affected states parties should eliminate informational, physical, and other barriers to access to victim assistance and environmental remediation.

Inclusivity

Affected states parties should meaningfully consult with and actively involve affected individuals and communities, civil society organizations, and other stakeholders at all stages of victim assistance and environmental remediation.

Non-Discrimination

Assistance programs should not discriminate against or among victims or on the basis of race, sex, age, religion, disability, or other status.

Transparency

Affected states parties should ensure transparency at all stages of victim assistance and environmental remediation.

² Harvard Law School International Human Rights Clinic (IHRC) and 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), <http://hrp.law.harvard.edu/wp-content/uploads/2022/06/Facing-Fallout-2022.pdf>.

Victim Assistance

Purpose

Victim assistance should address victims' immediate and ongoing needs and promote the full realization of their human rights.

Types of Assistance

Victim assistance should include but is not limited to: medical care, rehabilitation, and psychological support; provision for social and economic inclusion; acknowledgment of harm; measures to facilitate participation in cultural life; access to information; and measures to promote victims' human rights.

Environmental Remediation

Purpose and Character

Purpose

Environmental remediation should address existing harm and unacceptable risks of future harm to the environment and affected communities caused by contamination from nuclear weapons use and testing.

Character

States parties should take a precautionary and iterative approach to environmental remediation. They should also follow international standards and best practices and use the best available technologies.

Steps of Environmental Remediation

Assessing, Surveying, and Recording

Affected states parties should assess, survey, and record radioactive contamination and exposure pathways in order to prioritize responses and develop remediation plans.

Optimization

Affected states parties should evaluate a range of remediation options and implement the one that produces the greatest benefit to affected communities and the environment.

Risk Education

Affected states parties should ensure that risk education programs are available to communities at risk from nuclear weapons contamination.

Preventing Radiation Exposure Pathways

Affected states parties should break the pathways by which people are exposed to nuclear weapons contamination, including by limiting access to contaminated sites and controlling food and water sources.

Addressing Contamination

When remedial measures are necessary and appropriate, affected states parties should address the contamination itself through measures such as containment or other forms of treatment.

Material Handling and Waste Management

Affected states should ensure that contaminated material is properly managed during handling, transport, and storage.

Long-Term Site Management

Affected states parties should actively manage remediation sites and waste storage facilities as long as they pose a risk of harm to people or the environment, including with ongoing staffing, monitoring, maintenance, and funding.

Resources

Article 36, *Banning Nuclear Weapons* (February 2013), https://article36.org/wp-content/uploads/2013/02/Report_web_23.02.13.pdf.

Bonnie Docherty, "From Obligation to Action: Advancing Victim Assistance and Environmental Remediation at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons," *Journal for Peace and Nuclear Disarmament*, vol. 3(2) (2020), pp. 253–64, <https://doi.org/10.1080/25751654.2020.1842657>.

Matthew B. Bolton and Elizabeth Minor, eds., Special Section on Humanitarian and Environmental Consequences of Nuclear Weapons Testing, *Global Policy*, vol. 12(1) (February 2021), <https://onlinelibrary.wiley.com/toc/17585899/2021/12/1>.

Harvard Law School 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://hrp.law.harvard.edu/wp-content/uploads/2019/05/TPNW_Myths_Realities_April2019.pdf.

IHRC and 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), <http://hrp.law.harvard.edu/wp-content/uploads/2022/06/Facing-Fallout-2022.pdf>.