

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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of internally displaced persons and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL JPN 1/2021

13 January 2021

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 issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 45/17, 37/8, 32/8, 41/12, 42/16, 41/15 and 42/5.

In light of the upcoming 10 years' anniversary of the Fukushima nuclear disaster, we would like to bring to the attention of your Excellency's Government information received concerning the **management of contaminated water at the Fukushima Daiichi Nuclear Power Station (NPS) by the Government of Japan and TEPCO (Tokyo Electric Power) and the serious risks posed to the enjoyment of human rights of affected populations, the grave consequences which nuclear contamination poses to the physical and mental health and wellbeing of affected populations, including children, recent developments concerning the lifting of a number of evacuation orders, re-designation of highly contaminated areas as well as the lack of access to information, and lack of public consultation regarding data, envisaged solutions, past and future decisions affecting directly the wellbeing and human rights of concerned segments of the population. Allegations about an ongoing consideration by the Japanese authorities to release the Fukushima contaminated water into the Pacific Ocean, the significant delays occurred in the clean-up of the contaminated water, data unveiling serious health problems among the affected population, including children, the lack of revision of the Mid and Long Term Roadmap continue to remain in the focus of the attention of UN independent experts.**

The Government of Japan and TEPCO had set 2020 as a target date for addressing the issue of stored contaminated water resulting from the Fukushima disaster. Ten years past the disaster, this issue regrettably remains far from being sustainably resolved. Moreover, the solutions in discussion, namely the possible release of the contaminated water into the marine environment represent grave risks to the environment of human rights of concerned populations in and beyond the borders of Japan.

Over the past years several communication letters of Special Procedures mandate holders (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, AL JPN 1/2020 of 20 April 2020 and response dated 12 June 2020) have been addressed to your Excellency's Government regarding different aspects addressing the negative consequences of the Fukushima Daiichi NPS accident on the enjoyment of human rights including the right to life, to the highest attainable standard of health, the right to meaningful participation, right to adequate food and right to information. We thank the Japanese Government for engaging in a dialogue with mandate holders and providing responses. All answers to our queries have been duly considered and yet serious concerns persist regarding the management of highly contaminated water at the Fukushima Daiichi nuclear plant as well as a number of other issues related to the aftermath of the disaster.

According to information received:

Concerning the management of contaminated water

On 28 October 2020 a governmental decision to release the contaminated water into the Pacific Ocean was scheduled to be announced but has since been postponed. Japan has allegedly not conducted an Environmental impact assessment on any discharge into the Pacific Ocean, which would entail from its international obligations, given that there is a risk of significant transboundary harm to neighbouring countries.

The volume of groundwater flowing from the mountains and flood plains of Fukushima has increased dramatically, enhanced by the Typhoon Hagibis in October 2019, and the total amount of contaminated water is expected to rise to 1.37 million m³.

Allegedly, the primary source of radioactivity remains the melted nuclear fuel or corium located at the three Fukushima Daiichi reactors. Fresh groundwater entering the site continues to become contaminated as a result. One estimate in 2019 indicated that this would lead to an additional 500,000 to 1.000.000 tons, of contaminated water accumulating by 2030.¹ According to TEPCO's projections at 150 tons each day until 2025, and thereafter 100 tons per day² – the additional amount of contaminated water would be 273,750 tons by 2025 and by 2030 would reach 365,000 tons.

The Japanese Government, in a reply addressed to Special Procedures mandate holders on 12 June 2020 suggested that Advanced Liquid Processing System (ALPS) treated water³ stored in the tanks is not contaminated water and stated "After most of the radionuclides except tritium are removed in this purification system (ALPS), the water is safely stored in the tanks as ALPS treated water...Therefore ALPS treated water stored in the tanks is not contaminated

¹ JCER, "Contaminated water strategy of critical importance", Japan Center for Economic Research, March 7, 2019, see <https://www.jcer.or.jp/policy-proposals/2019037.html> (in Japanese)

² Mainichi Shimbun, "9 1/2 years after meltdowns, no end in sight for Fukushima nuke plant decommissioning", 22 September, 2020, see <https://mainichi.jp/english/articles/20200921/p2a/00m/0na/018000c#:~:text=Under%20the%20plant%20decommissioning%20plan,150%20ton%20target%20this%20year.>

ALPS is used to treat wastewater that has first gone through a reverse-osmosis process to remove cesium and is then desalinated to separate the fresh water.

water.”⁴ In the meantime TEPCO’s own data confirms that ALPS treated water contains multiple radionuclides such as strontium-90, iodine-129, carbon-14 and plutonium isotopes, as well as high concentrations of tritium (which is not treated by ALPS). In the case of tritium the concentration levels in water that has undergone secondary processing in September and October 2020 are according to TEPCO 272,000 Bq per liter. ⁵

Water that contains large quantities of radioactive carbon-14 (as well as the other radioactive isotopes including strontium-90 and tritium) can only be described as contaminated, contrary to the interpretation of the Japanese Government provided in the letter of 12 June 2020⁶.

In September 2018, TEPCO confirmed that their water processing technology known as ALPS, had failed to remove radioactive concentrations in the majority of the contaminated water stored in tanks at the Fukushima Daiichi plant.⁷ In March 2020, TEPCO reported that 780,000 tons of water, or 72% of the total water in storage tanks, would undergo secondary processing.⁸ The results of the secondary processing in ALPS, as reported by TEPCO, show that it has been possible for ALPS to reduce concentrations of radionuclides to below regulatory limits, which a step closer to reducing concentrations in the contaminated water.

However, secondary processing has considerable shortcomings to note:

- the 2000 cubic meters of contaminated water that has now undergone secondary processing is 0.25 percent of the total volume of water that is planned for processing over the coming years - it is thus too early to claim that over the coming years ALPS will reduce concentrations of radionuclides such as strontium-90 and iodine-129 to below regulatory limits;

- it is not possible to say what the total radioactive inventory will be of the contaminated water after secondary processing has been completed – each tank has a different inventory and therefore the final concentration will vary;

- the current plan is for the additional groundwater contamination to be reduced from an average of 150 cubic meter / tons per day by the end of 2020, and to 100 cubic meters / tons by 2025. If this is achieved, between 2020 and 2025 an additional 273,750 cubic meters of water will be generated, and in the period 2025-2030, a further 182,500 cubic meters/tons – for a total of 456,250 cubic meters. Thus in addition to the 1.23 million cubic meters that currently is stored in tanks, almost half a million cubic meters of contaminated water will be required to processed in ALPS;

⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35338>

⁵ TEPCO, "Fukushima Daiichi Nuclear Power Station Results from secondary treatment performance confirmation tests on water treated with multi-nuclide removal equipment (J1-G group) (follow-up report)", November 26, 2020 Tokyo Electric Power Company Holdings, Inc. Fukushima Daiichi Decontamination & Decommissioning Engineering Company, see <https://www4.tepco.co.jp/en/decommission/progress/watertreatment/images/201126.pdf>

⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35338>

⁷ Julian Ryall, “Japan plans to flush Fukushima water 'containing radioactive material above permitted levels' into the ocean” 16 October 2018, Daily Telegraph, see <https://www.telegraph.co.uk/news/2018/10/16/japan-plans-flush-fukushima-water-containing-radioactive-material/>

⁸ TEPCO, "TEPCO Draft Study Responding to the Subcommittee Report on Handling ALPS Treated Water", 24 March 2020, see <https://www.term and long.tepco.co.jp/en/decommission/progress/watertreatment/images/200324.pdf>

So far only 0.25 percent of the tank water has undergone secondary processing. It will be several years before all the water can be processed. The ALPS has not been designed to remove radioactive tritium or carbon-14 which would be discharged in their entirety into the Pacific. The processed water to be discharged still exceeds regulatory limits for radioactive tritium and therefore will be diluted with non-contaminated water and discharged over at least 30 years. In this context, it is alarming that the Japanese Government considers that ALPS treated water is not contaminated water.⁹

Concerning the Revision of Mid-Term and Long-Term roadmap

The contaminated water issue is intrinsically bound with the overall decommissioning plan for removing the molten fuel from the reactor buildings. According to the Japanese Government “There is no fact that there are any obstacles to the achievement of the targets for contaminated water management as alleged to the UN Special Rapporteur, and there are no plans to make further revisions to the Mid-and-Long-Term Roadmap at this time.” Yet various facts and allegations seem to indicate that the revision of the roadmap currently has no alternatives. To date it has been revised five times, most recently in December 2019. The Nuclear Damage Compensation and Decommissioning Facilitation Corporation (NDF), which formulates strategies to deal with main mid-and-long term challenges in the decommissioning of Fukushima Daiichi, issued its latest review in October 2020.¹⁰ It noted that, “Decommissioning of the Fukushima Daiichi NPS containing the reactor involved in the accident is an unprecedented activity that takes place in a special environment different from that of a normal reactor, and therefore, to ensure safety, it should correspond to a number of peculiar characteristics of safety.

In addition, TEPCO continues to allegedly misrepresent and selectively ignore basic scientific evidence on radioactive tritium. In particular, the role of Organically Bound Tritium (OBT) has not been adequately explained, and consequently, scientific data on the potential impacts of any future releases of contaminated water are not provided. In addition, current human dose models used by the International Atomic Energy Agency (IAEA) (and the Japanese authorities and TEPCO) are based on single discharges, but when multiple discharges occur the levels of OBT build up gradually.¹¹

It is also alarming that the Japanese Government considers that there will be no radiological impact from the release of the contaminated tank water, downplaying the hazardous radionuclides that will be discharged into the environment, which include radioactive strontium.

It is a major matter of concern the lack of access to adequate information and the misrepresentation by the Japanese Government with regard to the nature of the hazards posed by the contaminated water and their impacts in the affected

⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35338>

¹⁰ NDF, “Technical Strategic Plan 2020 for Decommissioning of the Fukushima Daiichi Nuclear Power Station of Tokyo Electric Power Company Holdings, Inc. Overview”, Nuclear Damage Compensation and Decommissioning Facilitation Corporation NDF, 6 October, 2020, see http://www.dd.ndf.go.jp/en/strategic-plan/book/20201214_SP2020eOV.pdf

¹¹ Rodgers DW., “Tritium Dynamics in Mice exposed to Tritiated Water and Diet.” Health Physics, 63, 331-337 1992, see https://journals.lww.com/health-physics/Abstract/1992/09000/Tritium_Dynamics_in_Mice_Exposed_to_Tritiated.9.aspx

populations and areas. Allegedly, these volumes have not been presented to the Japanese public in the context of the current decision making on discharge.

Concerning the grave impact of nuclear contamination on children's health

It is an established fact that children are more sensitive to radiation and are more likely to develop the short-term and some of the long-term effects of radiation exposure.¹² Children are at higher risk of radiation-related cancers of certain tissues.¹³ They are also more likely to experience higher external and internal radiation exposure levels than adults because they are shorter and have smaller body diameters and organ sizes. In the meantime, the 20 mSv/y permissible dose set by the Japanese Government is the same maximum allowable annual dose recommended by the International Commission on Radiological protection (ICRP) for adult nuclear workers – which is now in Japan is being applied to men, women, children, and infants alike.

As of 15 June 2020, 195 children and young people in Fukushima have been diagnosed with thyroid cancers and undergone medical interventions.¹⁴ The Fukushima Medical University continues to monitor the state of health of thyroid glands of children in Fukushima who were 18 years old and younger at the time of accident. Despite the scientific evidences,¹⁵ the Japanese Government continues to deny any association between radiation exposure resulting from the Fukushima Daiichi accident and higher levels of thyroid cancer. Recent analysis suggests that there is in fact a direct correlation between radiation exposure and thyroid cancers detected in Japan since 2011. In 2019, Japanese scientists reported that, “The average radiation dose-rates in the 59 municipalities of the Fukushima prefecture in June 2011 and the corresponding thyroid cancer detection rates in the period October 2011 to March 2016 show statistically significant relationships.”¹⁶

Concerning the status of evacuees, Difficult-to-return-zones, the re-designation of highly contaminated areas and the lifting of evacuation orders in Futaba, Okuma and Tomioka

Allegedly, as of March 2020 over 40,000 Fukushima citizens remain evacuees confronted by major challenges including livelihood support and termination of housing assistance which has contributed to high levels of stress and suicide

¹² As UNSCEAR declares, “the commonly held notion that children might be two to three times more sensitive to radiation than adults is true for some health effects but certainly not for all.” UNSCEAR, “Sources, Effects And Risks Of Ionizing Radiation”, United Nations Scientific Committee on the Effects of Atomic Radiation UNSCEAR 2013 Report to the General Assembly with Scientific Annexes Volume II Scientific Annex B, see http://www.unscear.org/docs/publications/2013/UNSCEAR_2013_Report_Vol.II.pdf

¹³ Linet MS, Kazzi Z, Paulson JA. Pediatric Considerations Before, During, and After Radiological or Nuclear Emergencies. *Pediatrics*. 2018;142(6):e20183001, The American Academy Of Pediatrics, see <http://pediatrics.aappublications.org/content/pediatrics/142/6/e20183001.full.pdf>

¹⁴ The Asia Pacific Journal, “Take Science Seriously and Value Ethics Greatly”: Health Effects of Fukushima Nuclear Disaster”, Interview with Hisako Sakiyama, M.D. & Ph.D. by Katsuya Hirano & Hirotsuka Kasai, 1 October 2020, Volume 18 | Issue 19 | Number 5 Article ID 5493, see <https://apjif.org/2020/19/Sakiyama-Hirano-Kasai.html>

¹⁵ In March 2020 a paper published in *Nature, Scientific Reports*, found a, “positive correlation between the thyroid cancer cases reported in the (Fukushima Health Management Survey) Full Scale Survey and the air-dose rates, with the association stronger with external exposure than with internal one.”

¹⁶ Yamamoto H, Hayashi K, Scherb H. Association between the detection rate of thyroid cancer and the external radiation dose-rate after the nuclear power plant accidents in Fukushima, Japan. *Medicine* 2019;98:37(e17165), see https://journals.lww.com/mdjournal/Fulltext/2019/09130/Association_between_the_detection_rate_of_thyroid.59.aspx

rates.¹⁷ However, the Government allegedly continues to fail to acknowledge that evacuees are Internally Displaced Persons (IDPs), including those so called voluntary evacuees from areas that were not officially designated evacuation areas. As a consequence, their entitlement to financial, housing, medical and other support is not made available to the level required.

Difficult-to-return-zones, which are areas where citizens are not permitted to live, exist in seven municipalities of Fukushima prefecture and cover a total of about 340 square kilometres. The Government has set an objective of lifting evacuation orders in parts of these zones by 2023 called “Designated reconstruction and rehabilitation areas” they cover a total of about 30 square km in six of these municipalities, excluding Minamisoma City.

On 17 January 2020, lifting of evacuation orders in small areas of Futaba Town, Okuma Town, and Tomioka Town were approved by the Japanese authorities. In total the area lifted was 0.5 square kilometer. The areas lifted were not residential areas but areas close to the main Joban express route and were linked to the plans for the 2020 summer Olympics. It was the first time evacuation orders had been lifted in the highly contaminated Difficult-to-return-zones,

In 2020 a new approach to the decontamination programme was applied. Rather than retaining the designation of a Difficult-to-return-zone, in the case of Iitate, the classification was terminated. They will not however be able to return to their former homes to live. On 25 December 2020, the decision to end the Difficult to Return Zone in Iitate was formally approved. This means Japanese citizens, including children will now be able to freely enter these areas with a potentially negative affect on their health. Radiation levels in practically all of the present Difficult-to-return-zones, are above 1 mSv per year whereas restrictions were only supposed to be lifted after decontamination had brought radiation levels down to 1 mSv or below.

Allegedly, as in previous years, average and maximum radiation levels in the lifted evacuation areas (i.e. areas determined by the Japanese government to be safe for return) of Namie and Iitate remain too high for normal life to be considered possible without increased health risks to returning citizens.

Regarding public consultations and access to information

According to various testimonies and sources of information, the lack of consultation and participation of the concerned population and the general public continues to prevail. The absence of substantive exchange of information on issues of extreme importance to the lives of affected populations, the opacity and lack of transparency of information provided to the public, the uncertainty over their health and future and most importantly over the future and health of their children, the prospects of return to contaminated areas of internally displaced persons are all factors which result in immense pressure over a population already facing a myriad of grave problems.

¹⁷ Human Rights Now, “40,000 People are Still Displaced and Radiation Levels are Still Dangerous Due to the Ongoing Fukushima Nuclear Disaster”, 11 March 2020, see <https://hrn.or.jp/eng/news/2020/03/11/fukushima-statement-march-2020/>

During 2020 opposition from public and civil society to plans for discharging water into the Pacific has increased. Since March 2020, resolutions have been adopted by municipalities expressing their concerns and opposition to the release of the contaminated water. The Citizens' Alliance 'Stop Polluting the Ocean' has reported that written statements have been adopted by 41 local councils representing 59 local authorities as of 3 July 2020. These include clear opposition to any discharge, and all reflect the position that the proposals of the METI subcommittee cannot be immediately accepted.

On 23 June 2020, at the ordinary general meeting of the National Federation of Fisheries Co-operative Associations, and on 26 June 2020 at the ordinary general meeting of the Fukushima Prefectural Federation of Fisheries Co-operative Associations, special resolutions to 'firmly oppose oceanic discharge' as a method for disposing of treated water were unanimously approved."¹⁸

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concerns regarding the aftermath of dealing with the consequences of the nuclear plant disaster in Fukushima. We acknowledge substantive efforts employed by Japanese authorities for overcoming those consequences, yet it is with dismay and great regret that we witness that ten years after the tragic event, people, including children are still suffering the consequences of contamination, internally displaced persons are still facing major obstacles to rebuild their lives, and the absence of an adequate solution to the accumulation of contaminated water at the Fukushima Daiichi nuclear plant poses major environmental and human rights risks.

The situation poses serious safety risks conditioned by radiation exposure. The consequences of the management of contaminated water at the Fukushima Daiichi nuclear plant negatively affects the environment of the affected areas, as well as the communities living close but also far beyond the Fukushima prefecture by violating their right to life, to the highest attainable standard of health, as well as their right water and also traditional food on which large numbers of population depend. We believe an eventual decision to discharge contaminated water reserves into the Pacific Ocean would not solve the problem that lies at the core of this unique environment challenge especially considering the gradual potential increase of contaminated water and the source of contamination being the molten fuel cores in reactors 1-3. An additional point of concern is the apparent hesitation of Japanese authorities to provide access to adequate information to the public and the opacity surrounding the nature of the hazards posed by the contaminated water and the impact of its disposal. Serious preoccupations concern the lack of effective participation of local communities and civil society organizations in meaningful consultations on the proposed avenue of disposal of the ALPS treated water, undermining their right to meaningful participation, as well as the lack of effective remedies.

It is equally alarming that the Japanese Government considers that there will be no radiological impact from the release of the contaminated tank water, downplaying the hazardous radionuclides that will be discharged into the

¹⁸ Citizens' Alliance Stop Polluting the Ocean!, "Communication to Mr. Baskut Tuncak, Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes Mr. Michael Fakhri Special Rapporteur on the right to food Mr. Clément Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association Mr. Francisco Calí Tzay, Special Rapporteur on the rights of indigenous peoples, 10 July 2020.

environment, which include radioactive strontium. In case the Japanese authorities decide to move ahead with the discharge of water in the ocean, it could only be interpreted as a failure to uphold the human rights of vulnerable categories impacted by the Fukushima Daiichi nuclear accident, including children, whose physical and mental health as well as the livelihood will come under additional strain.

We take this opportunity to recall that those persons evacuated from their homes by the Fukushima disaster constitute internally displaced persons. We are deeply concerned at the uncertainty about the return prospects of internally displaced persons due to the alleged potential negative effects of radiations on their health, and at the physical and mental health of any of those who return to contaminated areas. We are also concerned at the risk of secondary displacement of internally displaced persons who lack sufficient assistance and prospects of durable solutions, and the risk of new displacements linked to the environmental degradation and other potential impacts of the management of contaminated water.

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 strongly urge the Government to refrain from any decision to release contaminated water to the marine environment. In addition, 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 well as to find solutions that respect the human rights of the affected population.

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 up to date observations on the following matters:

- 1) Does your Excellency's Government see any necessity for revising the Mid-and-Long-Term Roadmap towards the decommissioning of TEPCO's Fukushima Daiichi Nuclear Power Station? It is our understanding that a certain level of flexibility regarding eventual revisions based on emerging needs is maintained by Japanese authorities.
- 2) Does your Excellency's Government consider the objective of resolving the water crisis efficiently by 2020 achieved by this time or has the target goal undergone any modifications?
- 3) Does your Excellency's Government envisage the possibility of discharging any contaminated water into the marine environment?
- 4) In which ways is the Japanese Government enabling scientific peer review of scientific monitoring and findings related to the consequences of the nuclear disaster?
- 5) We would appreciate receiving concrete examples of activities undertaken by Japanese authorities with the aim of engaging concerned

populations in decision making processes regarding the resolution of the contained water issue. Have there been any surveys conducted, public hearings, virtual forums or other activities taken place in the recent months/years? Is there any data produced showing public sentiments over envisaged solutions?

- 6) How is your Excellency's Government engaging other States potentially affected by a release of contaminated water to the Pacific Ocean, are there any forms of collaboration with other states under regional instruments protecting the seas?
- 7) Please indicate whether any measures are being envisaged in order to continue to assist those persons in need, in particular persons internally displaced because of the Fukushima disaster, including those from areas which were not designated evacuation areas, or where the evacuation order has been lifted or areas which had their classification as a Difficult-to-return zone terminated, and to prevent conditions leading to further displacements related to the Fukushima disaster.
- 8) Please inform us of what measures your Government is taking to guarantee the protection and human rights of internally displaced persons according to international standards, including the requirement to provide the conditions for them to achieve durable solutions, and whether any consultation has been held with internally displaced persons concerned and what efforts have been made to ensure their meaningful participation in the decision-making.

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.

Marcos A. Orellana

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

David R. Boyd

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michael Fakhri
Special Rapporteur on the right to food

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Cecilia Jimenez-Damary
Special Rapporteur on the human rights of internally displaced persons

Pedro Arrojo-Agudo
Special Rapporteur on the human rights to safe drinking water and sanitation

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;
- The UN Framework Principles on Human Rights and the Environment;
- The Guiding Principles on Internal Displacement

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.

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.

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).”

Article 15 of the ICESCR recognizes the right of everyone to participate in cultural life, enjoy the benefits of scientific progress, and to benefit from the protection of the moral and material rights to any scientific discovery or artistic work they have created. In addition, we would like to draw the attention of his Excellency’s government that on 1 February 2019 under Principle Concerns and Recommendations, the UN Committee on the Rights of the Child (CRC) made seven important recommendations to the government of Japan in relation to the Fukushima nuclear disaster.¹⁹ Specifically: (a) *Reaffirm that radiation exposure in evacuation zones is consistent with internationally accepted knowledge on risk factors for children;* (b) *Continue providing financial, housing, medical and other support to evacuees, children in particular, from the non-designated areas;* (c) *Intensify the provision of medical and other services to children affected by radiation in Fukushima prefecture;* (d) *Conduct comprehensive and long-term health check-ups for children in areas with radiation doses exceeding 1mSv/year;* (e) *Ensure mental health facilities, goods and services are available to all evacuees and residents, especially vulnerable groups such as children;* (f) *Provide, in schoolbooks and materials, accurate information about the risk of radiation exposure and the increased vulnerability of children to radiation exposure;* (g) *Implement the recommendations made by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/23/41/Add.3).* The UN CRC further called for the Japanese government to implement the highly critical recommendations made UN Special Rapporteur on environment, Anand Grover issued in 2013.²⁰ The UN CRC, concluded that Japan should “take all appropriate measures to ensure that the recommendations contained in the present concluding observations are fully implemented.”²¹

¹⁹ Committee on the Rights of the Child Eightieth session 14 January-1 February 2019, Item 4 of the provisional agenda Consideration of reports of States parties”, List of issues in relation to the combined fourth and fifth periodic reports of Japan, CRC/C/JPN/Q/4-5, 22 February 2018.

²⁰ Fukushima Mission 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 Mission to Japan (15 - 26 November 2012), A/HRC/23/41/Add.3 Distr.: General 2 May 2013, see https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-41-Add3_en.pdf Op.Cit. CRC February 2019.

In addition, 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 also recall that according to Article 21 of the ICCPR, “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” The ‘provided by law’ requirement means that any restriction ‘must be made accessible to the public’ and ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ (CCPR/C/GC/34). Moreover, it ‘must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution’. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions ‘target a specific objective and do not unduly intrude upon the rights of targeted persons.

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 see it particularly relevant to point to Human Rights Committee's General Comment No 36 of 2018 states that human right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. The General Comment also states that obligations of States parties under international environmental law should inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. In this regard, we would like to draw the attention of his Excellency's government about international law norms that prohibit significant transboundary environmental harm, both to the territory of other States and to areas beyond national jurisdiction. Environmental impact assessments are required as a preventive measure to enables States to ensure that significant transboundary harm does not occur. An obligation to conduct environmental impact assessment (EIA) flows from this obligation of prevention, "where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource".²² The consideration of alternatives to a proposal is a requirement for a comprehensive EIA. Before any discharge into the Pacific Ocean Japan is required to conduct an EIA under Article 206 of UNCLOS. If this indicates that there is a risk of significant transboundary harm, for example to the environment of and economy of other States or areas beyond national jurisdiction, Japan, which has jurisdiction and control over the discharges, "is required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk."²³ This clearly applies to the potential impact Fukushima Daiichi discharges would have on the East Sea and by extension the interests of the people of the Republic of Korea, as well as to coastal States in the Pacific Ocean's rim. Any uncertainty must be resolved applying the precautionary principle, pursuant to Principle 15 of the Rio Declaration. If an EIA indicates that there is a risk of significant transboundary harm, Japan would be "required, in conformity with its due diligence obligation, to notify and consult in good faith with the potentially affected State, where that is necessary to determine the appropriate measures to prevent or mitigate that risk."²⁴ Moreover, Japan is obliged to

²² *Certain Activities carried out by Nicaragua in the Border Area. 2015. I.C.J. Reports 2015 (Judgment) paragraph 104 at <https://www.icj-cij.org/en/case/152>. "The underlying principle applies generally to proposed activities which may have a significant adverse impact in a transboundary context. Thus, to fulfill its obligation to exercise due diligence in preventing significant transboundary environmental harm, a State must, before embarking on an activity having the potential adversely to affect the environment of another State, ascertain if there is a risk of significant transboundary harm, which would trigger the requirement to carry out an environmental impact assessment."*

²³ Ibid

²⁴ Ibid

ensure that the discharge does not cause harm to international waters or to the waters of another State. Principle 21 of the Stockholm Declaration on the Human Environment 1972, reaffirmed by Principle 2 of the Rio Declaration on Environment and Development 1992, provided that States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. This was codified in Article 194(2) of the United Nations Convention on the Law of the Sea (UNCLOS), which provides that “States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.” Another important duty is contained in Article 195 of the Convention: “In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.” That is what Japan would be doing if it were to discharge the million tones of pollution into the Pacific Ocean.²⁵ Indeed, it is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”²⁶

The Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. They underline States’ substantive responsibilities in this regard including the obligation to prevent from violating the right to a healthy environment or other human rights. Principle 14 for example provides that “States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.” The most vulnerable include children which are more vulnerable to environmental harm for many reasons including because they are physically developing. In addition, it is important to highlight that paragraph 2)c) of article 24 of the Convention of the Rights of the Child expressly provides that States should take appropriate measures to “combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

Finally, we take this opportunity 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 stated in the 1998 Guiding Principles on Internal Displacement which reflect international human rights law. Guiding Principle 5 sets out authorities shall respect their obligations under international human rights law so as to prevent and avoid conditions that might lead to displacement of persons. Where persons are internally displaced by disasters they must be 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

²⁵ Nuclear Weapons Advisory Opinion [1996] ICJ 2. At <https://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>. Paragraph 29.

²⁶ Pulp Mills on the River Uruguay (Argentina v. Uruguay) (*Pulp Mills*), at <https://www.icj-cij.org/en/case/135/judgments>. Paragraph 101.

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. Furthermore, 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.” 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.

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