

# Second Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons

Distr.: General  
14 November 2023

English only

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New York, 27 November–1 December 2023

## **Priorities for next steps on articles 6 and 7 on victim assistance, environmental remediation and international cooperation and assistance**

### **Working paper submitted by Article 36**

#### **I. An opportunity for humanitarian action**

1. The TPNW's obligations on victim assistance, environmental remediation and international cooperation and assistance establish the first international legal framework to address ongoing harm from the use and testing of nuclear weapons, through collective action amongst states parties and others supporting their work.
2. These obligations broaden the international framework for action on addressing nuclear weapons' humanitarian and environmental legacies – as well as the terms of the conversation about them – beyond existing bilateral and other routes through which assistance and redress have been and continue to be sought. The TPNW's articles 6 and 7 framework offers new possibilities for those concerned with the humanitarian and environmental impacts of nuclear weapons to act in solidarity towards addressing urgent, ongoing humanitarian and human rights impacts in affected states – whether those that have caused this harm are ready to provide full redress or not.
3. With the TPNW's recognition of the impact of use, testing and other nuclear weapons activities on people and places, and many states parties' collaborative approach to working with civil society and others, the opportunity has also been created for more effectively centring and including affected communities in international efforts to address nuclear legacies.
4. The goals of states parties' implementation of articles 6 and 7 must remain to:
  - Practically and measurably improve responses in victim assistance and environmental remediation, through mobilising international attention and resources, and developing and implementing improved approaches according to the priorities of affected communities and article 6's rights-based approach
  - Improve their understanding of and highlight the range of ongoing humanitarian and environmental impacts of nuclear weapons. These facts provide key evidence as to why these weapons must be stigmatised and eliminated

## II. Foundations established and progress made

5. The first Meeting of States Parties (1MSP) put in place the key pillars of the framework to implement articles 6 and 7. In actions 19-32 and 49-50 of the Vienna Action Plan, states parties established core principles for implementation, committed to inclusive ways of working, and adopted specific areas for action to drive forward their work.<sup>1</sup> Developed and then discussed at the 1MSP with input from civil society and people from affected communities, these actions provide a strong, clear, and meaningful foundation for work in the coming years. They represent a significant achievement by states parties and the wider community involved, which lay the groundwork for developing stronger norms and action to address nuclear harm through the TPNW.

6. Since 1MSP, states parties, under the leadership of Kazakhstan and Kiribati as co-chairs of the intersessional working group on articles 6 and 7, have worked on: initial assessments of the impacts of nuclear weapons use and testing in states parties, and national plans to address these; developing tools for voluntary reporting on national implementation; and examining possibilities for establishing an international trust fund to support affected states, as well as other modalities for international cooperation and assistance. The TPNW's gender focal point, Chile, also held meetings on the theme of working towards establishing guidelines for age- and gender-sensitive implementation. This work has been undertaken in a spirit of openness to the participation of civil society and affected communities, whose contributions have been invited to various meetings.<sup>2</sup>

7. Work to address nuclear legacies, and entrenching robust inclusive ways of working to do so, will be a long-term task. Nevertheless, with the TPNW still a young treaty of limited collective resources, the commitment states parties have already shown to undertaking serious work to strengthen the structures and foundations for implementing articles 6 and 7 is commendable. It is particularly significant that states parties affected by the testing of nuclear weapons have taken the lead in devoting resources to this work: though concerns have been expressed that article 6 risks placing further unfair burden or even blame on affected states, states parties have, rather, been looking to use the framework as an opportunity. This must be built upon.

8. To continue their work of strengthening the structures for implementing articles 6 and 7, at the 2MSP states parties should:

- Adopt and implement the decisions proposed in the articles 6 and 7 co-chairs' working paper
- Highlight the importance of articles 6 and 7 as part of the TPNW's humanitarian response to nuclear weapons; recognise the progress made and reported to 2MSP by states parties so far; and report on activities they have undertaken
- Towards generating greater understanding of the humanitarian impacts of nuclear testing and assisting states to make assessments on ongoing impacts, commit to declassifying and making public and accessible fallout monitoring records where these are held, including so that this information can be used by researchers applying the latest methodologies

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<sup>1</sup> See UN Document TPNW/MSP/2022/6

<sup>2</sup> For summaries of the work undertaken and other resources and recommendations, see ICAN, 'Intersessional progress on the TPNW,' [https://www.icanw.org/tpnw\\_intersessional\\_work](https://www.icanw.org/tpnw_intersessional_work)

### III. A growing norm

9. Since IMSP, driven by the humanitarian initiative on nuclear weapons, the obligations established in the TPNW, and the work of its states parties, international attention to the subject of addressing nuclear legacies has been building in international forums. At the Non-Proliferation Treaty (NPT)'s Review Conference in 2022, a range of states recognised the importance of addressing these impacts. A call on NPT states parties to engage with such efforts was included in the unadopted outcome document. At the 2023 NPT Preparatory Committee, victim assistance and environmental remediation was again raised, with a call for assistance and redress made by Kazakhstan and Kiribati. Most recently, Kazakhstan and Kiribati tabled a resolution to the UN General Assembly's First Committee on 'Addressing the legacy of nuclear weapons', which passed in October 2023 with an overwhelming vote in favour – including by a majority of countries that are not yet party to the TPNW. More broadly, attention to the issue of nuclear legacies has been seen in the passing of a resolution on support to the Marshall Islands at the Human Rights Council in 2022, and in the UN General Assembly through a regular triennial resolution on assistance to Kazakhstan and in resolutions on French Polynesia.

10. Alongside work in the TPNW itself, these developments are significant for the focus and interest they help to build amongst the international community in addressing nuclear legacies. Such interest should be a step that leads to practical action with and for affected communities. The embedding of addressing nuclear legacy issues in the broader international discourse on nuclear weapons also contributes to entrenching and universalising the TPNW's norms – specifically its developing humanitarian and human rights-based norms on victim assistance and environmental remediation. Attention to nuclear legacy issues in a range of international forums also contributes to building and maintaining international focus on the humanitarian impacts of nuclear weapons.

11. In all relevant international forums, states parties to the TPNW and states not yet party concerned with the humanitarian impacts of nuclear weapons should:

- Recognise the importance of victim assistance, environmental remediation and international cooperation and assistance
- Highlight the TPNW's framework on addressing nuclear legacies, and the need for all states to engage with work on these issues, following the passage of the First Committee resolution on 'Addressing the legacy of nuclear weapons'

### IV. Next steps in meaningful implementation

12. The framework agreed at the IMSP on articles 6 and 7, and activity and momentum generated since, places requirements and expectations on states parties. Though the implementation of articles 6 and 7 will be a long-term and progressively realised task, there is a need for focused, prioritised action within the TPNW to meet these requirements and expectations.

13. The purpose of the obligations in articles 6 and 7 should be to serve affected communities, raising the profile of unanswered questions and improving how impacts are addressed in the short term – as one contribution towards the broader nuclear justice that communities demand. Though states parties have focused so far on the impacts of the nuclear weapons activities mentioned explicitly in article 6 (use and testing), in taking implementation forward they should be mindful of the impacts of nuclear weapons activities more broadly that are noted in the TPNW's preamble and the obligation to implement article 6.1 without discrimination. Ultimately, states

parties have the opportunity, through the TPNW, to set standards of practice that can improve responses to affected communities in states parties and beyond through taking a holistic, humanitarian approach.

14. States parties should consider national implementation activities the core of their work, on which other discussions such as the establishment of a voluntary international trust fund rely.

15. Though they are based on legal structures in other humanitarian disarmament treaties, articles 6 and 7 represent a new approach when it comes to addressing nuclear harm, in that they respond to a broad range of impacts and rights.

16. As the first and only international legal framework on these issues, the TPNW should remain the centre of discussions on developing progressive norms and practice when it comes to addressing nuclear legacies.

17. Whilst continuing their work to develop structures for implementation and normative recognition of the value of addressing nuclear legacies, in the next intersessional period states parties should therefore also:

- Commence the convening of more in-depth discussions that can contribute towards building progressive norms and practice for victim assistance, environmental remediation and international cooperation and assistance. Productive areas of discussion to do so could include looking in detail at themes such as: the range of harms suffered by affected communities and how they are currently responded to; how the requirement for non-discrimination in victim assistance should be implemented in the context of addressing the impacts of nuclear weapons; and critically examining the limits of current approaches to victim assistance and environmental remediation (given that these are not purely scientific or technical matters, but involve policy decisions that should be made based on the needs, rights and knowledge of affected communities)<sup>3</sup>
- Push forward work on the theme of age- and gender-sensitivity, reviewing current national practice and lessons from other frameworks
- Make space to work in earnest on developing inclusive ways of working in implementation, particularly when it comes to the inclusion of affected communities and Indigenous Peoples<sup>4</sup>

18. States parties should not expect to fully address all of these areas by the 3MSP. Rather, they should now start approaching them through practical work and discussions.

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<sup>3</sup> Starting points on some of these themes are provided by two recent reports by the Harvard Law School International Human Rights Clinic and the Conflict and Environment Observatory: 'Confronting Conflict Pollution' (2020) [https://ceobs.org/wp-content/uploads/2020/09/Harvard\\_CEOBS\\_Confronting\\_Conflict\\_Pollution\\_2020.pdf](https://ceobs.org/wp-content/uploads/2020/09/Harvard_CEOBS_Confronting_Conflict_Pollution_2020.pdf) and 'Facing Fallout' (2022) [https://ceobs.org/wp-content/uploads/2022/06/Harvard\\_IHRC\\_CEOBS\\_Facing\\_Fallout\\_2022.pdf](https://ceobs.org/wp-content/uploads/2022/06/Harvard_IHRC_CEOBS_Facing_Fallout_2022.pdf) as well as the International Committee of the Red Cross's Briefing Note (2023) on 'The Obligation to Assist Victims and Remediate the Environment Within a Framework of Shared Responsibility Under the Treaty on the Prohibition of Nuclear Weapons' [https://www.icrc.org/en/download/file/267925/victim\\_assistance\\_and\\_environmental\\_remediation\\_obligations\\_-\\_briefing\\_note\\_-\\_icrc.pdf](https://www.icrc.org/en/download/file/267925/victim_assistance_and_environmental_remediation_obligations_-_briefing_note_-_icrc.pdf). Further recommendations on national implementation are also available in ICAN (2023) 'Recommendations on national implementation measures and voluntary reporting' [https://assets.nationbuilder.com/ican/pages/3187/attachments/original/1696247901/ICAN\\_nat\\_imp\\_l\\_reporting\\_6\\_7\\_paper\\_updated.pdf?1696247901](https://assets.nationbuilder.com/ican/pages/3187/attachments/original/1696247901/ICAN_nat_imp_l_reporting_6_7_paper_updated.pdf?1696247901)

<sup>4</sup> As a starting point, states parties should consider the Protocols for Seeking Nuclear Truth with Integrity developed by the Nuclear Truth Project, available at: <https://nucleartruthproject.org/talking-protocols/> and submitted to the 1MSP as NGO Working Paper 23

## **V. A route for constructive engagement by states not party**

19. Work to address nuclear legacies – including that taking place under articles 6 and 7 of the TPNW – remains an area in which states concerned by the humanitarian, environmental, human rights, and development impacts of nuclear weapons – both parties to the TPNW and not – have an opportunity to build bridges around shared humanitarian goals. Some states not party to the TPNW have already expressed an interest in possibilities to constructively engage with work under the treaty on victim assistance and environmental remediation, at the IMSP and in other forums.

20. Such engagement would be beneficial to the humanitarian objectives of the TPNW through the practical contributions it could bring, as well as to the promotion of the TPNW's normative foundations, and to encouraging universalisation amongst states with humanitarian goals. If states' commitment to addressing nuclear legacies and humanitarian impacts is sincere, ultimately they must join the TPNW. States not party with affected communities should in particular be encouraged to engage with work to implement articles 6 and 7 developing under the TPNW, as should states not party that used or tested nuclear weapons on the territories of states parties. (The Vienna Action Plan commits states parties to engagement and information exchange with the latter in action 20).

21. States not party to the TPNW concerned with addressing nuclear legacies should, considering their support for the resolution at the 2023 UN General Assembly First Committee on 'Addressing the legacy of nuclear weapons':

- Commit to attend meetings of the TPNW to: listen to information on the needs of affected states and communities and follow the activities they are undertaking; share the action they will take on victim assistance and environmental remediation in line with the resolution, to facilitate the effective exchange of information; and engage with TPNW states parties to work together constructively on this theme
- Continue to raise the importance of addressing nuclear legacies in all relevant forums, and engage in dialogue with all relevant stakeholders towards taking the most effective action on these issues