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Statement of The Honorable Casten Nemra

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Before the House Committee on Natural Resources
Subcommittee on Oversight & Investigations

Regarding the U.S. Nuclear Legacy in the Marshall Islands

October 21, 2021

Thank you, Madam Chair and members of this Committee. On behalf of President David Kabua, the Government, and People of the Republic of the Marshall Islands, it is indeed my honor and privilege to testify before you here today virtually from Majuro Atoll, the capital of our nation on the legacy and continuing issues resulting from the U.S. Nuclear Testing Program in the Marshall Islands.

This is a story of promises and commitments made, but not kept. I want to begin my testimony today with a statement from U.S. President Harry S. Truman of November 25, 1947, and presented to the United Nations Security Council that were concerned about the people of Enewetak who were being removed and relocated so that the U.S. could conduct its nuclear weapons test. President Truman's statement read: "*The Enewetakese will be accorded all rights which are the normal constitutional rights of the citizens under the Constitution, but will be dealt with as wards of the United States for whom this country has special responsibilities,*"

The U.S. detonated a total of 67 thermonuclear atmospheric tests on Enewetak and Bikini Atolls in the Marshall Islands between 1946 and 1958, representing nearly 60 percent of all atmospheric tests ever conducted by the U.S. This was equivalent to the detonation of 1.7 Hiroshima bombs every day for 12 years. In terms of radioactive iodine alone, 6.3 billion curies of iodine-131 was released to the atmosphere because of the nuclear testing in the RMI-an amount 42 times greater than the 150 million curies released by the atmospheric testing in Nevada, 150 times greater than the estimated 40 million curies released as a result of the Chernobyl nuclear accident, and

8,500 times greater than the 739,000 curies released from Atomic Energy Commission operations at Hanford, Washington.

Many of our people were removed from their homes including entire communities from Bikini, Enewetak, Rongelap, and Utrik Atolls. These communities were relocated, and then, in some cases such as Bikini and Rongelap returned on the advice and promises of the U.S. Government that it was safe to do so, only to discover after being returned to their home islands for several years that radiation levels were too high, and no local foods could be safely consumed. Entire communities then had to go through the additional trauma of being relocated again. Some islands were completely vaporized by the tests resulting in giant craters in the reef, and many others remain unsafe for human habitation today, and will for several generations to come. The people of Rongelap experienced the Bravo Shot on March 1,1954, from Bikini Atoll, with the power of 15 megatons, that went forward even though U.S. officials knew in advance that the wind would blow the fallout over Rongelap Atoll less than 95 miles to the east of Bikini. The result was that without warning, massive amounts of radioactive particles and debris fell on Rongelap, (like snowfall) while children played. The Rongelap people were then subjected to human experiments without their consent, and under the pretense of providing health care in what was known as "Project 4.1". People reported the birth of babies without bones, "jellyfish babies" in the northern Marshall Islands after the tests, something never seen before, or ever explained to them. These were just a few of the indignities, trauma, and suffering by the Marshallese people during and after the testing that resulted in a horrible legacy.

On October 21,1986, (exactly 35 years ago today), the UN Trusteeship was terminated, and the Compact of Free Association came into effect between our Governments which contained a structure and framework to settle claims by the people and government of the Marshall Islands arising as a result of the U.S. Nuclear Testing program. Section 177 of the Compact provides: *"The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands,...resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958."* This provision was implemented by way of a separate subsidiary agreement known as the Section 177 Agreement. That Agreement provided for a $150 million Nuclear Claims Fund that was to pay out amounts for specified purposes including healthcare, food, agricultural maintenance, and radiological surveillance; payments to four atolls of Bikini, Enewetak, Rongelap, and Utrik for community distributions and to establish their own Claims Funds; and for the establishment; operations and payment of awards for

the Nuclear Claims Tribunal which *"shall have jurisdiction to render final determination upon all claims past, present and future, of the Government, citizens and nationals of*

the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program…".

The Tribunal adopted a program that consisted of two categories of awards: damage to persons, and damage to property. Damage to persons compensated people who suffered from cancers, leukemias, and other radiogenic related illnesses and was based on the U.S. model of the Radiation Exposure Compensation Act, (RECA). The Tribunal consulted with people in the US Government administering the RECA program and engaged in an annual review to learn the latest medical evidence from expert epidemiologists including information from the joint U.S.-Japan Radiation Effects Research Foundation (RERF) who tracked the health outcomes of survivors of the atomic bomb detonations in Japan in World War II. Although the Marshall Islands tests emitted 42 times the amount of radiation in the atmosphere than the Nevada tests, U.S. radiation exposure victims continue to be compensated under RECA as they should, while Marshallese victims have not received their full awards and new claims are entirely unfunded. This is not a criticism of RECA, as Congress and the U.S. Government are clearly doing the right thing for U.S. citizens who were exposed to radiation from nuclear tests. This does demonstrate, however, the manifest inequity and unfairness of how the U.S. Government has treated Marshallese victims of the U.S. atmospheric nuclear tests.

The Tribunal also held hearings and considered damage to property claims in accordance with the provisions of the Section 177 Agreement and our domestic legislation establishing the Nuclear Claims Tribunal. These judicial proceedings involved the use of expert witness, land appraisers, and applied well established principles of U.S. law in their decisions. The awards made in damage to property claims are substantial and are mostly unpaid.

The last payment on any Tribunal awards was made in 2008. There is no funding available to compensate for the unpaid awards, continue radiation related healthcare, or engage in any other activity to address the consequences of the U.S. Nuclear Testing Program. A basic and fundamental reason for this is that the Nuclear Claims Fund of $150 million never produced the $18 million "in perpetuity" as was assumed it would back when it was negotiated and agreed. This was due to the flawed and unrealistic expected investment return of 12% per annum.

Madam Chair, I would like to refer to two important documents that describe the processes used by the Tribunal in its programs and proceedings. "The Nuclear Claims Tribunal of the Republic of the Marshall Islands: An Independent Examination and Assessment of its Decision-Making Processes" by former US Attorney General Dick Thornburgh, Glenn Reichardt, and Jon Stanley, January 2003, and "THE OPERATIONS OF THE MARSHALL ISLANDS NUCLEAR CLAIMS TRIBUNAL ESTABLISHED PURSUANT TO U. S. PUBLIC LAW 99-239" Outline of prepared remarks for Congressional Staff Briefing on April 23, 2004 by Bill Graham, Public Advocate, Nuclear Claims Tribunal. These documents may be found at (https://www.rmiembassyus.org/s/CongStaffBriefing-Public-Advocate-2004.pdf and https://www.rmiembassyus.org/s/Thornburg-report.pdf)

The RMI has pursued remedies available to it under the Section 177 Agreement including the "changed circumstances" provision. Our government filed a petition in September 2000, outlining the reasons why changed circumstances exist. The State Department's response to the petition largely insisted that changed circumstances do not exist because the events took place before the Section 177 Agreement, and were thus "known" by the parties, even though most information about the tests was still classified and largely unknown at the time the Section 177 Agreement became effective. Madam Chair, it certainly seems to us that the State Department review of the RMI's Changed Circumstances Petition appears to be a classic case of where the outcome was decided in advance without examining the evidence. What then could ever be a "changed circumstance" under this approach?

The U.S. Executive has refused to even discuss these issues, although the Section 177 Agreement provides for such consultations. They make vague references to a litigation risk even though it has been resolved in the courts that the 177 Agreement provided a "full and final settlement" of all claims that could be made judicially. If there has been a full and final settlement of claims according to the courts, how can there be a litigation risk?

There are also provisions in the U.S. Compact Act which allows for continuing authorizations to address the consequences of nuclear testing which remain available, but not subject to discussion with the U.S. Executive branch. They have even suggested that they cannot and will not do anything to discuss the authorization in the U.S. laws that approved the Compact and the Amended Compact for additional appropriations on *ex gratia* basis: another breach of the essence of the association between our governments.

Over the years, we have repeatedly been told by State and Interior staff that they have no authority to discuss this most important of issues and will not -- nor will they seek the authority.

Now, there is new information available concerning the nuclear waste dump known as the Runit dome. We now know a tremendous amount more related to poisonous remains of U.S. weapons testing at Enewetak than we did even in 2000, when the RMI filed its Changed Circumstances petition.

First, the U.S. shipped radioactive waste from Nevada and dumped it there.
Second, the hazardous material is not only nuclear; there are remnants of chemical and biological weapons.
Third, concerning the storage facility that the U.S. built on Runit Island, the rising sea is causing radioactive waste to leak into the lagoon and the Pacific because cost cutting measures were taken when constructing the concrete dome over a bomb crater with a sand base.
Fourth, radioactive waste was buried in the lagoon.
Fifth, dangerous waste was spilled on Enjebi Island.
Sixth, and perhaps most shockingly, 99% of the deadly plutonium is not under the dome.
Seventh, the U.S. Energy Department has never conducted the once every four years inspection of the dome and its surroundings required by the U.S. Insular Areas Act of 2011.
Eighth, despite the U.S. National Defense Authorization Act for Fiscal Year 2020 requiring a full report on the dome and its environs, U.S. Energy Department officials submitted an incomplete report and continue to withhold information that would enable the people living on Enewetak to know the full extent of the danger they face.
And finally, also extremely shocking, a U.S. Energy Department official this year suggested -- on the advice of a U.S. State Department official -- that the Government of the Marshall Islands is responsible for the deficient dome.

In short, we continue to learn new information that was not known at the time the Section 177 Agreement became effective.

Cancers have increased substantially while the current Section 177 4 atoll Healthcare program only has enough money to collect data and provide minimal healthcare. The U.S. National Cancer Institute estimated 500 excess cancers, and Senate bill 1756 of 2007 increased the number of exposed atolls from the known 4 to 10. The additional 6 atolls include Ailuk, Kwajalein, Likiep, Mejit, Wotho and Wotje. Despite this, the RMI

does not have an oncologist, meaning that the consequences of the testing program continue as people don't receive care for their illnesses from U.S. radiation exposure.

I thank Chairman Grijalva of the full Committee for proposing and obtaining Committee approval of legislation to require a more fulsome report regarding the Runit dome and its surroundings and you, Madame Chair, for leading the House in approving that legislation in the National Defense Authorization Act for Fiscal Year 2022.

I convey equal thanks to you, Madame Chair, for leading the House in passing a provision of that bill, which would require declassification of all documents related to U.S. nuclear weapons testing in the Marshall Islands – with explanations to Congress for any material not released. It is important that this includes redacted information.

I also wish to express our heartfelt appreciation to you Madame Chair and the subcommittee for holding this hearing today. Your efforts and concern about these unaddressed issues related to U.S. atmospheric nuclear testing in the Marshall Islands is most appreciated by the Marshallese people and our government.

Unkept promises and unfilled commitments. This hardly looks like the U.S. has accepted responsibility for the consequences of its nuclear testing program in the Marshall Islands as promised in the Compact. I return to President Truman's statement in 1947. What happened to the promised, indeed special treatment that was to be accorded the Marshallese people? All the rights of citizens under the Constitution? Instead, it seems to us that the U.S. has attempted to relegate the entire matter to the archives of foreign settlements, never to be examined or reviewed again even as new and previously concealed and withheld information continues to become known.

The U.S. has no closer association than with the Marshall Islands. We have given the U.S. authority to exercise two of the most fundamental aspects of our national sovereignty to protect U.S. security, ultimate control of: our borders -- which cover an expanse of the Pacific as large as the United States east of the Mississippi -- and our interactions with other nations. Our young men and women serve in the U.S. Armed Forces at rates higher than most U.S. States. We host what the Joint Chiefs of Staff have categorized as "the world's premiere range for intercontinental ballistic missile testing and space operations support." We remain consistently one of the U.S.'s strongest allies in the United Nations.

Madam Chair, the nuclear issues must be addressed and the RMI will insist that discussions take place in the current Compact negotiations to deal with these many unresolved issues related to U.S. atmospheric nuclear testing in the Marshall Islands which have been put off far too long. The U.S. negotiating team needs to be granted the requisite authority to engage in those dialogues and discuss measures to address the outstanding issues. The Marshallese people will not settle for anything less.

Kommol tata/ Thank you very much.