

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the human rights of internally displaced persons

REFERENCE:
AL JPN 6/2018

5 September 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 36/15 and 32/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning issues faced **by evacuees (also "internally displaced persons") under the ongoing decontamination and resettlement program in the Fukushima Prefecture of Japan and the existing and potential risks to which they are exposed to as a result of lifting the evacuation orders.**

A related communication, concerning the decision of Japanese authorities to lift, by March 2017, evacuation orders relating to areas in Fukushima where radiation levels allegedly remained high, was transmitted to your Excellency's Government by several UN Special Rapporteurs on 20 March 2017 (case no. JPN 2/2017). We acknowledge receipt of the response of your Excellency's Government dated 8 June 2017 and take note of the various points raised in relation to the decontamination program as well as measures which have been undertaken so far by the Japanese authorities.

We also wish to thank your Excellency's Government for the response provided to a letter sent by several UN Special Rapporteurs on 28 June 2018 (case no. JPN 5/2018) regarding the situation of workers who are employed in decontamination programme in the Fukushima Prefecture, the explanations provided in this letter have been examined by us with utmost attention. Although they provide clarifications to a number of issues which were raised and spread light on the entire process of decontamination and lifting of evacuation orders, we have to note that the concerns we had expressed previously continue to persist, in light of information and witness accounts which are conveyed to our mandates by various information sources

According to the new information received:

In 2012 the Government of Japan initiated a decontamination program which aimed to contribute to the reduction of radiation levels in the zones affected by the TEPCO Fukushima Daiichi NPS accident and allow for the lifting of evacuation orders for tens of thousands of affected citizens. Seven years after the nuclear

disaster, actions for the reconstruction and revitalization of Fukushima are in full implementation process, with evacuation orders lifted for most of the areas with the exception of the difficult-to-return-to zones.

In May 2017, the Japanese Government revised the Act on Special Measures for the Reconstruction and Revitalization of Fukushima, initiating the setting up of the Specified Reconstruction and Revitalization Bases for intensive implementation of decontamination and development of infrastructure.

In January 2018, the Japanese Government initiated a process to revise the current long term decontamination target of 0.23 $\mu\text{Sv/h}$ (1 mSv/y) on the basis that this threshold remains unachievable.

As of May 2018, the Government has approved and has been implementing the Plans for Specified Reconstruction and Revitalization Bases for six municipalities: Futaba Town, Okuma Town, Namie Town, Tomioka Town, Iitate Village and Katsurao Village.

The decontamination program has allegedly failed to reduce radiation to a level acceptable for the safe return of evacuees. The average dose rates around homes in the radius of 25 - 30 km northwest of the Fukushima Daiichi Nuclear Power Plant range from 1.3 to 3.4 $\mu\text{Sv/h}$, with higher levels reported in nearby forests and farmlands. At the meantime, scientific evidence suggests serious health risks, including development of cancer, for persons exposed to low-dose radiation, including in the range of 1 to 5 mSv/y.

In addition, nuclear waste generated from decontamination work is being stored at Temporary Storage Sites (TSSs) and other locations in the Fukushima Prefecture, including allegedly in residential areas. As of June 2017, there existed 862 TSSs in the Intensive Contamination Survey Areas inside the Fukushima Prefecture and as of October 2017 there were 255 TSSs in the Special Decontamination Areas.

In August 2017, the Government of Japan announced its plans to extend the housing support for officially designated evacuees until March 2019. As of October 2017, the officially designated number of evacuees was reported to be 53,275 according to the Fukushima Prefecture. This figure does not include the number of voluntary returns or self-evacuees from outside government-designated evacuation zones, which according to various reports is between 27,000 – 32,000 persons.

In March 2017 housing subsidies reportedly stopped to be provided to self-evacuees, who fled from areas other than the government-designated evacuation zones. A survey conducted in March 2017 indicated that 80 percent of households who had evacuated outside the Fukushima Prefecture had no intention of returning.

Victims of the nuclear disaster can seek compensation before the Nuclear Damage Claim Dispute Resolution Centre (Dispute Resolution Centre). The Alternative Dispute Resolution Committee (ADR Committee) issues the decisions on compensation. It is alleged that the ADR Committee has failed to adequately provide the necessary support to Fukushima survivors, particularly to self-evacuees. It is further alleged that the ADR Committee determines damages and compensation without input from medical experts for the reason that such consultation would slow down the process of evaluating claims.

On 10 October 2017, the district court in Fukushima Prefecture recognised self-evacuees as equal victims of the Fukushima Daiichi accident, affirming their right to compensation. Moreover, on 7 February 2018, the Tokyo District Court ordered TEPCO to pay 3.3 million yen in damages to each plaintiff who was forced to flee their hometown in the Fukushima Prefecture after the 2011 nuclear disaster.

Currently the combination of the Government's decision to lift evacuation orders and the prefectural authorities decision to cease the provision of housing subsidies, places a large number of self-evacuees under immense pressure. Many of them have to live under the persisting threat of eviction, with several families having legal action initiated against them. The affected persons and families find themselves in a situation where they are not able to participate in or be heard in the process of making decisions, which are seriously impacting their lives, their mental and physical well-being and their future.

The termination of housing subsidies puts a heavy financial strain on affected households, many of which consist of mothers and children who have fled the disaster area, whereas the fathers and husbands continue to live and work in the affected zones. Families fear exposure to radiation if they are forced to return and the impact of past exposure that may materialize after a period of latency. These concerns are magnified by existing poor living conditions in their temporary housing, grief from loss of their homes and anxiety about their future.

The needs of particularly vulnerable groups of evacuees are difficult to address since the data collected by the Fukushima Prefectural Government is not disaggregated. Lack of statistics concerning numbers and localisation does not allow to analyse how many children, women, persons with disabilities and elderly persons were affected by the nuclear disaster and consequently by the resettlement plans. Therefore it is particularly challenging to address their specific needs by providing targeted treatment and medical services, including psychological and social support and counselling.

Persons with disabilities are at increased risk while facing nuclear accidents due to contextual vulnerabilities. Yet evacuation plans designed for nuclear accidents do not seem to address their needs to a full extent. The present national Emergency Guidelines only provide a one route option for evacuation for persons with disabilities, in contrast to the two routes available for abled persons. Furthermore, the potential exposure of children and pregnant women to radiation continues to

remain an issue of utmost concern, as both groups are particularly vulnerable to the impacts of ionizing radiation exposure.

In the Government response to the letter by UN Special Rapporteurs sent on 17.08.2018 (case no. JPN5/2018), the Government of Japan clarified that it was not accurate to say that it “supported recommendations” made during the 2018 cycle of the UPR; but rather the Government ‘accepted to follow-up’ on recommendations, made within the framework of the third cycle of the Universal Periodic Review (UPR) in November 2017. One of those recommendations suggested to respect the rights of persons living in the area of Fukushima, in particular of pregnant women and children, to the highest level of physical and mental health, notably by restoring the allowable dose of radiation to the 1 mSv/year limit, and to continue providing support for the voluntary evacuees from the high-radiation areas of Fukushima, with housing, financial and other life-assisting means and with periodic health monitoring of those affected.

While we do not wish to prejudge the accuracy of these allegations, concern is expressed over the continuing health and safety risks resulted by radiation exposure in the context of the decontamination program in the Fukushima Prefecture, Japan. The impact of the decontamination programme places a great number of persons, including persons belonging to vulnerable groups, under considerable constraints and could result in violations of their basic human rights.

We take this opportunity to recall that those persons evacuated or self-evacuated from their homes by the Fukushima disaster constitute internally displaced persons (IDPs) and to remind your Excellency’s Government of its obligations relating to the human rights of IDPs, including those contained in the provisions of the 1998 Guiding Principles on Internal Displacement. We take note of reports that the Government of Japan intends to translate the 1998 Guiding Principles on Internal Displacement into the Japanese language and commends it for this decision in 2018 which is the 20th anniversary of the Guiding Principles and we hope for its application on the situation of the evacuees subject of this allegation letter.

Particular concern is expressed over the impact of the terms and modalities of ongoing resettlement programmes on the enjoyment of human rights, in particular the right to life, health, physical integrity, housing, and food. The decision to not reflect the actual number of evacuees and recognizing these as internally displaced persons in the official records of the prefectural government, undermines the ability of local authorities to provide vital services and financial assistance to a number of self-evacuees.

While welcoming your Excellency’s Government’s initiative to extend housing support for designated evacuees to March 2019, we are deeply concerned that the decision to lift evacuation orders in areas where radiation levels remain high, and withdrawing housing support previously provided to a large number of households, create significant pressures for internally displaced persons to return to their previous homes, where their life, safety or health would be at risk from exposure to hazardous levels of radiation.

Returning evacuees, as well as those already living in municipalities of Fukushima, face additional health risks posed by large scale, heavy transportation and storage of nuclear waste as well as the radiation that could be released by waste facilities. We remain concerned by the fact that this practice is expected to increase during the coming years, along with the long-term psychological effects associated with living in a nuclear waste industrial zone.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

In view of the urgency of the matter, we would appreciate a response on the steps and measures taken by your Excellency's Government to safeguard the rights of the nuclear evacuees in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide further information regarding the measures taken to minimise the Fukushima Daiichi offsite releases, the revised long term decontamination radiation target level and the expected timetable for its implementation.
3. Please provide information concerning any measures aimed at minimising the risks for and protecting the rights of groups of persons who are particularly vulnerable to the consequences of the nuclear disaster and ongoing resettlement programs, including women, children, elderly people and persons with disabilities. Please provide information, where possible statistics, regarding affected groups and their localisation.
4. Please elaborate on the state of implementation of the recommendation, made at the third cycle of UPR in November 2017, which suggested to respect the rights of persons living in the area of Fukushima, in particular of pregnant women and children, to the highest level of physical and mental health, notably by restoring the allowable dose of radiation to the 1 mSv/year limit, and to continue providing support for the voluntary evacuees from the high-radiation areas of Fukushima, with housing, financial and other life-assisting means and with periodic health monitoring of those affected. Since the Government of Japan 'agreed to follow-up' on this recommendation, we would appreciate to know more about the possible actions and implementation measures which this commitment entails, according to Japanese authorities.

5. Please indicate what measures your Excellency's Government is taking to provide support for self-evacuees, who also constitute internally displaced persons (IDPs), and specifically how you will ensure that durable solutions according to international standards are achieved for these IDPs meaning they no longer have specific assistance and protection needs linked to the evacuation and can enjoy their human rights without discrimination resulting from their displacement
6. Please also provide details regarding any possible support measures and vital services which your Excellency's Government plans to assume following the termination of housing support for evacuees in March 2019, in line with the 2012 Nuclear Disaster Victims Support Act and the UN Guiding Principles on Internal Displacement.
7. Please indicate whether any consultation has been held with self-evacuees and what efforts have been made to ensure their meaningful participation in the decision-making.
8. Please provide information about the measures taken by your Excellency's Government to provide, with the participation of the community, safe and appropriate temporary and final storage facilities for radioactive debris.

We would appreciate receiving a response as soon as possible. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken with a view to protect public health and the environment; and to ensure the accountability of any person responsible for any alleged violation.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Cecilia Jimenez-Damary

Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

I In connection with the above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The International Convention on the Elimination of All Forms of Discrimination Against Women;
- The Convention on the Rights of the Child; and
- The Convention on the Rights of Persons with Disabilities.

We wish to draw your Excellency's Government's attention to obligations under international human rights instruments, to which Japan is party, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. We would also like to call your attention to General Comment No. 6 of the Human Rights Committee (HRC) on the right to life. According to the HRC, the expression "inherent right to life" should not be interpreted in a restrictive manner. The protection of the right to life therefore requires States to adopt positive measures to implement this right, including measures to reduce infant mortality and increase life expectancy. In addition, Article 6 of the Convention on the Rights of the Child (CRC) recognises that every child has the inherent right to life and requires States parties ensure to the maximum extent possible, the survival and development of the child. It further requires State parties to take all effective and appropriate measures to diminish infant and child mortality.

We would also like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the Universal Declaration of Human Rights (UDHR) Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting health of the individual, and in terms of health services. General Comment No. 14 describes the normative content of Article 12 and the legal obligations undertaken by the States parties to the ICESCR to respect, protect and fulfil the right to health. In paragraph 11 of General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water

and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information”.

Moreover, the CESCR in General Comment No. 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). General Comment No. 14 also notes that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). This is further codified in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 12.

The right to maintain wholesome or healthy living is also enshrined in Article 25 of the Constitution of Japan. These provisions in the Japanese Constitution and human rights instruments form the basis of the right to avoid unnecessary exposure to radiation.

We would like to stress that the right to health requires States to pay special attention to the needs of vulnerable groups. The right to health requires the State to pay special attention to the needs of vulnerable groups. In his summary report of his mission to Japan, the former Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health observed that “[t]he State is also under an immediate obligation to prevent discrimination, especially against vulnerable groups in its policies or practice, even during times of resource constrain ... Older persons, children, women and persons with disabilities are more susceptible to ill effects of disasters”.

We would also like to refer your Excellency’s Government to Article 25 of the UDHR and Article 11 of the ICESCR, which guarantee the right to adequate housing. The right to adequate housing is the right to live somewhere in security, peace, and dignity. The CESCR has additionally elaborated on the content concerning the right to housing in General Comment No. 4. Furthermore, the right to adequate housing is either expressly referred to or implied in other international instruments such as Article 27(3) or the CRC; Article 14(2)(h) of the CEDAW; and Article 5(e)(iii) of the ICERD.

We would also like to recall that those persons evacuated from their homes by the Fukushima disaster constitute internally displaced persons (IDPs) and to remind your Excellency’s Government of its obligations relating to the human rights of IDPs, including those contained in the provisions of the 1998 Guiding Principles on Internal Displacement. It is necessary that those persons internally displaced by the disaster are assisted and supported by the government until such time that they achieve durable solutions. Guiding Principle 28 establishes that “[c]ompetent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of

the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.” Where return to places of origin is deemed unsafe, alternative solutions must be found in consultations with affected communities and until such time that safe and dignified return is possible. Moreover, Guiding Principle 29 states that “[c]ompetent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.”. Furthermore, Principle 8 of the Pinheiro Principles explicitly calls on states to alleviate the situation of displaced persons living in inadequate housing. In regard to the requirement to ensure durable solutions for IDPs, we furthermore recall the provisions of the IASC Framework on Durable Solutions for Internally Displaced Persons.

Additionally, we wish to draw to the attention of your Excellency’s Government to Article 2 of the Nuclear Disaster Victims Support Act, adopted in June 2012, which provides that the Japanese Government has an obligation to ensure that disaster victims have a choice as to where to reside and that appropriate support is offered irrespective of their choices.

Based on the above international legal framework, we would like to note that at the UNHRC Universal Periodic Review of Japan (A/HRC/WG.6/28/JPN/2) in November 2017, member States expressed concern that the high threshold of exposure level of 20 mSv/y set by Japan in Fukushima is not in line with international standards for radiation protection. The member States recommended continuing support for the voluntary evacuees from the high radiation areas of Fukushima, with the provision of housing and financial assistance. The International Commission on Radiological Protection (ICRP) recommends reference levels for existing exposure situations to be set typically in the 1 mSv to 20 mSv band of projected dose, with the upper limit of 20 mSv/y recommended for nuclear industry workers.

We would also like to draw your Excellency’s Government’s attention to Article 7 of the ICESCR, enshrining the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions. In relation to the right to healthy natural and workplace environments, General Comment No. 14 provides that improvement of all aspects of environmental and industrial hygiene comprises, inter alia, “preventive measures in respect of occupational accidents and diseases” and “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health” (para 15).

We would also like to reiterate the report by the former Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health after his visit to Japan in November 2012. The Special Rapporteur encouraged the Government to address a number of serious challenges and to consider particular areas for improvements in the nuclear emergency response system; including the scope and extent of the basic

and detailed health management surveys; the dose limits of radiation; access to accurate information on radiation and its impact on health; the transparency and accountability of the nuclear industry and regulatory authority; and participation of affected communities in decision-making processes.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.