

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL JPN 1/2020

20 April 2020

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; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 36/15, 32/8, 41/12 and 42/20.

In this connection, we would like to bring to the attention of your Excellency's Government concerns relating to serious risks posed to the enjoyment of human rights of affected populations, in the context of **contaminated water management at Fukushima Daiichi Nuclear Power Station (NPS) by the Government of Japan and the Tokyo Electric Power Company (TEPCO), the significant delays occurred in the clean-up of the contaminated water and the reported likelihood of discharging contaminated water into ocean waters.**

Several UN Special Rapporteurs have engaged with your Excellency's Government concerning the decontamination process following the Fukushima Daiichi NPS accident. (UA JPN 2/2017 on 20 March 2017, and response dated 8 June 2017; AL JPN 5/2018 on 28 June 2018 and response dated 17 August 2018; and AL JPN 6/2018 on 5 September 2018 and response dated 5 November 2018).

According to information received:

The management of highly contaminated water at the Fukushima Daiichi nuclear plant continues to present serious challenges to the Tokyo Electric Power Company (TEPCO), and is a source of serious concern towards populations whose basic human rights and wellbeing are affected by the process. According to the Mid-and-Long-Term Roadmap towards the Decommissioning of TEPCO's Fukushima Daiichi Nuclear Power Station Units 1 to 4 (the Mid-and-Long-Term Roadmap) established in December 2011 and most recently revised in December 2019, the Government of Japan and TEPCO aim to suppress the amount of contaminated water generation to about 150m³/day in 2020 and to less than 100 m³/day in 2025, and treatment of stagnant water in the buildings is aimed to

be completed in 2020.¹ Available information and data give ample reason to doubt that this target can be achieved.

In the past nine years a significant and increasing volume of radionuclide-contaminated water has been recorded at the site. The contaminated water allegedly still contains radioactive toxins like caesium, strontium, iodine, rhodium and cobalt in disturbing amounts. Chronic exposure to these radionuclides can produce negative health effects including neurodevelopmental problems, cardiovascular disease, cancer, and even death.

As of 19 March 2020, the amount of such contaminated water at the Fukushima Daiichi plant (units 1-4) was recorded at 1.19 million m³ (cubic meters).² The majority of this, 1.08 million m³, is water treated by the Advanced Liquid Processing Systems (ALPS) and held in storage tanks (ALPS-treated water).³ Volumes of contaminated water are expected to continue to increase over the coming years. According to some estimates the additional decontamination of all ALPS-treated water alone will require an additional estimated 5-6 years.

Since 2011, a vast accumulation of contaminated groundwater has taken place. While the installation of sub drains and pumping wells by TEPCO has led to a reduction of the amount of groundwater entering the reactor building, in 2018 the average was 170 m³ each day, and “measures continue to be implemented to further suppress the generation of contaminated water to approximately 150 m³ /day within FY2020 and 100 m³/day or less within 2025”.⁴ This recorded volume reportedly demonstrates a tendency to increase as a result of heavy rain, particularly during typhoons.⁵

In September 2018, TEPCO indicated that water processing had failed to reduce levels of radioactivity to levels below the regulatory limit permissible for ocean discharge. On 28 September 2018, TEPCO admitted that of the 890,000 m³ of ALPS-treated water, about 750,000 m³ contained higher concentrations of radioactive materials than levels permitted by the safety regulations for release into the ocean.⁶ In 65,000 m³ of ALPS-treated water, the levels of strontium-90 were more than 100 times the safety standards, according to TEPCO. The

¹ The Inter-Ministerial Council for Contaminated Water and Decommissioning Issues, “Mid-and-Long-Term Roadmap towards the Decommissioning of TEPCO’s Fukushima Daiichi Nuclear Power Station” (27 December 2019) https://www.meti.go.jp/english/earthquake/nuclear/decommissioning/pdf/20191227_3.pdf

² TEPCO, Treated Water Portal Site, accessed on 14 April 2020, see <https://www.tepco.co.jp/en/decommission/progress/watertreatment/index-e.html>

³ Ibid.

⁴ Ministry of Economy, Trade and Industry, “The Outline of Decommissioning and Contaminated Water Management” (27 February 2020) <https://www.meti.go.jp/english/earthquake/nuclear/decommissioning/pdf/mp202002.pdf>

⁵ Ministry of Economy, Trade and Industry, “The Outline of Decommissioning and Contaminated Water Management” (27 February 2020) <https://www.meti.go.jp/english/earthquake/nuclear/decommissioning/pdf/mp202002.pdf>

⁶ Asahi Shimbun, “Editorial: TEPCO bungles it again in dealing with Fukushima tainted water”, 9 October 2018, see <http://www.asahi.com/ajw/articles/AJ201810090025.html>

levels were as high as 20,000 times the standards in some tanks. These figures contrast TEPCO's initial pledge to reduce radioactivity levels "to lower than the permissible level for discharge" by 2020.⁷

In September 2019, the Minister of the Environment of the Government of Japan did not exclude the possibility of discharging the contaminated water into the ocean, during a televised interview. In its 10 February 2020 report the ALPS Subcommittee considered five initial options for disposition of ALPS treated water and down selected to two potential options: controlled vapour release, and controlled discharges into the sea.⁸

While TEPCO plans to conduct secondary treatment of large amounts of the ALPS-treated water prior to any discharge, significant amounts of radioactive materials will remain, including strontium. The disposal of contaminated water from the Fukushima nuclear disaster into the ocean or air will jeopardize a multitude of human rights and the livelihoods of a large number of communities, including indigenous communities who are heavily dependent on fishing for income and subsistence. The discharged radionuclides could potentially build up in the fish and shellfish which compose an important part of the diet of the population in Japan. If consumed by humans, the accumulation of these radioactive elements in fish can potentially cause a number of serious health concerns, including fatal diseases, in children as well as adults. The decision to dispose of contaminated wastewater into the ocean would also seriously affect the human rights and livelihoods of local fishermen, who have invested enormous efforts into rebuilding their industry after the nuclear plant disaster. The impacts of such ocean disposal would create reputational damage for their industry, irrespective of differences of opinion regarding fish and shellfish contamination and resulting health impacts. Aerial discharges raise many similar concerns for agricultural communities in potentially affected areas, and potentially for consumers as well.

In consideration of the final option to be undertaken, the ALPS Subcommittee noted that the Government is expected to involve relevant stakeholders, including scheduling meetings with the local community.⁹ Local community members including the local fisheries association and forestry association report strong opposition to any environmental release, that the consultation is very limited, failing to involve the wider population, and that it is taking place during the current COVID-19 pandemic, posing challenges to meaningful consultation. We also note concerns have been raised by neighbouring countries regarding the

⁷ Atomic Energy Society Japan, "Treatment of contaminated water stored in Fukushima Daiichi Nuclear Power Plant", Division of Water Chemistry, Fusion Engineering Division, 10 September 2013, see <http://www.aesj.or.jp/jikocho/Treatmentofcontaminatedwater.pdf>

⁸ The Subcommittee on Handling of the ALPS Treated Water Report (10 February 2020) https://www.meti.go.jp/english/earthquake/nuclear/decommissioning/pdf/20200210_alps.pdf

⁹ *Ibid.*

proposed means of disposal, and limited evidence of broader consultations with potentially affected communities and indigenous peoples in foreign jurisdictions.

The discharge of contaminated water into the ocean and air is anticipated to affect populations also beyond Japan's borders. Several countries voiced their concerns over the Fukushima Daiichi water issue at a Meeting of the International Maritime Organization in London,¹⁰ the basis of which are that the proposed approaches to managing the radionuclide contaminated water can seriously affect the food security and livelihood of large numbers of populations within and outside Japan.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the overall situation of the management of contaminated water at the Fukushima Daiichi NPS. In particular, we are deeply concerned by the increasing likelihood of discharging radioactive waste to the air or ocean. The proposed approach to waste management poses health risks relating to release of radioactive matter contaminating water and traditional food on which large numbers of the population depend. This discharge would negatively affect not only the communities living nearby but also those far beyond the Fukushima prefecture, including indigenous communities, by violating their human rights including their rights to life, to health, to bodily integrity, to food, among others, and the duty of Japan to prevent exposure to hazardous substances. Serious concern is similarly addressed to the alleged limited involvement of affected community members, including local communities, civil society organisations and indigenous peoples, in meaningful consultations on the proposed avenue of disposal of the ALPS treated water, implicating their right to meaningful participation. In the context of the rights of indigenous peoples, this includes the requirement for free prior and informed consent for actions that stand to violate their human rights, including the storage or disposal of hazardous materials in their lands and territories.

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 accelerate the process of contaminated water management and preventing any risks of discharge of contaminated water into the ocean.

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:

¹⁰ International Maritime Organization meeting in London. States parties to the London Convention – London Protocol (LC-LP), 9 October 2019, London.

- 1) Does your Excellency's Government envisage any further changes to be made to the Mid-and-Long-Term Roadmap towards the decommissioning of TEPCO's Fukushima Daiichi NPS?
- 2) Has the objective set for resolving the water crisis efficiently by 2020 been modified or is it likely to be modified in view of recent developments?
- 3) Does your Excellency's Government envisage the possibility of discharging any contaminated water into oceans that is (a) below and (b) above regulatory limits for radioactive exposure?
- 4) How is your Excellency's Government engaging and consulting with concerned and/or affected communities? Please include detailed information on efforts regarding: local communities and indigenous peoples near Fukushima; local communities, civil society organizations, and indigenous peoples located further away, including those outside Japan's territory; and States in the vicinity of Japan, including Canada, China, Russia, the Republic of Korea, the United States, among others, as well as the Nordic Council.
- 5) How is your Excellency's Government's proposal for ocean discharge of radioactive waste in compliance with Japan's obligations under the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (London Protocol)?

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Hilal Elver
Special Rapporteur on the right to food

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex

Reference to international human rights law

In connection with 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 Convention on the Rights of the Child; and
- The UN Declaration on the Rights of Indigenous Peoples.

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 Excellency's Government's attention to General Comment No. 36 of the Human Rights Committee (HRC) on the right to life. According to the HRC, the duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity, including degradation of the environment (para. 26). Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors (para. 62). In addition, Article 6 of the Convention on the Rights of the Child (CRC) recognizes 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. Further, Article 7 of the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with an affirmative vote of Japan, states that indigenous individuals have the rights to life as well as physical and mental integrity.

We would also like to draw the attention of your Excellency's Government 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 UDHR, Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health services. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights (CESCR) describes the normative content of ICESCR Article 12 and the

legal obligations undertaken by the States parties to respect, protect and fulfil the right to physical and mental health. In paragraph 11 of General Comment No. 14, the 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”. Furthermore, Article 24 of the CRC recognizes the right of the child to the enjoyment of the highest attainable standard of physical and mental health, and the concomitant duty of the State to provide adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

Article 11 (1) of the ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” In interpreting this provision, the CESCR stressed in its General Comment No. 12 that the core content of the right to adequate food implies, *inter alia*, both economic and physical accessibility of food (para. 7). The Committee considers that the core content of the right to adequate food implies, *inter alia*, availability of food which refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand, and accessibility of food which encompasses both economic and physical accessibility. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. In addition, Article 27 of the CRC acknowledges the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 24 of the CRC provides measures that States Parties should take in order to protect the right to food of every child, including “through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

The right to maintain wholesome or healthy living is also enshrined in Article 25 of the Constitution of Japan. These provisions in the Constitution and human rights instruments form the basis of the right to avoid unnecessary exposure to radiation. Read together, these rights clearly establish a duty of the part of your Excellency's government to prevent exposure to hazardous substances and wastes, as detailed in the 2019 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the UN General Assembly (A/74/480). We would also like to draw the attention of your Excellency's

Government to the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) ratified by Japan on 15 October 1980, and its 1996 Protocol (London Protocol). According to Article 3 of the London Protocol States “shall apply a precautionary approach to environmental protection from dumping of wastes or other matter whereby appropriate preventative measures are taken when there is reason to believe that wastes or other matter introduced into the marine environment are likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects”.

We wish to call the attention of your Excellency’s Government to Article 25 of the ICCPR, which guarantees the right and the opportunity of every citizen to take part in the conduct of public affairs. The HRC in General Comment No. 25 stipulates that citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government (para. 6), and that they may also exert influence through public debate and dialogue with their representatives or through their capacity to organize themselves (para. 8). The right to participate in public affairs is further expounded in A/HRC/39/28: “Meaningful participation” requires a long-term commitment by public authorities, together with their genuine political will, an emphasis on agency and a shift in mind-set regarding the way of doing things... Laws, policies and institutional arrangements should ensure the equal participation of individuals and groups in the design, implementation and evaluation of any law, regulation, policy, programme or strategy affecting them (para. 19(c)). The right to participate in public affairs should be recognized as a continuum that requires open and honest interaction between public authorities and all members of society, including those most at risk of being marginalized or discriminated against, and should be facilitated continuously (para. 19(h)). When decision-making processes may have an impact on children, States should ensure that the right of children to express their views freely and to be heard is guaranteed, including by establishing child-friendly, age-appropriate, gender sensitive, inclusive and safe mechanisms for their meaningful engagement (para. 59). Article 12 of the CRC provides that States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

We would also wish to refer to Article 32 of UNDRIP which provides that States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Further, Articles 18, 19, and 20 set out that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. States should consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and

informed consent before adopting and implementing legislative or administrative measures that may affect them. Further, Article 29 provides that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

We wish to appeal to your Excellency's Government to take all necessary steps to secure the right to information, which is an enabler of rights to meaningful participation, prior informed consent, among many others. The right to information derives from the freedom of expression. However, the right to information has been recognized as a right in and of itself and one of the rights upon which free and democratic societies depend (E/CN.4/2000/63, para. 42). We would like to call the attention of your Excellency's Government to the importance of the right to information about hazardous substances to the general public, as emphasized in the Human Rights Council Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/30/40) in paragraphs 7, 8 and 48. In addition, we would like refer your Excellency's Government to the HRC's General Comment No. 34 concerning Freedoms of Opinion and Expression which indicates that the right to access to information includes "access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production." (paras. 18 and 19).

In order to fully realize the right to information for transparent public institutions, implementation through frameworks for measuring, monitoring, reporting and verification of information are necessary for Governments to ensure accountability on their obligations. States should ensure collection and proper management of information on exposure levels, contamination, and long-term health implications of exposure to chemicals, especially with regard to affected communities. In this connection, we wish to refer your Excellency's Government to General Comment No. 14 of the CESCR which provides that States should establish and maintain mechanisms to monitor implementation of policies and plans towards achieving the right to health (para. 56). Maintaining disaggregated information is necessary to understand specific events in the realization of the impact of particular actions on various groups including children. The CESCR has in relation to various country evaluations recommended that States improve national statistics and data collection and disaggregation.

We would also like to refer your Excellency's Government to 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 (A/HRC/23/41/Add.3). The Special Rapporteur encouraged the Government to address a number of serious challenges and to consider particular areas for improvement 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. In particular, the Special Rapporteur urged, “the Government to involve individuals and community organizations in current and future nuclear and health policies, including in data collection and radiation monitoring, planning evacuation centres, designing health management surveys, decisions regarding radiation levels and evacuation zones, and in setting compensation amounts (para 75).”

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