

# Fukushima nuclear power accidents and human rights' remedy under the international law

With a report on the state of litigations by victims of the Fukushima nuclear accidents  
from 2013 - 2019

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## Abstract

Since the 11<sup>th</sup> of March in 2011, the Government of Japan has been faced with numerous litigations by nuclear-accident victims. International human rights bodies made some recommendations for improving a human rights situation of the victims of the Fukushima nuclear accidents. They were established on the human rights treaties to which Japan is a State Party. For instance, the Committee on Social and Cultural Rights was concerned with the unfulfilled specific needs of disadvantaged and vulnerable groups, such as older persons, persons with disabilities, women and children, as well as the lack of transparency and disclosure of essential information regarding the safety of nuclear power installations (2013). The Human Rights Committee on Civil and Political Rights took account of the situation on returning to (un)decontaminated areas (2014). Some independent rapporteurs also visited Japan to evaluate the human rights situation after the Fukushima nuclear accidents. Especially in his report to the UN Human Rights Council, Special Rapporteur on the rights of health, Anand Grover, recommended that Japan should take some steps to improve the situation regarding the rights of health (2012).

Unfortunately, Japan does not take part in any optional protocol, which provides for an individual communication procedure. In this situation, it is important to ensure that the Government of Japan responds those recommendations coming up from state reporting system and carries out such recommendations in good faith. Secondly, it is crucial to explore how to make use of these recommendations for implementing international human rights' obligations at the national level, such as lawsuit in Japanese courts. Last but not least, civil societies can monitor an interaction between the government of Japan and the international human rights bodies, so-called "constructive dialogue", and participate in that dialogue by submitting their counter reports to the bodies.

## I. Introduction

Since the 11<sup>th</sup> of March 2011, almost 9 years have passed. Numerous measures to recover and maintain ordinary and peaceful lives for victims of the Fukushima nuclear power

accidents have been put into action by the Japanese Government and the Tokyo Electric Power Company (TEPCO). In addition, many inhabitants have evacuated from their homes to protect them from nuclear radiation and contamination. Some victims made lawsuits claiming that the Japanese Government and the TEPCO should indemnify their damages and losses due to the nuclear accidents. In almost all cases, legal issues are based on national law. However, since 2011, the Government of Japan has received recommendations from international human rights bodies stating how it should improve the legal situation of victims of the Fukushima nuclear accidents. In this context, Japan has endorsed the human rights treaties of the UN Human Rights Council.

This article introduces the situation of some litigations by the victims in Japan, especially the “Nariwai Litigation” (Part II), and then reviews the damages and losses due to the Fukushima nuclear disaster under the international human rights law through examining some recommendations by the international human rights bodies (Part III). In addressing such a tough theme, this article will pick up four aspects from our perspectives. First, what are relevant provisions under International Law with respect of human rights or protection of human beings in the context of nuclear disaster? Secondly, how broad and continuing is the situation of the damage regarding the Fukushima nuclear accidents now? Thirdly, what human rights violations have international human rights bodies addressed in the context of Fukushima nuclear victims? Lastly, what are practical ways to make use of the recommendations to improve the situation of Fukushima nuclear victims?

## II. Litigations by victims of the nuclear accident in Fukushima

### A. The state of damages

This chapter will recapitulate a situation of the damage in the Fukushima nuclear accident. At 14.46 on the 11<sup>th</sup> of March 2011, a heavy earthquake with a magnitude of 9.0 struck the Northern part of Japan causing a huge Tsunami wave. This also reached the Fukushima Daiichi Nuclear power station operated by the TEPCO, resulting in a full blackout and causing a nuclear accident - that is considered a “major accident” at “Level 7”, which is the highest of the International Nuclear Events Scale (INES).<sup>1</sup>

Due to this accident, a vast amount of radioactive substances spread out. All residents living in areas within 20km from the Fukushima Daiichi Nuclear power station were forced to leave by evacuation orders of the government; in some regions even beyond the 20km radius. Those residents had to live in evacuation centers. The maximum amount of radioactivity per hour in Fukushima city on the 15<sup>th</sup> of March 2011 was 20.40 $\mu$  Sv.

For a long period of time, entrance to areas within 20km from the power station was restricted. Therefore, the local inhabitants could not start with to restore their properties. For example, a cattle farmer in Namie town could not return to his home and cowshed. When he

returned in June 2011, almost all cattle he had raised with love had died of starvation. Even now, many people cannot return to their homes and continue to live in evacuation centers in the Fukushima prefecture and across the whole country.

About 50,000 people are still evacuated due to the Great East Japan Earthquake.<sup>2</sup> According to the Fukushima Prefecture Government, as of 10 July 2019, 31,483 of them are evacuated elsewhere than in the Fukushima Prefecture.<sup>3</sup> Given that the impact of the Fukushima accident is not limited to the Fukushima Prefecture, the number of evacuated persons caused by the accidents is supposed to be a little higher. In addition to this, there are also those who voluntarily evacuated, not because of an instruction of a local government, but by their own initiative.

These people face several problems and worries. For example, there are family members living apart from each other. Some fathers have to stay in Fukushima due to their work, while their wives and children have been evacuated. Some of them are facing with family problems, including divorce. In contrast, it exists those who cannot leave from Fukushima due to their works or other reasons and thus they are also suffering from the Fukushima accidents.

Radioactivity is measured at several monitoring posts at public facilities within the Fukushima prefecture. In a high level of radiation area, decontamination work is being undertaken by the government of Japan. As a result of this, the level of radiation is slowly decreasing, and evacuation orders have been lifted in some areas. Therefore, many people have returned to the Fukushima prefecture, but the contaminated soil is piled up at locations where every-day life takes place. In particular, parents are highly concerned about the radiation emerging from these piles.

In order to mitigate the risks associated with exposure to radioactive substances, many children were prohibited from playing outside after the nuclear accident. Because of lack of physical activity, children in Fukushima tend to be obese. In fact, in 2012, 2013 and 2014, Fukushima was ranked No.1 in Japan for childhood obesity several age groups.

In the health survey covering a period from April 2014 to March 2016, four children, who were diagnosed to have no problem with their thyroid gland in a previous health survey carried out in between October 2011 to March 2014, were diagnosed with suspicion of thyroid cancer. This is likely associated with chronic exposure to low level radiation as has been shown recently in large population studies.<sup>4</sup> Thus, people are forced to live with concerns of health effects from radiation. This article considers this to be a damage caused by the nuclear accident

Nine years have passed since the nuclear accident. The Fukushima Prefecture Government has made many efforts and restoration is making progress. However, the abolishment of the damages from the nuclear accident have not yet come to an end.

As for those damages, it is necessary to take note of a finding of the 1996 Advisory

Opinion by the International Court of Justice (ICJ). The Court held:

*“The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area...Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations”.*<sup>5</sup>

Of course, it is necessary to differentiate effects of the use of nuclear weapons from those of nuclear accidents. But the above-mentioned paragraph of the Opinion could also apply to the effect of nuclear accidents. There are some features of nuclear damage.

First of all, the nuclear accidents have caused damage to a very wide area. In the case of the Fukushima nuclear accidents, the area under evacuation order as of June 2011 covered about 1,100 square kilometers.

A second feature is the unimaginable longevity and continuity of the damage. According to the June 2011 press release of the Nuclear and Industrial Safety Agency of Japan, the total amount of radioactive substances discharged by the Fukushima Daiichi Nuclear Power Plant accident into the air is estimated at 770,000 terabecquerels ( $10^{12}$ ). According to the October 2011 press release of the Japan Atomic Energy Agency, the estimated total amount of radiation discharged by the Fukushima Daiichi Nuclear Power Plant accident into the sea, including radiation fallout, was 15 quadrillion ( $10^{15}$ ) becquerels. Decontamination work is going on now. But it is difficult to find the end of that work in the foreseeable future.

So those features lead us to the third one of the damage: comprehensiveness and diversity. The nuclear accident does harm all aspect of each victim's life. Nuclear victims face numerous losses. They lost their families, land, home, workplace, health, safety of food and their community, and were forced to flee to other areas. And men, women, children, elderly people, persons with disabilities, and foreign people etc. are affected. And, of course, the environment itself is also a victim.

Lastly, there is a fact worth of attention: the unpredictability of the damage. Radiation effects on health might affect a large variety of organs and they appear at a later stage. For these reasons, it is necessary to observe the status of nuclear victims carefully and for a long time.

Against those features of the damage, it is important to make it clear what human rights of Fukushima nuclear disaster victims are violated and how they should be remedied. Before that, this article will introduce some litigations and political activities by the victims in Japan.

## B. Litigations and political activities by the victims

### 1. Litigations are pending at courts across the country

Following the nuclear accident, victims who stayed in Fukushima as well as those

who have evacuated from Fukushima to several places, have filed lawsuits against the state of Japan or TEPCO (the operator of the Fukushima Daiichi nuclear power station) at courts in Fukushima or at their place of evacuation. Currently 12,000 victims are fighting their case to obtain legal remedies for the damages due to nuclear accident at about 30 courts across the country.

## 2. Nariwai Litigation

The Fukushima Nuclear Accident litigation called “*Nariwai wo kaese, chiiki wo kaese!*” (Restore our livelihoods! Return our homes!) that two of the authors (Nakase and Sekine) are involved in that litigation as members of the counsel group. It is the largest litigation with approximately 4000 plaintiffs. This section will report on such litigation including the actual circumstances of how the Japanese government and TEPCO compensate to the victims.<sup>6</sup>

In this litigation the plaintiffs demand firstly a reinstatement by reduction of the radiation dose rate to 0.04 $\mu$ Sv per hour or less, which was the dose rate prior to the nuclear accidents, and secondly, for the time until the rate reaches 0.04 $\mu$ Sv per hour, a monthly compensation of 50,000 Yen (which is 384 Euros at an exchange rate of 130 Yen per Euro). With the state and TEPCO as defendants such lawsuit was filed with the district courts of Fukushima in Fukushima city on 11th March 2013, exactly 2 years after the nuclear accident.

The approximately 4000 plaintiffs have come together to achieve their fundamental goals that they return their homes and lives as they were in their homes before the nuclear accident. They have gathered to support the goals of (1) overcoming the state’s and TEPCO’s distinction and separation of victims into categories and demand remedy for all victims, (2) obtaining not only monetary compensation, but demand concrete institutionalization of measures for rehabilitation of living, environment and health management, and (3) eventually achieving the exit from nuclear power generation. For those institutionalizations and changes in state policies to be realized, the plaintiffs pursue to clarify the legal responsibility also of the state and not only such of TEPCO as a (private) corporation.

A particularity to this Nariwai litigation is a diversity of plaintiffs: not only those who have evacuated but also residents who have not evacuated, with different ages and different occupations. The damages suffered by such plaintiffs cover almost all types of damages the nuclear accidents caused.

## 3. Insufficient compensation under the guideline of the relevant council of the Ministry of Education, Culture, Sports, Science and Technology

The guideline set up by the temporary Dispute Reconciliation Committee for Nuclear Damage Compensation appointed by the Ministry of Education, Culture, Sports, Science and Technology was extremely insufficient and led to a large division between the victims.

Evacuees who had evacuated following a governmental evacuation order were paid a compensation of 100,000 Yen (which equals 769 Euro at an exchange rate of 130 Yen per Euro) per month, but those who are living outside of the area under evacuation order could receive only a small amount of compensation or could not receive at all. Due to that difference, a conflict between them occurred.

- At the time of the nuclear accident, residents in Fukushima who were living in the coastal area, but outside the mandatory evacuations areas or certain areas of inland Fukushima prefecture, including Fukushima city, obtained a one-time compensation of 80,000 Yen (approx..615 Euro at an exchange rate of 130 Yen per Euro). Pregnant women and under-aged who had evacuated received a compensation of 680,000 Yen (approx. 5230 Euro) and those who had not evacuated 480,000Yen (approx. 3693 Euro).
- For residents who, at the time of the nuclear accident, were living in the southern parts of inland Fukushima prefecture and southern parts of Miyagi prefecture, the compensation under the guidelines did not apply, but TEPCO voluntarily indemnify for only pregnant women and under-aged a compensation of 240,000Yen (approx.. 1846 Euro).
- Almost all people living in other areas at time of the nuclear accident did not receive anything.

#### 4. Purpose of the Nariwai Litigation

The purpose of the Nariwai Litigation is to unite all victims and reveal the state's and TEPCO's legal responsibility, and then to transform national policy to deal with the actual situation of damage appropriately. Such purpose cannot be achieved solely by litigation. The victims due to the nuclear accident established an association of plaintiffs for the Nariwai litigation and progressed a political activity in parallel.

#### 5. What was revealed during process of the Nariwai Litigation

##### **(a) The Responsibility for the accident**

In the litigation, the state and TEPCO claim that (1) it was not possible to foresee the height of the Tsunami that actually reached the nuclear power station; and (2) even if it had been possible to foresee such, there would have only been an obligation to install a seawall and where such seawall on its own would not have been sufficient to prevent the nuclear accident.

However, plaintiff attorneys have examined this by analyzing the accident investigation report and obtaining advice from tsunami and nuclear power generation experts. As a result of this, they were able to reveal in court that the state and TEPCO were in a position to foresee a hit by such Tsunami as reached the power station. Furthermore, the state

and TEPCO could have prevented the nuclear accident by taking counter measures like making the building watertight and positioning the emergency power generator to a higher place.

**(b) The Damage**

In the Nariwai Litigation, the state and TEPCO claim that there was not a violation of victims' rights because health risks due to radiation of less than 20 mSv in aggregate per year are very low and a connection between such health risks to the nuclear accident has not yet been statistically established.

However, the damage of the nuclear accident is not limited to the mandatory evacuation areas where the aggregate amount of radiation exceeds 20mSv per year.

For example, a questionnaire by Professor Son of Chukyou University and his team with respect to mothers of all children born between April 2008 and March 2009 who had lived in 9 cities in inland Fukushima prefecture at the time of the nuclear accident, revealed the following result:

In 2014, so even more than 3 years after the accident, 60% of the mothers replied that they worried about health problems of their children in Fukushima and 20-30% of the mothers recognized a different understanding among their husbands, parents or other people.

Also, many families in Fukushima has changed their lifestyle. For example, for mitigating an exposure to radiation, they must prevent their children from playing outside and stop hanging out their washes outside, producing and consuming local food, and drinking water in Fukushima. Furthermore, elderly people, as of now, still voluntarily refrain from going into the forests for picking of bamboo shoots, mushrooms and other edible plants that constituted a part of their lifestyle before the nuclear accident.

The plaintiffs have been revealing the reality of damage during the litigation. Though it exists a different scientific view on health risks on the victims, the damage caused by the accident is not limited to increased health risks. In the case of evacuees, even if they settle in a new environment, they have no choice but to take radiation exposure mitigation measures in the same way as those who remain in the Fukushima prefecture, which causes changes in the living conditions, and the plaintiffs take this burden as damage.

To give judges a deeper understanding of the reality of the damage, 4000 plaintiffs selected 35 persons for a court's review. In front of the judges, they argued their damages due to the nuclear accident, but it was not easy for them to speak out in the court's hearing.

Furthermore, the plaintiffs argued that the Judges should carry out a site investigation in order to let the judges experience the reality of the damage. On the 17 March 2016, the judges visited the towns of Namie, Futaba and Tomioka, which are all mandatory

evacuation areas (at this moment, they must wear a protective cloth from nuclear radiation).

Plaintiffs' lawyers, the judges, and attorneys of the state and TEPCO walked from Futaba station to the home of one of the plaintiffs, passing through a deserted shopping street where time had stopped after the nuclear accident. The dosimeter continued to beep to alarm of high radiation. This means that the it remains a high radiation rate in Futaba area.

This was the first experience of a site investigation on a nuclear accident in Japan. That has been widely reported in the media, and there is a move to conduct site investigations in more than 30 other proceedings pending in other courts in the country. In fact, the judges listened earnestly and enthusiastically to the plaintiff's explanation, and it seems important to have the judges see the dimension of the damage.

## 6. Reality of the current state policy

On the other hand, nine years after the nuclear accident, currently the government is hiding damage and abandoning victims.

By end of March 2017, the government released the evacuation orders for almost all areas with a radiation in aggregate of 20mSv or less per year. After five years evacuees could return to the homes. However, at the same time where the government released the orders, the government announced that it intended to stop a monthly compensation payment to evacuees by the end of March 2018.

The rate of evacuees returning to the five towns after the evacuation orders were released is as low as 13% as of end of January 2017, not including the number of residents who have formally resettled in other towns. In the areas with radiation levels of 20 mSv or more per year, the evacuation order has not been lifted, and the living environment, including infrastructure, has not recovered after the nuclear accident. Few evacuees are determined to return. However, if government compensation is discontinued, some may be forced to return despite their concerns about radioactive substances or infrastructure. The cessation of compensation payments equals forcing victims to return.

Moreover, Based on the law, Fukushima prefecture had provided housing support to voluntary evacuees, but it ended at the end of March 2017. The number of voluntary evacuee amounts to 32,000 people in total. The cessation of this housing aid is a huge blow for such voluntary evacuees.

In light of the foregoing, the government imposes on the victims to endure a radiation of in aggregate less than 20mSv per year.

## 7. In view of the judgement to be made

In these unfavorable circumstances, within 2017 and 2018, several judgements and conclusions to pending trials with respect to the Fukushima Nuclear Accidents are expected.

On 17 March of 2017, a judgement was made in Gunma district court, admitting legal



responsibility of the state and TEPCO. As next, the trial pending at the courts in Chiba prefecture received a judgement on 22 September in the same year.

The Nariwai Litigation in which two authors, Nakase and Sekine, were involved, concluded the trial on 21 March in 2017 after four trial years. The court decided a judgement in first instance on 10 October in 2017.

The point to note was whether this judgement would be the third decision following the judgements of the Gunma District Court and the Chiba District Court, which acknowledged the legal responsibility for the negligence of the state and TEPCO. And it was also whether or not the damage of all victims would be recognized regardless of evacuees and residents.

In that decision, Fukushima district court admitted the state's responsibility and TEPCO and acknowledged the damage for victims in Fukushima and in some adjacent areas.

This favorable ruling is to admit legal responsibility of the state and TEPCO. It also means that the court as a state institution admitted an entitlement to compensation and other demands of the majority of people in Fukushima prefecture against the state and TEPCO. This politically important judgement is focused by media and experts all over the country.

This judgement will have a large impact on the liability for the accident, remedies of victims, and restoration and rehabilitation in Fukushima prefecture, and even on national discussion on the restart of nuclear power stations. The plaintiffs intended to use this judgement as leverage in negotiations with the Ministry of Economy, other ministries and Fukushima prefecture to strive forward with their movement to change the state policies.

On 24 October, 2017, the plaintiffs and the defendants appealed to the Sendai High Court. But, the case is still pending.

### III. Human right remedy from the viewpoint of international law

#### A. International Law and Nuclear disaster victims

In international law in general there are a few provisions on protection of nuclear disaster victims. In international nuclear law, there exist some treaties on nuclear accidents. The 1994 Convention on Nuclear Safety provides in its Article 16 (2):

Each Contracting Party shall take the appropriate steps to ensure that, insofar as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.

This provision seems to be related to the rights to information of nuclear disaster victims. But it is not specific about "appropriate steps" or "appropriate information". So no one can find here full protection in respect of the rights to information of individuals concerned.

The 1986 Convention on Early Notification of a Nuclear Accident has also an article about information to be provided (Article 5). But in its paragraph 3 “Information received... may be used without restriction, except when such information is provided in confidence by the notifying State Party.” This means there is room for confidential information about nuclear accidents. So this provision does not ensure the rights to information fully.

The 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency puts the States Parties under an obligation to cooperate between themselves and with the IAEA to facilitate prompt assistance in the event of a nuclear accident “to minimize its consequences and to protect life, property and the environment from the effects of radioactive releases” (Article 1(1)). But it does not provide the treatment of nuclear victims no more in detail.

There are also some treaties on civil liabilities for nuclear damages. Some common features among them, such as absolute liability of the operator for nuclear damage or indiscriminate application of those treaties based upon nationality, domicile or residence, are favor of nuclear disaster victims.<sup>7</sup> But jurisdiction is limited to the courts belong to the states where nuclear accidents happened.<sup>8</sup> And “the nature, form and extent of the compensation, as well as the equitable distribution thereof,” are under the law of the competent court<sup>9</sup>. According to those elements, the regime of civil liabilities for nuclear damages under international law is depending upon national laws of the states concerned. Then it is not necessary to conclude that the regime of civil liabilities has a decisive role in the remedy of human rights of nuclear disasters victims from the angle of international law.

Besides, there are some rules on protection of refugees or internally displaced persons. In particular, the Guiding Principles on Internal Displacement was adopted by the UN Commission on Human Rights in 1998.<sup>10</sup> This instrument does not have a binding effect but intends to “identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration”.<sup>11</sup> According to its definition of the internally displaced persons, the principles undoubtedly apply to nuclear disasters victims, or people evacuated from the contaminated areas. The instrument confirms that the principles reflect, and are consistent with, international human rights law and international humanitarian law.<sup>12</sup> Therefore in order to find binding principles and rules on remedy of human rights of nuclear disaster victims, it is necessary to examine the field of international human rights law at least in peace time. Then, this article has arrived at the international human rights law.

Before that, it is also critical to take notice of the development of principles and rules on the protection of human beings in natural disasters. In 2016, the International Law Commission adopted “Draft articles on the protection of persons in the event of disasters” and decided to recommend to the UN General Assembly the elaboration of a convention on the

basis of the draft articles on the protection of persons in the event of disasters.<sup>13</sup> Now this topic is under consideration.<sup>14</sup>

## B. Human Rights Violation in Fukushima Nuclear Disaster from viewpoint of Some International Human Rights Bodies

### 1. The Grover Report (2013)

Then what human rights violations have been addressed in context of Fukushima nuclear victims especially by international human rights bodies?

Japan is now a state party to some treaties regarding international human rights and now also a member of the UN Human Rights Council. The situation of human rights in Japan including that of Fukushima nuclear victims is supposed to be observed from those international human rights standards.

In 2013 the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health issued a report on the base of his mission to Japan. The Special Rapporteur, Mr. Anand Grover, visited Japan from 15 to 26 November 2012. During the visit, he ascertained the country's endeavors to implement the right to health, and in particular considered the issues relating to the realization of the right to health in the wake of the nuclear accident at the Fukushima Dai-ichi nuclear power plant on 11 March 2011, the events leading up to it, and emergency response, recovery and mitigation. In the report, the Special Rapporteur commended Japan for some steps taken and its commitment to the realization of the right to health. But the report encouraged the Government of Japan to address a number of serious challenges and to consider particular areas for improvements in order to realize that right fully. With a view to facilitating that endeavor, he made a number of recommendations for the Government of Japan. This is the first fact-finding report on the situation of nuclear disaster victims in Japan after Fukushima nuclear accident in viewpoint from international human rights standard in the UN.<sup>15</sup>

The recommendations by the Special Rapporteur cover the following fields relating to the situation of Fukushima nuclear victims. There are seven fields:

- formulation and implementation of its nuclear emergency response system
- health monitoring of the affected population
- policies and information on radiation doses
- decontamination
- transparency and accountability within the regulatory framework
- compensation and relief
- effective community participation in all aspects of the decision-making processes relating to nuclear energy policy and the nuclear regulatory framework

Besides, there are some implementation procedures of the standards established

under the international human rights treaties: the state reporting system, the inter-state complaints procedure, and the individual communication procedure. The latter two procedures are not compulsory. Japan accepted the former one system, and rejected the latter two procedures. So only through the state reporting system, it is possible to review whether Japan respects the human rights in context of Fukushima nuclear disaster. This article will pick up here three reports of Japan after Fukushima accidents.

## 2. CESCR's Observations (2013)

Since 2011, some human rights bodies have issued the Concluding Observations related to the States Party's Report of Japan. They expressed their concerns about the situation of Fukushima nuclear victims and recommended Japan to take some steps to improve it.

In 2013, the Committee on Economic, Social and Cultural Rights (CESCR) adopted its Concluding Observations where the Committee said:

24. Noting the complexity of relief response to the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident, the Committee is concerned that the specific needs of disadvantaged and vulnerable groups, such as older persons, persons with disabilities, and women and children, were not sufficiently met during the evacuation and in the rehabilitation and reconstruction efforts (art. 11, 2(2)).

Noting that the lessons learned from the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident have led to the adoption of new arrangements to better respond to the needs of affected communities, including vulnerable groups, in future relief and reconstruction efforts, the Committee recommends that the State party adopt a human rights-based approach to disaster response, risk mitigation and reconstruction efforts. In particular, the Committee recommends that the State party ensure that disaster management plans do not discriminate or lead to discrimination in the enjoyment of economic, social and cultural rights.

The Committee requests the State party to provide in its next periodic report comprehensive information, including statistical data disaggregated by sex and vulnerable group, on the management of the consequences of the Great East Japan Earthquake and the Fukushima nuclear accident as well as on victims' enjoyment of economic, social and cultural rights during the evacuation and in the rehabilitation and reconstruction works. The Committee also requests the State party to include information on how victims' right to justice has been guaranteed.<sup>16</sup>

And in its para. 25, the Committee recommended that Japan should implement the

recommendations of the Grover's Report.

25. The Committee reiterates its concern about the lack of transparency and disclosure of necessary information regarding the safety of nuclear power installations and at the insufficient nationwide community preparation for the prevention and handling of nuclear accidents, which, in the case of the Fukushima nuclear accident, has led to negative impact on the enjoyment of economic, social and cultural rights of victims (arts. 11 and 12).

The Committee recommends, once again, that the State party increase transparency on issues relating to the safety of nuclear power installations and step up its preparedness to nuclear accidents. In particular, the Committee urges the State party to provide the population with comprehensive, credible and accurate information on potential hazards, preventive measures and response plans, and to ensure prompt disclosure of all information when disasters occur.

The Committee encourages the State party to implement the recommendations of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health from his recent visit to the State party.<sup>17</sup>

### 3. CCPR's Observations (2014)

In 2014, the Human Rights Committee (CCPR) established under the International Covenant on Civil and Political Rights (ICCPR) considered the state party's report of Japan. Its concerns and recommendations are below:

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24. The Committee is concerned that the high threshold of exposure level set by the State party in Fukushima and the decision to cancel some of the evacuation areas give people no choice but to return to highly contaminated areas (arts. 6, 12 and 19). The State party should take all the necessary measures to protect the life of the people affected by the nuclear disaster in Fukushima and lift the designation of contaminated locations as evacuation areas only where the radiation level does not place the residents at risk. The State party should monitor the levels of radiation and disclose that information to the people affected in a timely manner.<sup>18</sup>

The Committee concerned about the returning policy in that this policy violated the right to life, the right to move and the right to speech.

### 4. CEDAW's Observations (2016)

In 2016, the Committee on the Elimination of Discrimination against Women

(CEDAW) established under the Convention on the Elimination of All Forms of Discrimination against Women issued its concluding observations on the reports of Japan. The Committee concerned the health status of evacuated persons and women and recommended as follows:

#### Health

36. The Committee notes the efforts made by the State party to address health concerns related to radiation following the Fukushima Dai-Chi Nuclear Power Plant accident in 2011. The Committee, however, notes with concern the State party's plans to lift the designation as evacuation zones of contaminated areas with radiation exposure levels under 20 millisieverts per year, which may have a disproportionate effect on the health of women and girls.

37. The Committee recommends that the State party reaffirm that the lifting of designation of places as evacuation zones of contaminated areas with radiation exposure is consistent with internationally accepted knowledge on risk factors for women and girls considering that women are more sensitive to radiation than men. It further recommends that the State party intensify the provision of medical and other services to women and girls affected by radiation, in particular pregnant women in the Fukushima Prefecture.

#### Disaster risk reduction and management

44. The Committee commends the State party for its leadership in disaster risk reduction and management and its contribution to global efforts to adopt the Sendai Framework for Disaster Risk Reduction 2015-2030. The committee also commends the State party for mainstreaming gender perspectives into its policies on disaster risk reduction, and the adoption of a national Basic Disaster Management Plan. However, the Committee is concerned at the low participation of women in leadership roles in the area of disaster risk reduction and management at the national and local level following the Great East Japan earthquake in 2011.

45. The Committee recommends that the State party accelerate the participation of women in decision-making and recovery processes related to disasters at all levels, in particular at the local level. It should also continue its efforts aimed at integrating a gender perspective into all sustainable development policies, as well as into disaster risk reduction and post-disaster management.<sup>19</sup>

Among those recommendations by the Special Rapporteur and the Committees, there are some common and noticeable features. Those points reflect the current problematic aspects of the situation of Fukushima nuclear victims. The authors find three aspects here.

First whether the policy of lifting evacuation and return is appropriate or not is at issue. Despite CCPR and CEDAW concerned, Japan carried out its plans to lift the designation as evacuation zones of contaminated areas with radiation exposure levels under 20 millisieverts per year.<sup>20</sup>

Secondly, as the Special Rapporteur and CCPR suggested, dissemination of information and findings about effect of radiation exposure is critical. It is important for Fukushima nuclear disaster victims to get sound knowledge on its risk in order that they can enjoy the right to health fully. Ordinary people do not know about what to know regarding radiation. As we know, the risk of radiation has uncertainty and unpredictability in a short term. Therefore, access to information of radiation should be ensured while people affected should be insightful on that problem. Experts need to explain the risk standing in side of those ordinary people. And the Government should do promote education about radiation risk more sincerely.

Lastly, as the Special Rapporteur demanded and CEDAW suggested, the Government has to ensure the participation of the victims into a decision-making process relating to nuclear energy policy and the nuclear regulatory framework. The Government of Japan now plans to restart nuclear reactors step by step.<sup>21</sup> But as the Grover Report said, “a risk-benefit analysis is not in consonance with the right to health framework, as it gives precedence to collective interests over individual rights.”<sup>22</sup> It is the case not only with the right to health but also most of all human rights. Now Japan is in the course of economic recovery from the East Japan Great Earthquake and Fukushima nuclear accidents. 2020 Tokyo Olympic also drive it rapidly. Human-rights-first thinking should be established in that course.

#### IV. Conclusion

There are other problems that must be solved in the context of the Fukushima nuclear accidents for supporting the victims. But, what should we do to make use of those findings by the international human rights bodies or in the international human rights procedures?

At first, we can make use of the recommendations of the international human rights bodies in the domestic litigations. International treaties concluded by the Government of Japan have a legal effect as part of its internal law in accordance with Article 98, paragraph 2, of the Constitution of Japan. Whether or not provisions of treaties directly applies at the domestic level is determined in each specific situation. In doing so, it is necessary to take into consideration the purpose, meaning and word of the provisions concerned under international conventions.<sup>23</sup> Therefore, Japanese domestic courts treated a little case that they endorsed the direct application or self-execution of international human rights treaties. But, since judges have interpreted the constitution as covering the same range as international human rights instruments in almost cases, it is feasible to insist on invalidity of some laws and

administrative measures as infringing human rights unconstitutionally by referring to international human rights treaties or those human rights bodies' recommendations. The victims of nuclear disasters can use international human rights bodies' recommendations as instruments of interpretation of the Constitution. But in practice, there are a few such cases in litigations regarding Fukushima nuclear victims.

Secondly, the Government of Japan necessitates to sincerely respond to those recommendations. Despite they have no legal binding effect, such recommendations are authoritative interpretation and application of the relevant provisions in the international human rights treaties to which Japan is a state party. Then the government is held responsible for those recommendations. Fukushima nuclear victims and Civil Society organizations can demand the government to take such necessary steps, for instance legislative or administrative measures to protect the rights that the human rights bodies expressed their concerns.

Last but not least, Civil societies can monitor this intercourse between the government of Japan and the international human rights bodies, so called "constructive dialogue", and participate in that dialogue through submitting their counter reports to the human rights bodies. In addition to this, Japan is also state party to other human rights treaties regarding children, persons with disabilities and so on. In those treaties the state reporting systems are available. And other Special Rapporteur' visits like Mr. Grover are also available. Japan issued a standing invitation on 1 March 2011. By this invitation Japan always accepts some requests to visit from all special procedures.<sup>24</sup> Through these procedure, civil societies or human rights NGOs can put it on the table how grave and sever the situation of Fukushima nuclear victims is.

That international and domestic implementation of international human rights standards is critical to improve the situation of Fukushima nuclear victims and remedy their human rights. It is necessary to explore the role of international human rights law and its implement procedures more than ever.

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<sup>1</sup> On 12 April 2011, the Nuclear and Industrial Safety Agency (NISA) of Japan submitted a provisional International Nuclear and Radiological Event Scale (INES) Level 7 rating for the accident at the Fukushima Daiichi nuclear power plant. See "Fukushima Nuclear Accident Update Log, Updates of 12 April 2011", available at <https://www.iaea.org/newscenter/news/fukushima-nuclear-accident-update-log-15> (last visited on 2 October 2019).

<sup>2</sup> Figure as of 10 July 2019, published by Reconstruction Agency of Japan on 30 July 2019, available at [http://www.reconstruction.go.jp/topics/main-cat2/sub-cat2-1/20190710\\_hinansha.pdf](http://www.reconstruction.go.jp/topics/main-cat2/sub-cat2-1/20190710_hinansha.pdf) (in Japanese), last visited on 28 August 2019.

<sup>3</sup> Published by Fukushima Prefectural Government on 5 August 2019, available at [http://www.pref.fukushima.lg.jp/uploaded/life/438691\\_1107339\\_misc.pdf](http://www.pref.fukushima.lg.jp/uploaded/life/438691_1107339_misc.pdf) (in Japanese), last visited



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on 28 August 2019.

<sup>4</sup> [Richardson et al. Risk of cancer from occupational exposure to ionising radiation BMJ 2015;](#)

[Shore & Walsh - Risk of solid cancer in low dose rate radiation epidemiological studies and the dose rate effectiveness factor 2017;](#)

[Nikkilä et al. Background radiation and childhood leukemia - A nationwide register - based case - control study Int J Cancer 2016.;](#)

[Nikkilä et al. Effects of incomplete residential histories on studies of environmental exposure with application to childhood leukaemia and background radiation. Environ Res 2018.](#)

<sup>5</sup> See *ICJ Reports 1996*, pp. 243-244, para. 35.

<sup>6</sup> As for Nariwai litigation or Nariwai Lawsuits, see Beata Bochorodycz, “Legal Empowerment : The Role of Legal Professionals in the Denuclear Movement after Fukushima Daiichi Disaster”, *Hosei Kenkyu*, vol. 82. Nos. 2-3, pp. 1068-1090, 2015. As for the website of the plaintiffs’ legal team, see <http://www.nariwaisoshou.jp/progress/2018year/entry-832.html> (in Japanese).

<sup>7</sup> See in stance the [1963 Vienna Convention on Civil Liability for Nuclear Damage](#), Art. 4 (1) and 13 (1).

<sup>8</sup> *Ibid*, Art. 11.

<sup>9</sup> *Ibid*, Art. 8.

<sup>10</sup> [See Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.](#)

<sup>11</sup> *Ibid.*, p. 5, para. 1.

<sup>12</sup> *Ibid.*, p. 5, para. 3.

<sup>13</sup> *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10)*, paras. 43 to 46 and 48.

<sup>14</sup> By resolution 71/141 of 13 December 2016, the General Assembly took note of the draft articles, invited Governments to submit comments on the recommendation by the Commission to elaborate a convention on the basis of the draft articles, and decided to include in the provisional agenda of its seventy-third session, in 2018, an item entitled “Protection of persons in the event of disasters”. For more detail, see Daniel Rietiker, “The 2016 ILC Draft Articles on the Protection of Persons in the Event of Disasters and Their Relevance for Victims of Nuclear Accidents and Use of Nuclear Weapons”, in *Nuclear Non-Proliferation in International Law - Volume V*, 2020, T.M.C. ASSER PRESS pp 93-128.

<sup>15</sup> See *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, UN Doc. A/HRC/23/41/Add.3

<sup>16</sup> See *Concluding observations on the third periodic report of Japan*, adopted by the Committee at its fiftieth session (29 April-17 May 2013), E/C.12/JPN/CO/3, p. 6, para. 24.

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<sup>17</sup> *Ibid.*, pp. 6-7, para. 25.

<sup>18</sup> See *Concluding observations on the sixth periodic report of Japan*, CCPR/C/JPN/CO/6, p. 8, para. 24.

<sup>19</sup> See *Concluding observations on the combined seventh and eighth periodic reports of Japan*, CEDAW/C/JPN/CO/7-8, p. 11, paras. 36-37 and pp. 12-13, paras. 44-45.

<sup>20</sup> See *Environmental Remediation in Japan*, March 2018, Ministry of the Environment, Japan, available at [http://josen.env.go.jp/en/pdf/progressseet\\_progress\\_on\\_cleanup\\_efforts.pdf](http://josen.env.go.jp/en/pdf/progressseet_progress_on_cleanup_efforts.pdf), last visited on 29 May 2018.

<sup>21</sup> See *Strategic Energy Plan* adopted by the Cabinet on 11 April 2014, available at [http://www.enecho.meti.go.jp/en/category/others/basic\\_plan/pdf/4th\\_strategic\\_energy\\_plan.pdf](http://www.enecho.meti.go.jp/en/category/others/basic_plan/pdf/4th_strategic_energy_plan.pdf) (Provisional Translation), last visited on 29 May 2018. The Government of Japan (GOJ) considers “[n]uclear power is an important base-load power source as a low carbon and quasi-domestic energy source, contributing to stability of energy supply-demand structure” and explains the policy direction: “On the premise that safety comes before everything else and that every possible effort is made to resolve the people’s concerns, judgment as to whether nuclear power plants meet the new regulatory requirements will be left to the Nuclear Regulation Authority (NRA) and in case that the NRA confirms the conformity of nuclear power plants with the new regulatory requirements, which are of the most stringent level in the world, GOJ will follow NRA’s judgment and will proceed with the restart of the nuclear power plants. In that case, GOJ will make best efforts to obtain the understanding and cooperation of the host municipalities and other relevant parties”, while “Dependency on nuclear power generation will be lowered to the extent possible by energy saving and introducing renewable energy as well as improving the efficiency of thermal power generation, etc. Under this policy, GOJ will carefully examine a volume of electricity to be secured by nuclear power generation, taking Japan’s energy constraints into consideration, from the viewpoint of stable energy supply, cost reduction, global warming and maintaining nuclear technologies and human resources” (*ibid.*, p. 24).

<sup>22</sup> See *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, Anand Grover, *Addendum*, A/HRC/23/41/Add.3, p. 16, para. 47.

<sup>23</sup> See *Fourth periodic reports of Japan to the Human Rights committee*, 16 June 1997, CCPR/C/115/Add.3, p. 4, para. 9.

<sup>24</sup> The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye undertook an official visit to Japan from 12 to 19 April 2016. In his report to the Human Rights Council (A/HRC/35/22/Add.1), he introduced the testimonies by some journalist that “media outlets avoid covering topics that may lead to criticism by the Government, such as the Fukushima disaster” (*ibid.*, p. 9, para. 28) and referred to the Grover Report (A/HRC/23/41/Add.3)(*ibid.*, p. 9, para. 29), and recommended that “Particular attention must be

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paid to the support of journalists investigating issues of great sensitivity, such as ... the impact of nuclear activities and disasters” (*ibid*, p. 18, para. 67).