
First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

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

Working paper submitted by ICAN on behalf of member organization Harvard Law School International Human Rights Clinic (IHRC)

I. Introduction

1. The victim assistance and environmental remediation obligations of the Treaty on the Prohibition of Nuclear Weapons (TPNW) are essential to the treaty's humanitarian purpose. States parties should take immediate action to begin implementation as well as make long-term commitments to sustain it. This working paper identifies steps states parties should pursue at the First Meeting of States Parties and during the following intersessional period. The paper also recommends principles states parties should follow in implementing the positive obligations over time.

II. Overview of Positive Obligations

2. Articles 6 and 7 of the treaty are designed to address ongoing harm to individuals and the environment as a result of nuclear weapons use or testing. These provisions of the treaty parallel the requirements of other humanitarian disarmament treaties, including the Mine Ban Treaty and the Convention on Cluster Munitions, which require victim assistance and clearance of areas contaminated by explosive ordnance.

3. Article 6(1) of the treaty obliges states parties to provide a range of assistance to individuals under their jurisdiction who have been affected by use or testing of nuclear weapons. Article 6(2) requires states parties to take measures toward environmental remediation of areas under their jurisdiction or control that are contaminated by activities related to testing or use of nuclear weapons.

4. Article 7 lays out the international cooperation and assistance provisions of the treaty. Under Article 7(3), states parties “in a position to do so” are obligated to “provide technical, material, and financial assistance to states parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.” Article 7(6) imposes special obligations on states parties that have used or tested nuclear

weapons “to provide adequate assistance to affected states parties, for the purpose of victim assistance and environmental remediation.”

III. Short-Term Actions

5. The First Meeting of States Parties to the TPNW and the following intersessional period provide an important opportunity for states parties 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. The First Meeting of States Parties should adopt a political declaration, an action plan, and a final report, in which states parties agree to:

- (a) Establish an implementation framework;
- (b) Commit to guiding principles; and
- (c) Institute an intersessional work plan.¹

Establish an Implementation Framework

6. States parties should begin the process of victim assistance and environmental remediation by establishing a framework for implementing the obligations that includes assessments and national plans.

7. Each state party should assess the needs of individuals affected by nuclear weapons use or testing in areas under its jurisdiction. It should assess the nature, extent, and effects of contamination from nuclear weapons use or testing in areas under its jurisdiction or control as well as any pathways through which communities might be exposed to unacceptable risk. Each state party should also evaluate its national capacity to meet victims’ needs and remediate the contaminated environment. In so doing, the state party should consult with victims, their representative organizations, and other experts.

8. Each state party 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.

9. Each affected state party should also adopt a national victim assistance plan and national environmental remediation plan. As part of each plan, the state party 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 party should, in addition, pass relevant implementation laws and policies.

10. Other states parties should develop frameworks for providing international cooperation and assistance that will help affected states parties meet their Article 6 obligations. Donors and affected states parties should work together to develop a “specific and effective framework to discuss assistance and international cooperation

¹ For further detail on how states should implement the treaty’s positive obligations, see 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, issue 2 (2020), <https://www.tandfonline.com/doi/full/10.1080/25751654.2020.1842657>; 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.

issues in order to identify needs and mobilise resources as well as to allow other States to present lessons learned and good practices.”²

11. Although each state party’s assessments and plans will evolve as more information is gathered and technology and scientific knowledge changes, the First Meeting of States Parties should set a deadline, ideally by the Second Meeting of States Parties, for completing the initial iteration of these steps.

Commit to Guiding Principles

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

13. States parties are required by Article 6(1) to undertake victim assistance efforts “without discrimination.” In accordance with international human rights law, including the Convention on the Rights of Persons with Disabilities, and other humanitarian disarmament treaties, states should not discriminate against victims, between victims, and among victims and other persons with other disabilities.

14. States parties should commit to transparency by establishing guidelines for regular reporting. Although the text of the TPNW does not include formal reporting requirements, regular reporting provides information to affected communities, which can help them protect themselves; allows for independent monitoring; promotes accountability; and facilitates the allocation of resources in line with areas of need. Affected states parties can report on their progress in implementing Article 6, provide information on forthcoming initiatives, and identify areas where they could benefit from international support. Other states parties can report on their support for victim assistance and environmental remediation pursuant to Article 7. TPNW states parties can look to other humanitarian disarmament treaties, notably the Convention on Cluster Munitions and the Mine Ban Treaty, for models for voluntary reporting guidelines.

15. States parties should actively and meaningfully involve survivors, affected communities, civil society organizations, and other relevant stakeholders at all stages of the victim assistance and environmental remediation processes. They should also ensure that the First Meeting of States Parties 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, the needs of victims, and their preferences for how these needs and impacts are addressed. As part of promoting inclusivity, states parties should ensure programs are accessible, removing any physical and information barriers to access.

Institute an Intersessional Work Plan

16. The First Meeting of States Parties should establish an informal intersessional working group to examine the challenges of victim assistance and environmental remediation in more depth. This working group should provide a forum for reporting on progress in implementing Articles 6 and 7, exchanging best practices, facilitating international cooperation and assistance, and developing relevant international standards. The working group should operate in consultation with survivors, affected communities, civil society organizations, and other relevant stakeholders.

² Vientiane Action Plan, para. 15, Action #43, in Convention on Cluster Munitions First Meeting of States Parties, Final Document, CCM/MSP/2010/5, November 9-12, 2010, Annex II, pp. 9-16.

IV. Long-Term Measures

17. Victim assistance and environmental remediation are long-term undertakings that require considerable dedication by and cooperation among states. Harvard Law School's International Human Rights Clinic and the Conflict and Environment Observatory have developed sets of principles for implementing each that are rooted in humanitarian disarmament, international human rights law, and international environmental law.³ These principles encompass some the short-term actions discussed above, including conducting assessments, adopting national plans, collecting and disseminating information (reporting), and committing to guiding principles.

18. In this section, the paper lays out additional principles that are common to both victim assistance and environmental remediation as well as those that are specific to the individual obligations. While particularly relevant for states parties, the principles are also applicable to any state affected by the use or testing of nuclear weapons that seeks to assist victims or remediate contamination in its territory.

Common Principles

19. 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; harm 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, displacement of local communities, and substantial impairment of the realization of human rights.

20. The TPNW establishes a framework of shared responsibility for the treaty's positive obligations. Affected states parties bear the primary responsibility. 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 parties' sovereignty and follows the precedent of international human rights and humanitarian disarmament law. Other states parties, include those that have used or tested nuclear weapons, should provide financial, material, technical, and/or other assistance to affected states parties to spread the burden and ensure they can meet their victim assistance and environmental remediation responsibilities.

21. As part of this framework, states parties and non-state actors should exchange scientific and technical information regarding the impacts of and responses to nuclear weapons use or testing. They should also work to build affected states parties' capacity to ensure the latter can sustain victim assistance and environmental remediation activities over the long term.

³ For the full lists of and commentaries on these principles, see 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* (forthcoming June 2022).

Victim Assistance Principles

22. States parties should implement a wide variety of victim assistance measures to most effectively address the broad range of victims' needs. The treaty requires states parties to provide "medical care, rehabilitation and psychological support, as well as provide for [victims'] social and economic inclusion." States parties should also 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

23. States parties should take multiple steps in implementing their environmental remediation obligation. They should prevent exposure pathways 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. States parties should also address the contamination itself through treatment and containment measures, waste management, and long-term site management.

24. When planning for the remediation of a contaminated area, affected states parties 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. States parties should consider costs and benefits related to the environment, human health, society, culture, and the economy, and they should be guided by the preferences of affected communities and other stakeholders.

25. States parties 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, states parties 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, states parties 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.

V. Conclusion

26. States should seize the opportunity presented by the First Meeting of States Parties to launch implementation of the positive obligations established in Articles 6 and 7. Doing so will establish these critical obligations as a TPNW priority and set the stage for turning words on paper into actions in practice. These actions are simply the starting point, however, as victim assistance and environmental remediation are extended endeavours that require long-term commitments. Only by addressing the ongoing needs of victims and preventing future harm through environmental remediation can states parties fully realize the treaty's humanitarian goals.