



# General Assembly

Distr.: General  
7 September 2012

English only

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## Human Rights Council

Twenty-first session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the American Anthropological Association, a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Reparation and the right to remedy in the Marshall Islands nuclear disaster\*\***

The right to health, a decent existence, work and occupational safety and health; the right to an adequate standard of living, freedom from hunger, an adequate and wholesome diet and decent housing; the right to education, culture, equality and non-discrimination, dignity and harmonious development of the personality; the right to security of person and of the family; the right to development; the right to meaningful remedy... all are rights established by existing United Nations covenants. These rights represent the ideal that governments strive for in providing for their citizens basic life requirements that all humans are entitled to. Guaranteeing these rights requires strategies and structures that insure equitable access and sustainable use of critical resources - sociopolitical systems that insure environmental quality and social equity.<sup>1</sup>

This ideal remains illusive in places like the Marshall Islands where the biodegenerative consequences of a nuclear colonial history alter and affect all aspects of life, yet efforts to provide reparation are too often limited to compensation, with grossly-inadequate or non-existent effort to insure restitution, rehabilitation, satisfaction, and non-repetition. A product of negotiation and compromise, and an imperfect and singular reflection of the economic value of damage, injury and loss, compensation is arguably the form of reparation with the greatest distance between reparation and justice.<sup>2</sup> How can a monetary sum compensate for the loss of life, or a way of life, or the land and resources meant to support the generations to come? Where is the justice in treating a small portion of the injury to people and their environment, when the nature of that injury will continue to contaminate and change the atmosphere, marine and terrestrial realms, and life processes for tens of thousands of years?

It is the consequences of limited and inadequate reparation in the Marshall Islands that prompted Special Rapporteur Georgecu's Mission to the Marshall Islands, where he found ample evidence that the failure to fully protect and restore the health and well-being of the Marshallese nation has generated an array of rights-abusive conditions. The American Anthropological Association strongly supports the Special Rapporteur's report and his recommendations, to which we add these following observations and recommendations.

As residents of a United Nations designated trust territory governed by the United States, the Marshallese people:

- experienced fallout and environmental contamination that compromised the health of the individuals, communities, and an entire nation;
- experienced the loss of traditionally-held land and marine resources without negotiation or just compensation;
- suffered through decades of imposed medical research documenting the human effects of exposure in a select portion of the exposed population while ignoring

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\*\* The Center for Political Ecology, an NGO without consultative status, also shares the views expressed in this statement.

<sup>1</sup> As first noted in Ms. Fatima Zaire Ksentini's preliminary report on Human Rights and the Environment prepared for the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (U.N. Doc.E/CN.4Sub2/1991/8).

<sup>2</sup> "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law" (United Nations Commission on Human Rights E/CN.4/2005/L.48).

radiogenic health conditions in other atolls, a human subject experimentation program that arguably violated the Nuremburg code; and,

- when negotiating the terms of independence in free association with the United States were severely hampered by the US refusal to fully disclose the full extent of military activities, including the scientific documentation of the environmental and health impacts of serving as the Pacific Proving Ground for nuclear, biological, and chemical weapons of mass destruction.

Following the near-lethal fallout from nuclear weapons tests in 1954 which blanketed occupied islands, Marshallese petitioned the United Nations to cease nuclear weapons tests, requests that were ignored, and petitioned again following nuclear weapons tests in 1956, prompting from the United States a statement of culpability in their address to the United Nations General Assembly, including the promise to provide full and complete remedy.<sup>3</sup> In 1988, in exchange for dropping claims pending in the US Courts and limited independence for the US territory, the United States established a Nuclear Claims Tribunal as a reparation mechanism to receive and adjudicate personal injury and property damage claims. The NCT functioned with a limited pool of \$150 million and the right to return to Congress to expand that pool should conditions change or new information come to light. Over the years, in an effort to develop and hear claims, the NCT brought new independent experts in to evaluate the extent of damage and develop remedial recommendations. After a decade of investigation and claims hearings, over 2,000 Marshallese were found to be eligible for medical compensation from some 75 different forms of cancer and other radiogenic disease, and some were awarded compensation for their experiences in human radiation experiments. Property damage awards to and cost to restore four atolls (Bikini, Eniwetok, Utrik, and Rongelap) total some \$4 billion. With less than \$1 million left in the fund, the Marshall Islands Government has petitioned the US Government to fully implement the Tribunal, pointing to the extensive evidence that has come to light via declassification in the 1990s. Failure to respond to these requests prompted the Marshall Islands Government to shut down Nuclear Claims Tribunal operations, with personal injury and property damage awards still to be fully paid, and new claims unaddressed.<sup>4</sup>

Reparation involves those social, political, and economic actions, mechanisms, and processes that allow for meaningful remedy in all its forms, and thus the restoration of human dignity.<sup>5</sup> We argue that the true measure of reparation is the restoration of what has been lost, and in this instance what has been lost is a healthy environment that sustains a viable, culturally-distinct, Pacific island way of life. Given the many constraints and impossibilities in this heavily polluted context -- atomized islands, high-level nuclear waste dumps, chronic and acute health effects to individuals in the past, present, and in the

<sup>3</sup> Petition from the Marshallese people concerning the Pacific Islands, UN Doc. T/PET/10/29, 9 March 1956, Enclosure IV: Statement on nuclear Tests in the U.S. Trust Territory by U.S. Representative to Trusteeship Council Sub-Committee on Petitions.

<sup>4</sup> Details from *Consequential Damages of Nuclear War: The Rongelap Report*, BR Johnston and HM Barker (Left Coast Press: Walnut Creek, CA) 2008. Note, the recognition that the Nuclear Claims Tribunal was grossly underfunded was acknowledged in 2010 by the President's Cancer Panel which called for increased funding to honor and fully fund the judgments of the Tribunal. See, National Cancer Institute, National Institutes of Health, U.S. Department of Health and Human Services, "President's Cancer Panel: Reducing Environmental Cancer Risk: What can we do now." 2008-2009 Annual Report, p.108, available from: [http://deainfo.nci.nih.gov/advisory/pcp/annualreports/pcp08-09rpt/PCP\\_Report\\_08-09\\_508.pdf](http://deainfo.nci.nih.gov/advisory/pcp/annualreports/pcp08-09rpt/PCP_Report_08-09_508.pdf).

<sup>5</sup> American Anthropological Association Committee for Human Rights Reparations Task Force Report, *Waging War, Making Peace – Reparations and Human Rights*, BR Johnston and S Slyomovics, eds., (Left Coast Press: Walnut Creek, CA) 2009.

generations to come -- meaningful remedy requires restoration of a healthy and sustainable way of life with respect for the full array of needs, rights and dignity of this indigenous nation.<sup>6</sup>

We see these needs as obligations of the United States and the Marshall Islands Government, but also as obligations for the United Nations community which established the unique the territory as a unique strategic trust status and entrusted the United States with it's administration.

We call on this Council to take action to insure that the bilateral relationship between the Marshall Islands and the United States is strengthened through:

- Full disclosure, cooperation, and assistance from the United States in addressing the environmental contamination and human health ramifications of past and current military use of the Marshall Islands, including records associated with biological, chemical, nuclear and other weapons testing; full access to data associated with environmental surveys; and, full access to the medical records and related records of scientific research involving Marshallese subjects and their biological samples, including genetic samples.
- Actions of acknowledgement, full apology and amends to the Marshallese people for the many damages resulting from UN Strategic Trust designation and the United States military activities, harmful exposures, and related human subject experimentation in the Marshall Islands, including full funding by the United States of the Marshall Islands Nuclear Claims Tribunal awards to addressing past and future claims, and expansion of nuclear health treatment and compensation programs to include the injuries of remediation workers, and the personal health impacts that extend across the nation and the generations.
- Mutual engagement in building, staffing, and sustaining a comprehensive health treatment system in the Marshall Islands that attends to the acute, chronic, and inter-generational effects of exposure to radiogenic and other toxic contaminants resulting from the military use of this nation, and environmental health monitoring and remediation system to respond to new hazards resulting from downwind/downstream exposure to nuclear disasters in the region.
- Bilateral and international partnership that develop the educational capacity, technical expertise and related infrastructure to attend to the health, environment and sustainable development needs of the Marshall Islands, with standards in remediation based on precautionary principles, and a restoration praxis which emphasizes innovation in science and technology.
- Actions that demonstrate a guarantee of non-repetition in the violations of bioethical norms and humanitarian law suggested by human subject experimentation, and in the violations of humanitarian law resulting from the development, testing and use of weapons of mass destruction.

International attention to this history and experience is long overdue, and sadly and sorely relevant to a post-Fukushima world. Marshallese efforts to adjust and adapt to historically challenging circumstances, especially strategies that restore and build a culturally meaningful and sustainable way of life, offer lessons relevant to all members of the United Nations.

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<sup>6</sup> United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295).