

# JAPAN

## SUBMISSION OF HUMAN RIGHTS NOW

TO

**THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

IN ADVANCE OF THE CONSIDERATION OF JAPAN'S REPORT

### Human Rights Now



*Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN dedicates to protection and promotion of human rights of people worldwide.*

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# JAPAN

## SUBMISSION OF HUMAN RIGHTS NOW TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### I. INTRODUCTION

1.1 The present submission was produced by Human Rights Now to be submitted to the Committee on Economic, Social and Cultural Rights (hereinafter ‘Committee’) in advance of its consideration of Japan’s Third Periodic Report on the implementation of the obligations under the International Covenant on Economic, Social and Cultural Rights (hereinafter ‘ICESCR’) at the 49<sup>th</sup> session.

1.2 Human Rights Now is an international human rights NGO based in Tokyo, Japan. It comprises more than 700 members, most of whom are lawyers and scholars. It has worked to protect and promote human rights for the people across the world with a special focus upon Asian countries<sup>1</sup>.

1.3 The submission concentrates upon the human rights situation in the aftermath of the Great East Japan Earthquake of 11 March 2011<sup>2</sup>. The tremor of magnitude 9 was disastrous. It generated massive tsunamis along the East coast of Japan, culminating in more than 15,000 casualties and the evacuation of more than 330,000 residents<sup>3</sup>. It also rendered dysfunctional the nuclear power stations in Fukushima Prefecture, and a nuclear emergency was declared accordingly.

1.4 Three primary issues will be elaborated in due course. Those are, first, the health conditions both of Fukushima residents and those in other areas in relation to nuclear radiation leaks; second, the poor housing conditions of the evacuees; and third, the safety of food and products.

1.5 It should be noted that the following concluding observations of the Committee

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<sup>1</sup> For further information, please consult the homepage at <http://hrn.or.jp/eng/outline/>

<sup>2</sup> For our prior activities in relation to the Great East Japan Earthquake, please visit the following website, <http://hrn.or.jp/eng/activity/area/japan/>

<sup>3</sup> Headquarters for Emergency Disaster Control, Cabinet Office, Government of Japan, “2011 REPORT ON EAST JAPAN EARTHQUAKE” (2011), p. 2. (in Japanese), available at, <http://www.kantei.go.jp/saigai/pdf/201201101700jisin.pdf>

concerning the Hanshin-Awaji Earthquake disaster and the nuclear power installation accident were included in the second periodic report of Japan,

With respect to the nuclear power installations:

*'The Committee was concerned about reported incidents in nuclear power stations and the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents'<sup>4</sup> and*

*recommends increased transparency and disclosure to the population concerned of all necessary information on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents'<sup>5</sup>.*

Furthermore, regarding the Hanshin-Awaji Earthquake;

*'The Committee is concerned that despite large resettlement programmes planned and executed by Hyogo Prefecture in the aftermath of the great Hanshin-Awaji earthquake, the population most affected has not always been consulted adequately, and as a consequence many single older persons now live in environments totally unfamiliar to them with little or no personal attention. Apparently, little or no psychiatric or psychological treatment is being offered for people who have lost their families. Many resettled earthquake victims who are over 60 years of age lack community centres, access to health centres and outpatient nursing'<sup>6</sup>, 'The Committee notes with concern that poorer sections of the population in the Hanshin-Awaji areas affected by the earthquake are finding it increasingly difficult to finance their building reconstruction. Some were forced to sell their property in order to pay off their existing mortgages without being able to rebuild their house'<sup>7</sup>, and*

*'The Committee recommends that State party encourage Hyogo Prefecture to step up and expand its community service, in particular to older and disabled persons'<sup>8</sup> and 'speedily take effective measures to assist poorer earthquake victims in meeting their financial obligations to public housing funds or banks, undertaken to reconstruct their destroyed houses, in order to help them avoid having to sell their properties to meet continuing mortgage payments'<sup>9</sup>.*

Despite the concerns and recommendations in the concluding observations of

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<sup>4</sup> The Committee on Economic Social and Cultural Rights, "CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT : CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS", E/C. 12/1/1 Add. 67 (2001), para. 22.

<sup>5</sup> *Ibid.*, para. 49.

<sup>6</sup> *Ibid.*, para. 27.

<sup>7</sup> *Ibid.*, para. 28.

<sup>8</sup> *Ibid.*, para. 54.

<sup>9</sup> *Ibid.*, para. 55.

the Committee in the second periodic report, the government failed to implement the above recommendations. Thus, the rights of people affected by the East Japan Earthquake and residents around the Fukushima Nuclear Power Plants under this Covenant have been seriously violated.

Therefore, this Submission by Human Rights Now focuses upon the facts in 2011 that the rights of affected persons and residents around the nuclear power station were and have been endangered without the above-mentioned recommendations being implemented substantially.

The Government submitted the third periodic report on 22 December 2009 which was issued before the East Japan Earthquake, and the above issues were not included.

1.6 Considering the situation, Human Rights Now would like to propose the followings list of issues and recommendations:

- The Committee is to ask the government to disclose detailed information regarding the measures taken for the East Japan Earthquake and the meltdown of the Fukushima Dai-ichi Nuclear Power Station as well as data concerning affected persons, as well as the status of implementation on above-mentioned recommendations.
- The Committee is to give recommendations so as to improve the situation on the basis of the information submitted from the government and NGOs.

## II. RIGHT TO HEALTH (ARTICLE 12)

### A. LEGAL FRAMEWORK

2.1 Article 12 of the ICESCR protects the right to enjoy ‘the highest attainable standard of physical and mental health’. The Committee interpreted this right as ‘a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health (emphasis added)’<sup>10</sup>. Accordingly, paragraph 2 (d) of the same Article which guarantees ‘the creation of conditions which would assure to all medical services and medical attention in the event of sickness’ is to be construed as to include ‘the provision of ... timely access to basic preventive, curative, rehabilitative health services (emphasis added)’<sup>11</sup>. The Committee also viewed that measures taken by the Government may include judicial remedies<sup>12</sup>.

2.2 Therefore, the Japanese Government must take measures to ensure the conditions under which the highest attainable standard of health is realized. Medical services must be provided adequately and in a timely fashion. Where the situation so requires, effective remedies must be given. Insufficient expenditure or misallocation of public resources which prevents persons from enjoying their right to health could constitute a violation of Article 12<sup>13</sup>.

### B. FACTUAL BACKGROUND

2.3 The Great East Japan Earthquake on March 11 caused threats to the right to health of many affected people who suffered from this disaster in various ways and were evacuated from their residence. The government, however, failed seriously to take necessary measures to protect the right to health of the affected people and thereby endangered the affected people’s right to health.

2.4 In particular, due to radioactive contamination resulting from TEPCO’s Fukushima Daiichi nuclear power plant accident (hereinafter, the “Fukushima nuclear accident”), it has been estimated that the amount of radioactive materials released is

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<sup>10</sup> Committee on Economic, Social and Cultural Right, “GENERAL COMMENTS 14 THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ARTICLE 12)”, E/C. 12/ 2000/4[hereinafter “General Comments 14”], para. 9.

<sup>11</sup> *Ibid.*, para. 4.

<sup>12</sup> Committee on Economic, Social and Cultural Right, “GENERAL COMMENTS 3 THE NATURE OF STATE PARTIES OBLIGATIONS (ARTICLE 2 PARAGRAPH 1)”, E/1991/23 para. 5.

<sup>13</sup> General Comments 14, *supra* note 10, para. 52.

over 168 times that which was released by the atomic bomb in Hiroshima<sup>14</sup>. This creates serious risks to the health of the population, in particular expecting mothers, infants, children and the young generations most vulnerable to harm from radiation living in wide areas which have not been designated as evacuation areas<sup>15</sup>. Although the Japanese government, along with local governments, has been implementing various kinds of measures, Human Rights Now must report a serious failure to protect people's right to health guaranteed by the Covenant.

***i. Failure of effective measure to prevent and respond to the Fukushima nuclear accident***

2.5 The Japanese government failed to implement the following recommendation made by the Committee to its second report.

*'recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents'*<sup>16</sup>.

It is revealed that the government failed to prepare effective plans for the prevention of a nuclear accident. Also the early reaction of the government to the accident of Fukushima Dai-ichi Nuclear Station was totally inadequate<sup>17</sup>. Indeed, the government itself admits that it has never anticipated the type of trouble that actually occurred at Fukushima Dai-ichi Nuclear Station and thus no effective measures to prevent meltdown were established prior to the accident.

***ii. Failure of disclosure***

2.6 After the accident took place in Fukushima Dai-ichi Nuclear Station, the Japanese government failed to disclose all necessary information to the affected population of the Fukushima nuclear accident in a timely manner.

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<sup>14</sup> This calculation is admitted by the government.

Sankei News, "RELEASED CAESUIM 168 TIMES OF HIROSHIMA BOMBS" (26 August 2011), available at, <http://sankei.jp.msn.com/science/news/110826/scn11082619220001-n1.htm>

<sup>15</sup> For further information, please look at the homepage of the Nuclear and Industrial Safety Agency, Ministry of Economy, Trade and Industry at <http://www.nisa.meti.go.jp/>

<sup>16</sup> The Committee on Economic Social and Cultural Rights, "CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT: CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS", E/C. 12/1/1 Add. 67 (2001), para. 49.

<sup>17</sup> Investigation Committee on the Accident at the Fukushima Nuclear Power Stations of Tokyo Electric Power Company, "INVESTIGATION REPORT" (December 2011), available at, <http://icanps.go.jp/eng/>

Prior to the accident, the government had developed the System for Prediction of Environment Emergency Dose Information (SPEEDI) for use in emergency, however it was not utilised at all to ensure the safety of the residents.

Although the system was measuring the relevant data and correctly predicting the spread of the radiation, and the government was aware of the results at the earliest stage, officials including the Minister of Health, Labour and Welfare decided not to make them public. It was not until 23 of March 2011 that the government disclose the information of SPEEDI<sup>18</sup>.

As a result, in the immediate aftermath of the Earthquake, a large number of residents in Fukushima prefecture were exposed to the leaked nuclear radiation for a considerable period of time. Some residents evacuated to a shelter where radiative pollution was especially serious (the case of *Akōgi* shelter) without knowing it, and a number of residents evacuated to the very direction to which radioactive materials flew over (the case of residents in *Namié* town who evacuated under the direction of town officials who were not notified with the SPEEDI data).

Moreover, without warning, many people living in Fukushima city and Koriyama city stayed outside for a long time and exposed themselves to high level radiation. At that time, the waterworks in the region did not properly function so the residents, including children, waited outdoors for a few hours to receive water. Some had to leave their houses to buy food and daily necessities. Some even drank water contaminated by the nuclear radiation, not knowing its potential danger.

2.7 Even after the disclosure of SPEEDI data, the government failed to disclose detailed information on the level of nuclear contamination to the affected population.

It was not until late August that the government disclosed a map detailing soil contamination by cesium 134 and 137. Moreover, the government has not yet disclosed all data of contamination regarding other nuclear materials emitted by the nuclear accident.

Regarding the information of radiation level in air, the government and local governments have failed to provide detailed information to the population concerned. Although local governments monitor and disclose airborne radiation levels everyday, many citizens claim that the number of monitoring points are not sufficient.

Moreover, many citizens claims that there are serious gaps between the radiation level announced by local governments and the actual level measured by themselves or

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<sup>18</sup> *Ibid.*

other experts<sup>19</sup>. The residents often claim that the government tends to measure selectively and avoid measuring highly radioactive “hot spots”. Thus, affected people are not quite sure where the hot spots are in their neighbourhoods<sup>20</sup>.

### *iii. Narrow evacuation area designation*

2.8 With respect to the evacuation, in the aftermath of the accident of Fukushima Dai-ichi Nuclear Station, the government issued the following instructions. On 11 March, the evacuation area was set at a 3 km radius and the stay-in-house area from a 3-10 km radius from the station. Afterwards, according to the escalation of events, the evacuation was expanded to a 20 km radius on 12 March, and the stay-in-house area to a 30 km radius on 15 March<sup>21</sup>. It is doubtful that such determination was sufficient enough to protect citizen’s rights to health from exposure to radiation.

In April 2011, the area within 30 kilometers around the nuclear plant as categorized as the “Planned Evacuation Area” or “Emergency Evacuation Preparation Area.” Areas such as Iidate village were categorized as ‘Deliberate Evacuation Areas’<sup>22</sup>.

In September 2011, the government made a decision to cancel the categorization of certain areas as “Emergency Evacuation Preparation Areas” without proper consultation with the population who have evacuated<sup>23</sup>. Furthermore, the government plans to narrow the evacuation zone without proper consultation with the population who have evacuated<sup>24</sup>.

2.9 Additionally, the government has been using a 20 millisievert per year (mSv/year) standard to direct evacuation programs and designate areas where evacuation is encouraged, and for areas and spots that may become subject to higher radiation levels than this threshold it will undertake evacuations or other measures<sup>25</sup>. However, despite the confirmation of highly radioactive spots (the so-called ‘hot spots’) outside the 20 km radius, only part of the households in the city of Date, 72 households

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<sup>19</sup> Human Rights Now, “INVESTIGATIVE REPORT ON FUKUSHIMA CITY AND KORIYAMA CITY”(December 2011)[hereinafter “Fukushima Report], See Appendix 1, available at,

<http://hrm.or.jp/eng/activity/area/japan/investigative-report-on-fukushima-city-and-koriyama-city/>

<sup>20</sup> *Ibid.*

<sup>21</sup> Government of Japan, “REPORT OF JAPANESE GOVERNMENT TO THE IAEA MINISTERIAL CONFERENCE ON NUCLEAR SAFETY” (2011), p. 17, available at, <http://www.iaea.org/newscenter/focus/fukushima/japan-report/>

<sup>22</sup> For the map of the designation, please see, “Government of Japan, DELIBERATE EVACUATION AREAS AND SPECIFIC RECOMMENDED FOR EVACUATION”( 2011), [hereinafter “Map of designation], available at, [http://www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/evacuation\\_map\\_b.pdf](http://www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/evacuation_map_b.pdf)

<sup>23</sup> <http://www.atomdb.jnes.go.jp/content/000118461.pdf>

Reports regarding the cancellation of the qualification of certain areas as “Emergency Evacuation Preparation Area” were made in the Asahi Shimbun dated August 10, 2011, as well as other newspapers.

<sup>24</sup> <http://www3.nhk.or.jp/news/html/20120321/k10013877081000.html>

<sup>25</sup> *Supra* note 23.

in the city of Minamisoma, and one household in Kawauchimura in Fukushima prefecture have been categorized as ‘Designated Evacuation Encouraged Areas’.

Although significant concerns are raised among citizens living in affected areas, the government persistently uses a standard of 20 mSv/year to determine the evacuation. Under such policy, areas under 20 mSv/year are recognized as areas safe enough for citizens to stay in or return to. This approach is apparent in the ‘Report of the working group on risk management of low dose exposure’ published by the government on 22 December 2011<sup>26</sup>. With respect to the population living in areas with a radiation level lower than 20 mSv/year, there are not sufficient counter-measures in place for the protection and restoration of the health and living standards.

2.10 This 20 mSv/year standard is, however, much higher than the international standard of 1 mSv/year<sup>27</sup>. The International Commission on Radiological Protection (hereinafter ICRP), for instance, suggested that 1 mSv/year is the limit of the effective dose for public nuclear exposure<sup>28</sup>. While excluding background radiation, Japan has introduced this ICRP standard as the domestic standard<sup>29</sup>.

One of the bases for this standard is that a radiation dose of 1 mSv/year represents a risk of death of 1% for all age groups, a risk of illness of one in a thousand, a life-time risk of one in a thousand, and even for age groups where the risk of exposure to radiation is the greatest, a dose of 1 mSv/year does not significantly increase all the risks<sup>30</sup>. While there is criticism that even this standard constitutes an underestimation, it is clear that a radiation dose limit that exceeds 1 mSv/year creates meaningful risk.

2.11 In addition, the 20 mSv/year standard is contrary to domestic law. The “Ordinance on Prevention of Ionizing Radiation Hazards,”<sup>31</sup> established under the rules of the Industrial Safety and Health Act and the Enforcement Order of the Industrial Safety and Health Act, designates areas where the total effective dose from external

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<sup>26</sup> Cabinet Secretariat, “REPORT OF THE WORKING GROUP ON RISK MANAGEMENT OF LOW DOSE EXPOSURE”(December 2011), available at,

<http://www.cas.go.jp/genpatsujiko/info/twg/111222a.pdf>

<sup>27</sup> Human Rights Now, “OPINION ON THE MEASURES TO BE TAKEN BY JAPAN AND TOKYO ELECTRIC POWER COMPANY TO ADDRESS THE DESTRUCTION OF HEALTH, ENVIRONMENT AND LIFE CAUSED BY THE FUKUSHIMA DAIICHI NUCLEAR POWER PLANT DISASTER” (AUGUST 2011), pp. 4-9, See Appendix 2, available at, [http://hm.or.jp/eng/activity/20110912\\_ikensho.pdf](http://hm.or.jp/eng/activity/20110912_ikensho.pdf)

<sup>28</sup> International Commission on Radiological Protection, “NEW ICRP RECOMMENDATION” (2007), p. 165, available at, [http://iopscience.iop.org/0952-4746/28/2/R02/pdf/0952-4746\\_28\\_2\\_R02.pdf](http://iopscience.iop.org/0952-4746/28/2/R02/pdf/0952-4746_28_2_R02.pdf)

<sup>29</sup> [http://www.mext.go.jp/b\\_menu/shingi/chousa/gijyutu/004/006/shiryo/04070501/003.htm](http://www.mext.go.jp/b_menu/shingi/chousa/gijyutu/004/006/shiryo/04070501/003.htm)

ICRP’s 1990 recommendation show the thoughts behind also taking background radiation into consideration for radiation protection. Under the Japanese standard, background radiation is excluded.

<sup>30</sup> Kusama, Shinozaki, Yoshizawa, “Considerations regarding acceptance of radiation risks,” Hoken Butsuri, 22-15-20 (1987).

<sup>31</sup> Ordinance of the Ministry of Health, Labor and Welfare No. 41, September 30, 1972, <http://law.e-gov.go.jp/htmldata/S47/S47F04101000041.html>

radiation and radioactive substances in the air may exceed 1.3mSv over a three-month period (or 0.6 microsievert per hour ( $\mu\text{Sv}/\text{hour}$ )) as radiation “controlled areas,”<sup>32</sup> restricts the entry of people other than radiation workers to such areas (article 3.4) and prohibits activities like eating and drinking within such areas (article 41.2)<sup>33</sup>. Moreover, according to articles 6.1 and 6.2 of the same rule, the exposure of pregnant female radiation workers, from the time they are determined to be pregnant until giving birth, should be no more than an effective dose of 1 mSv in internal exposure and 2 mSv in exposure to the abdominal surface. This rule has been followed for decades.

Currently, ordinary citizens like women and children are in the equivalent of controlled areas into which they should not enter. Furthermore, Fukushima’s contaminated areas are in a situation in which they do not even have regulations such as those restricting pregnant women engaged in work in controlled areas to 2 mSv on the abdominal area over the course of the pregnancy.

2.12 Under the 20 mSv/year standard, Fukushima residents who cannot afford to relocate have been living under circumstances where they run the significant risk of high-level nuclear exposure.

#### *iv. Inadequate support for self-evacuation*

2.13 In addition to the narrow evacuation designation, the governmental support for residents who live outside of the evacuation zone and wish to evacuate is problematic. Since the government established the 20 mSv/year standard as mandatory evacuation, the government has focused its support and compensation for the people who had lived in the evacuation zone, and people living in a wider contaminated area outside the evacuation zone have not been provided sufficient support for relocation at all.

2.14 In areas which have not been designated as an evacuation zone by the government, some households with expecting mothers, infants and children have independently decided to evacuate, but there has been practically no public financial support for such evacuees. As for the residents who do not have the financial means to relocate, to the extent that the government does not provide sufficient compensation to evacuate, they are left with no other choice but to remain in contaminated areas even

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<sup>32</sup> [http://peacephilosophy.blogspot.com/p/blog-page\\_05.html](http://peacephilosophy.blogspot.com/p/blog-page_05.html)

<sup>33</sup> Under this law, the entry of ordinary citizens, such as children and pregnant women, to places with high levels of radiation that could be considered as designated “controlled areas” shall be restricted, and routine activities, such as eating and drinking, in such “controlled areas” shall not be permitted.

though they may be exposed to health risk.

2.15 On December 6, 2011, the Dispute Reconciliation Committee for Nuclear Damage Compensation (hereinafter the Committee), an ad hoc committee established under the Ministry of Education, Cultural, Sports, Science and Technology<sup>34</sup>, revised a guideline for compensation for evacuees, and established a guideline to pay compensation for self evacuated people as follows<sup>35</sup>.

**【Self Evacuation Area】**

The Committee explicitly announced Fukushima City, Nihonmatsu City, Date City, Hon-miya City, Kori Town, Kunimi Town, Kawamata Town, Otama Town, Koriyama City, Sukagawa City, Tamura City, Kagamiishi Town, Furudono Town, Miharu Town, Ono Town, Soma City, Shinti Town, Iwaki district, and Iwaki City (excluding areas already designated as evacuation areas) as Self Evacuation Areas.

**【Standard for compensation】**

The Committee decided the amount of compensation for residents who lived in self evacuation areas at the time of the accident as follows: 400,000 yen for children and expecting mothers for damage caused from the day of the incident to the end of December 2011; and 80,000 yen for other residents for damages caused during the early stage of the accident.

Based on the guideline made by the Committee, the TEPCO decided to pay 600,000 yen for children and expectant mothers who voluntarily evacuated, 400,000 yen for children and expecting mothers staying in the above area, and 80,000 yen for other people living in or evacuated from the above area as compensation.

However, the amount of compensation is far lower than the actual costs needed for evacuation, and is thus insufficient to support self evacuees<sup>36</sup>.

2.16 After the Chernobyl incident, the Government of former Soviet Union ordered the evacuation of residents in an area where the radiation exceeded 5 mSv/year and guaranteed the right of the residents living in areas where the dose of nuclear radiation exceeded 1 mSv/year to be compensated of all harm and provided measures of social support when the residents made a decision to relocate<sup>37</sup>. This system of measures and

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<sup>34</sup> This is an adhoc committee established under the Ministry of Education, Cultural, Sports, Science and Technology, Government of Japan in pursuant with Article 18 of the Compensation for Nuclear Damage Law.

<sup>35</sup> See at

[http://www.mext.go.jp/component/a\\_menu/science/anzenkakuho/micro\\_detail/\\_\\_\\_icsFiles/afieldfile/2011/12/06/1309711\\_2\\_1.pdf](http://www.mext.go.jp/component/a_menu/science/anzenkakuho/micro_detail/___icsFiles/afieldfile/2011/12/06/1309711_2_1.pdf).

<sup>36</sup> Fukushima Report, *supra* note 19, Appendix 1

<sup>37</sup> Fukushima Report, *supra* note 19, p. 13.

See also, Ministry of Russian Federation on Civil Defence, Emergencies and Elimination of Consequences of Natural Disasters, "CHERNOBYL ACCIDENT: TEN YEARS ON" (1996), pp. 1 ff, available at, [http://chernobyl.undp.org/english/docs/rus\\_natrep\\_1996\\_eng.pdf](http://chernobyl.undp.org/english/docs/rus_natrep_1996_eng.pdf)

compensation was followed by Ukraine and Belarus<sup>38</sup>. However, such a system is yet to be established in Japan.

2.17 Without a sufficient financial remedy for evacuation from the government, many people who cannot afford to relocate have no choice but to stay in the contaminated area even though they may be exposed to health risks. Particularly, the right to health of the most vulnerable to harm, such as babies, children, members of the young generation and expecting mothers are seriously endangered. The failure to give effective remedies to Fukushima residents evacuating from their houses to protect their health, along with the narrow designation of evacuation zone, constitutes a breach of the obligation of the Government to ensure the right to health under ICESCR.

#### *v. Ineffective nuclear decontamination*

2.18 Concerns have also been raised as to the ineffective discharge of radioactive materials by the Government. The Act on Special Measures Concerning Radioactive Contamination, which obliges the government to conduct decontamination activities in areas with a radiation level of 0.23 $\mu$ Sv/hour or over, was passed in 2011 and came into force on 1 January 2012. According to the Act, the national government conducts decontamination of areas exceeding 20 mSv/year, and decontamination in other areas is left to the local governments which lack the budget, expertise and human resources for decontamination while it has been reported that decontamination by private entities have not have much effect.

2.19 At the local level, the Act has not yet been fully implemented and a wide area has remained without any public decontamination activity. Without sufficient expertise and human resources, local governments cannot effectively cope with the decontamination activity. Neither the national nor local governments have an established comprehensive plan or effective strategy for decontamination. In Fukushima City, the government, contrary to its public statements, barely conducts decontamination activities. In Koriyama City, instead of activity by the local government, citizens are mobilized to conduct decontamination activity without proper instruction or protective measures. In some areas, the residents including members of the young generation and even expecting mothers are forced to engage in the dangerous decontamination

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<sup>38</sup> The mission team commissioned by the United Nation Development Programme and the United Nations Children's Fund, "THE HUMAN CONSEQUENCES OF THE CHERNOBYL NUCLEAR ACCIDENT; A STRATEGY FOR RECOVERY"( 2002 ), pp. 36, 43, available at, [http://chernobyl.undp.org/english/docs/strategy\\_for\\_recovery.pdf](http://chernobyl.undp.org/english/docs/strategy_for_recovery.pdf)

activities themselves based on the decision made by local communities<sup>39</sup>.

#### *vi. Misleading information dissemination*

2.20 The dissemination of misleading information which underestimates the risk of radiation by the government is a grave concern. Despite the lack of proof that low dose exposure does not present health risks, the national, prefecture and municipal governments are disseminating messages with a stance which emphasises the safety of people living outside evacuation zones.

2.21 Since April 2011, the Ministry of Education, Culture, Sports, Science and Technology distributed a series of documents entitled ‘To Properly Understand Nuclear Radiation’<sup>40</sup>. These documents contain some misleading contents such as ‘in areas where the radiation is less than 3.8 $\mu$ Sv/hour, there is no problem for ordinary life.’ The Ministry of Health, Labor and Welfare also published pamphlets for expecting mothers, stating that ‘in an area which is not designated as an evacuation zone, the nuclear radiation has no effects on a fetus and it is safe to drink water.’ Where the current situation is not proved to be safe, such information could cause public misunderstanding<sup>41</sup>.

2.22 The Fukushima Prefectural Government has been disseminating the idea that radiation exposure is not such a serious problem at all to residents living outside the evacuation zone. The Prefectural government urges people to be calm and not to take the situation seriously. For example, the Nuclear Emergency Response Headquarters in Fukushima published ‘Radiation and Health Q&A’ on 30 June 2011<sup>42</sup>, and the prefecture organised a ‘Seminar by health risk management advisors on radiation at Fukushima Prefecture’. The health risk management advisors on radiation appointed by Fukushima Prefecture included Professor Shunichi Yamashita who was later appointed as the vice president of Fukushima Medical University and chairman of the research committee for ‘Fukushima Health Management Survey’. He has underscored publicly that ‘radiation levels under 100 $\mu$ Sv/hour have no effect on health’<sup>43</sup> and reiterates the safety of low level radiation exposure. These activities were designated to emphasise

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<sup>39</sup> Fukushima Report, *supra* note 19, pp. 5-8.

<sup>40</sup> Ministry of Education, Culture, Sports, Science and Technology, “TO PROPERLY UNDERSTAND NUCLEAR RADIATION”(2011), pp. 1 ff., available at, [http://radioactivity.mext.go.jp/ja/8849/8850/8864/1305089\\_0819\\_1.pdf](http://radioactivity.mext.go.jp/ja/8849/8850/8864/1305089_0819_1.pdf)

<sup>41</sup> <http://www.mhlw.go.jp/stf/houdou/2r98520000014hcd-img/2r98520000014hdu.pdf>

<sup>42</sup> <http://www.pref.fukushima.jp/j/housyasenshitsu7.pdf>

<sup>43</sup> Fukushima Report, *supra* note 19, p. 10. After the statement, some websites put an apology and correction that he meant to state “radiation levels under 10 $\mu$ Sv/h has no effect on health.”

the Government's view that there are negligible effects of low doses of radiation on health. Such campaign has not only caused distrust of official information among residents, but also created an environment where residents who cast doubt on such policy become isolated from those who accept them, out of weariness at the current situation.

### *vii Insufficient health services*

2.23 Notwithstanding great concerns as to the health conditions of Fukushima residents, the government has failed to provide sufficient medical services to the people exposed to radiation immediately after the nuclear accident. Also, outside of the evacuation zone, most of people have no choice but stay in contaminated areas without sufficient medical checks or medical care provided at all. The government has neither established an adequate system for the testing of internal exposure nor provided free health examinations for residents.

2.24 In May of 2011, the Fukushima Prefectural Government set up a research committee for residents' health examination survey, and decided to conduct "Fukushima Health Management Survey"<sup>44</sup> to check the effects of radiation and entrusted the survey to Fukushima Medical University (FMU)<sup>45</sup>.

The survey includes a basic survey using a medical interview sheet, health examination, and examination of the thyroid gland (conducted only for people under the age of 18). The results will be compiled into a database for long-term administration. However, contrary to the plan, the university has simply sent a questionnaire to all people living in Fukushima Prefecture. The questionnaire merely asks details of what residents did after the accident in March and do not ask about their health conditions at all. The majority of residents have lost track of their behavior following the incident and such questions drew their strong resentment. Further, since the lack of transparency of use of data as well as lack of explanation on the merit to response made residents reluctant to respond the questionnaires. As a result, only 20% of people responded to the questionnaires.

2.25 In its investigation in November 2011, Human Rights Now found that residents living outside the evacuation zone, such as Fukushima and Koriyama City have not

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<sup>44</sup> *Ibid.*

<sup>45</sup> See "Residents' Health Administration Survey", available at, [http://www.fmu.ac.jp/univ/chiiki/health\\_survey/index.html](http://www.fmu.ac.jp/univ/chiiki/health_survey/index.html).

received any official examinations, including examinations of internal exposure, urine, blood, and thyroid checks.

Examinations of internal exposure were conducted only for residents living in certain areas around the nuclear plant. There is no prospect of offering free examination of internal exposure for all residents in the city. Since Fukushima Prefectural Government neither publishes nor accepts applications for the examination of internal exposure, residents are left without access to such examinations.

The number of whole body counters in Fukushima is strikingly small. Merely two machines are established in the prefecture as of January 2012<sup>46</sup>.

Although it was announced that another five machines would be purchased, this is still insufficient, for one could provide services only for ten persons in one day at best<sup>47</sup>. In such situation, private organizations for examinations, such as the “Citizen’s Radioactivity Measuring Station” in Fukushima City, have been established. In addition, Dokkyo Medical University established a sub-office of research laboratory on international epidemiology on November 10 to provide health examinations for residents in Nihonmatsu City, Fukushima Prefecture. However, there are long waiting lists for the service<sup>48</sup>.

Without sufficient medical check and health care, the health of people affected by the nuclear accident is endangered.

2.26 As to the health issues concerning residents affected by the Earthquake in general, the health services and governmental support provided for the evacuees both in evacuation centers and temporary housing are insufficient. Details will be given in the succeeding sections but it should be emphasized here that the lack of adequate health services has resulted in a significant number of ‘disaster-related deaths’ as an indirect result of the Earthquake and the evacuation. The Asahi Shimbun reported that the number of ‘disaster-related deaths’ surpassed 1,300 instances in three prefectures<sup>49</sup>. This figure is higher than that of the Hanshin Earthquake in 1995. In Fukushima, it was reported that some elderly died due to the evacuation<sup>50</sup>. The number of suicides caused by the Earthquake from June to November of 2011 reached 49 instances<sup>51</sup>, and that as of

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<sup>46</sup> Fukushima Report, *supra* note 19, p. 13.

<sup>47</sup> *Ibid.*, p. 13.

<sup>48</sup> *Ibid.*, p. 10.

<sup>49</sup> Asahi Shimbun Digital, “‘DISASTER-RELATED DEATH’ EXCEEDS 1300 IN 3 PREFECTURES”, 27 February 2012, available at, <http://www.asahi.com/national/update/0227/TKY201202270461.html>

See also Asahi Shimbun Digital, “DISASTERS TAKE HEAVY TOLL ON NURSING HOME RESIDENTS” (20 July 2011), available at, <http://www.asahi.com/english/TKY201107190358.html>

<sup>50</sup> *Ibid.*

<sup>51</sup> Cabinet Office, Government of Japan, THE NUMBER OF SUICIDES IN RELATION TO THE GREAT EAST JAPAN EARTHQUAKE, 22 December 2011, available at, [http://www.esri.go.jp/jp/archive/jisatsu/monthly/2011nov/h2311\\_s10\\_1.pdf](http://www.esri.go.jp/jp/archive/jisatsu/monthly/2011nov/h2311_s10_1.pdf)

the end of 2011, a total of 573 deaths were recognized as resulting from indirect effects of the disaster in 13 municipalities in Fukushima<sup>52</sup>. Nonetheless, the official survey on the casualties and causes of death is yet to be conducted by the Government.

In addition, those who moved to temporary housing, particularly elderly persons and persons with disabilities, always find difficulty in accessing the medical services as most housing was constructed in mountainous areas. In the investigation conducted in 2012, Human Rights Now found that some temporary shelter away from the city area in Kesenuma, the health condition of the people is at stake. In such place, despite the fact that many residents are elderly or have disabilities, there was no periodic health check service provided by the local government. Also, severe transportation issues are still unresolved even a year after the Earthquake has passed. Free transportation services to medical facilities are not provided by the Government, and the residents have to pay for expensive transportation such as taxis<sup>53</sup>. In winter, heavy snow makes it more difficult for elderly and persons with disabilities to move by themselves to medical facilities.

### *viii Situation of children*

2.27 Most schools outside the evacuation zone opened in April 2011

The government established in April 2011 that a very high amount of radiation of 3.8 $\mu$ Sv/hour would constitute the limit to decide whether children may attend elementary and junior high schools<sup>54</sup>. After receiving criticism of this decision, on May 27, 2011, the government announced that it aimed to lower radiation exposure in school facilities to 1 mSv/year and that it would provide financial support to reduce the amount of radiation in the soil. Although the decontamination activity of school soil has been conducted in all affected areas, the airborne radiation level has still been significantly high in many schools in affected areas.

Without any proper guidance from the government, the school children resumed outdoor activities, such as play and sports games, without any protective measure.

Most children are eating school lunch based on food products produced in affected areas.

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<sup>52</sup> Yomiuri Shimbun, "573 DEATHS RELATED TO NUCLEAR CRISIS" (5 FEBRUARY 2012), available at, <http://www.yomiuri.co.jp/dy/national/T120204003191.htm>

<sup>53</sup> Human Rights Now, "Statemet on Kesenuma"(in Japanese) (February 2011), available at, <http://hrm.or.jp/activity/topic/1-2/>

<sup>54</sup> If one were to stand in a schoolyard eight hours of every day and spend the remaining 16 hours in a wooden house built on the same schoolyard for the rest of the day, and this for an entire year, the radiation dose received would equal approximately 20mSv.

2.28 In sum, the problems elaborated above raised concerns as to failure of the government to perform its obligation under Article 12 of the ICESCR. Many Fukushima residents still run the risk of high-level nuclear exposure. Effective remedies are not given for self-evacuation. Decontamination activities are ineffective. Moreover, health services are not provided in a timely fashion, which resulted in the significant number of ‘disaster-related deaths’ surpassing that of the Hanshin Earthquake.

### C. PROPOSED LIST OF ISSUES

2.29 Human Rights Now suggests the Committee to include the following as the list of issues:

- Provide detailed information on the measures taken by the government to prevent nuclear power plant accidents in accordance with the following Committee’s recommendation, *‘recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents’*<sup>55</sup>.
- Provide detailed information on immediate measures to prevent affected citizens from exposure of nuclear radiation right after the meltdown at the Fukushima Daiichi Nuclear Power Station;
- Provide detailed information on the research and surveys of status of radioactive contamination and health condition of affected people after the nuclear accident in Fukushima conducted by the government, if any;
- Provide detailed information on comprehensive measures taken by the government to protect the right to health of all affected citizens from further damage caused by the nuclear exposure. Provide what kind of measures have been taken thus far to ensure the health of residents in Fukushima prefecture, and what further measures are intended to be implemented;
- Provide the number of residents provided for the health examination

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<sup>55</sup> The Committee on Economic Social and Cultural Rights, “CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT: CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS”, E/C. 12/1/1 Add. 67 (2001), para. 49.

services, including examinations of internal exposure, urine, blood, and thyroid checks, and the plan to provide such examination to all citizens living in Fukushima;

- Provide whether, and to what extent, the Government has a long-term plan to support the residents who develop diseases in relation to nuclear exposure;
- Explain the positions of the government on measures regarding evacuation and relocation from contaminated areas, and the right to compensation for people who evacuated from their residence;
- Explain to what extent compensation, social services, social benefits, education and health-care services are available to persons who evacuate (either mandatory or voluntarily) from the contaminated area, whether they are provided necessary protection as Internally Displaced People;
- Explain what measures the government adopts to remedy all the individuals who are affected by the nuclear accident and redress all losses caused by the accident regardless their status of evacuation;
- Provide information regarding the process of consultation with people affected by the nuclear accident with regard to the measures and remedies for them;
- Explain to what extent health-care services are available to persons who are affected by the Great East Japan Earthquake and living in temporary shelters, whether they are provided necessary protection as Internally Displaced People.

#### **D. PROPOSED RECOMMENDATIONS**

2.30 Human Rights Now suggests the Committee to adopt the following recommendations in the concluding observation.

- to take all necessary measures to protect the health and restore the living environment of the residents living in areas where the radiation dose

exceeds 1mSv per year (excluding background radiation) in accordance with international standards

- to strictly monitor the levels of radioactive contamination and disclose such data and information to the public in a timely manner
- to provide necessary information in respect of radiation damage to the residents living in all affected areas and to recognize the right to compensation and support relocation. When residents of such areas decide to relocate, for the government to support such relocation, to give such displaced persons the appropriate protection of internally displaced persons (IDP)<sup>56</sup> and to provide necessary or sufficient compensation to allow them to rebuild their lives. In particular, in order to protect the right to health of the most vulnerable people from the grave risk of radioactive hazards, sufficient compensation and material support of relocation for the households including expecting mothers, babies, and school children living in affected areas should be provided by the government without any delay.
- to take all necessary and long term measures to reduce the risk of illness caused by radioactive exposure for all affected people. The measures include long-term monitoring of the health condition of affected people, free and periodic medical checks, free examination of the level of internal radioactive exposure, as well as free healthcare and medical treatment related to radiation related illness.
- to establish a system to ensure clean food to be provided to the people, especially babies, children, members of the young generation and expecting mothers living in all affected areas. A stricter food security check system should be introduced.

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<sup>56</sup> Based on the United Nations' Guiding Principles on Internally Displacement (E/CN.4/1998/53/Add.2, adopted by the United Nations Human Rights Commission in 1998), human rights should be guaranteed and protected. HRN explained in detail the steps the government should take based on such principles in our April 2011 white paper entitled "Protecting the Rights of Disaster Victims and Residents in Connection with the Great Eastern Japan Earthquake.", available at, [http://hrn.or.jp/activity/20110405\\_shinsai.pdf](http://hrn.or.jp/activity/20110405_shinsai.pdf)

### III. RIGHT TO ADEQUATE HOUSING (ARTICLE 11)

#### A. LEGAL FRAMEWORK

3.1 Article 11 of the ICESCR guarantees the right to adequate housing. ‘Adequate housing’, in the words of the Committee, means ‘adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities (emphasis added)’<sup>57</sup>. It must also be ‘in a location which allows access to ... health-care services, schools, child-care centers and other social facilities’<sup>58</sup>. This also applies to victims of natural disasters<sup>59</sup>.

3.2 In the Guiding Principles, the UN Special Rapporteurs on Internally Displaced Persons suggested that ‘children ... expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.’<sup>60</sup> The Inter-Agency Standing Committee (hereinafter, ‘IASC’) also published the Guideline, emphasizing that in establishing emergency shelters, the Government should ‘use a participatory approach that engages women and people at risk’ and ‘consult women in particular about privacy and security’<sup>61</sup>. This approach was reaffirmed in the Operational Guidelines released in 2011<sup>62</sup>.

#### B. FACTUAL BACKGROUND

3.3 After the Great East Japan Earthquake, the affected residents evacuated from their houses to the evacuation centers. Subsequently, some of them were gradually moved to the temporary housing provided by the Government. The issues related to the right to adequate housing discussed here are two-fold: the housing conditions in the evacuation centers, and that in the temporary housing.

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<sup>57</sup> Committee on Economic, Social and Cultural Rights, “GENERAL COMMENTS 14 THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ARTICLE 11(1))”, E/C.12/2000/4 para. 7.

<sup>58</sup> *Ibid.*, para. 8(f).

<sup>59</sup> *Ibid.*, para. 8(e).

<sup>60</sup> Commission on Human Rights, “GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, (principle 4(2)) E/CN.4/1998/53/ADD.2.

<sup>61</sup> Inter-Agency Standing Committee, GUIDELINES ON MENTAL HEALTH AND PSYCHOLOGICAL SUPPORT IN EMERGENCY SETTINGS” 2007, p. 175, available at,

[http://www.who.int/mental\\_health/emergencies/guidelines\\_iasc\\_mental\\_health\\_psychosocial\\_june\\_2007.pdf](http://www.who.int/mental_health/emergencies/guidelines_iasc_mental_health_psychosocial_june_2007.pdf)

<sup>62</sup> Inter-Agency Standing Committee, IASC OPERATIONAL GUIDELINES ON THE PROTECTION OF PERSONS IN SITUATIONS OF NATURAL DISASTER (2011), pp. 11, 18, 26, 34, 41, available at, <http://ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf>

### *i. Poor conditions in the evacuation centres*

3.4 The overall conditions of the evacuation centers after the Great East Japan Earthquake were below standard of the “adequate housing” guaranteed by the Covenant. In the aftermath of the Kobe Earthquake in 1995, the Habitat International Coalition observed that

‘The overall conditions in all types of accommodation are substantially below the standards that a wealthy, democratic country like Japan could be expected to meet. In various contexts residents have been denied electricity, hot water, access to appropriate and healthy kitchen facilities, privacy, appropriately equipped households to meet physical challenges, secure, safe, violence-free environments, social support networks and security of tenure.’<sup>63</sup>.

Such is still true about the conditions in the evacuation centers provided in the aftermath of the Earthquake in 2011. The evacuation centre is often set up in school gym. In most cases, an evacuee was given one small *futon* in school gym, and that was the only space within which he or she had to stay during daytime and sleep at night. There is no partitions between each *futon* and hence no privacy whatsoever.

The Disaster Relief Act and related regulation prescribe the obligation of government to provide basic human needs of affected people of natural disaster. However, the implementation of the Act is not adequate.

For example, food had been provided during the operation of evacuation centers, nevertheless, the food provided was not adequately nutritious and not in a timely fashion. In most cases within 1 month, the evacuees were distributed only bread and rice balls which were cold and not adequately nutritious. Even after 1 month, the food condition was under nutrition.

3.5 The government conducted several surveys on the condition of evacuation centres. Such survey represents part of reality.

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<sup>63</sup> Habitat International Coalition, “STILL WAITING, HOUSING RIGHTS VIOLATIONS IN A LAND OF PLENTY: THE KOBE EARTHQUAKE AND BEYOND”(January 1996), p32, available at, [http://sheltercentre.org/sites/default/files/HIC\\_HousingRightsViolationsInALandOfPlenty.pdf](http://sheltercentre.org/sites/default/files/HIC_HousingRightsViolationsInALandOfPlenty.pdf)

For instance, the government conducted a survey between April 20 to 24 by sending a questionnaire to 965 evacuation centres. The 536 Centre responded to the questionnaire. One centre was still providing only rice balls and bread, 3 centres were providing only cold meals. There were 182 centers suffering a lack or scarcity of underware to change into, 2 centres were still waiting for recovery of water and other lifelines, 108 centres were without partitions or other private space, 28 centres were without sufficient medical services<sup>64</sup>. According to the government, it identified centres with the most serious conditions and called on local governments to focus support.

However, only 55.6% of centres responded to the survey (the breakdown is 92.6 % in Iwate, 35.2% in Miyagi and 28.6% in Fukushima). There is grave concern that the condition of centres that have not responded are much more serious than the centres which responded<sup>65</sup>.

3.6 As for protection of vulnerable people such as women, persons with disabilities and the elderly, on 28 April 2011, the Cabinet Office published a document entitled, 'The Provision of Support in Response to the Various Needs of Victims'. While the document contained positive implications, none of the points raised by the document have been well implemented on the ground.

Human Rights Now concluded from a series of investigations that at the evacuation centers, various needs of residents, including those of vulnerable people, especially women, people with disabilities and the elderly are not duly regarded in evacuation centers on the ground<sup>66</sup>.

3.7 It was found that persons with disabilities were hesitant in moving to the evacuation centers due to lack of proper protection and treatment, concern about discrimination or abuse. Some even had to leave the centers. Only a few prefectures provided special evacuation centers for persons with disabilities and the elderly. As a result, significant numbers of persons with disabilities could not even stay in an evacuation centre. Due to the poor conditions of the evacuation centers, the health condition of evacuees was also an issue. In summer, the elderly ran a risk of

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<sup>64</sup> See the following website, <http://www.cao.go.jp/shien/2-shien/6-zentyosa/3-result-3th.pdf>

<sup>65</sup> The government terminated the survey on 1 June 2011. See the following website, <http://www.cao.go.jp/shien/2-shien/4-zentyosa.html>

<sup>66</sup> Human Rights Now, "STATEMENT REGARDING THE ESTABLISHMENT OF EVACUATION CENTRES WITH DUE CONSIDERATION OF THE VARIOUS NEEDS OF RESIDENTS INCLUDING THOSE OF WOMEN"(MAY 2011), pp. 1 ff (Appendix 3), available at, <http://hrn.or.jp/eng/activity/area/japan/regarding-the-establishment-of-evacuation-centres-with-due-consideration-of-the-various-needs-of-res/>

hyperthermia as air-conditioners were not equipped at the evacuation centers. In some areas where the dose of nuclear radiation was high such as Minamisoma, the evacuees had to open the windows so as to avoid hyperthermia, running the potential risk of high-level nuclear exposure<sup>67</sup>.

3.8 Treatment and protection of women are inadequate in evacuation centres. The right to privacy of women in the evacuation centres was not protected.

In its survey in April and May in 2011, Human Rights Now found that a significant number of the evacuation centres failed to address women's needs, as shown by the following<sup>68</sup>:

- No room-partitions between men and women.
- Changing rooms or nursing rooms for women were not provided
- It was also difficult to do laundry as little safe space was secured to hang out female laundry. Women had no choice but to use their underwear once and throw it away, and the supply of underwear was limited.
- No safe and separate toilets for women and men. Further, they were set up outside and therefore unsafe.
- Counselling by female doctors, public health nurses, and female counsellors were not provided in most cases.
- In some centres in which residents have to cook, gender roles are being forcefully applied. Women were coercively allocated to do the cooking all day, regardless of marital status or occupation, whilst men were not so obliged.

In many cases, women did not join the administration of the centre. It was also reported that various issues were decided by area leaders who ran the evacuation centres and women were forced to keep silent. For example, the introduction of partitions was refused on the grounds that it would harm the unity of communities.

3.9 Thus the conditions of the evacuations have been very serious and most of the evacuation centers were below standard. Moreover, due considerations were not adequately given to vulnerable people at the centers. Although the condition of evacuation centre has gradually improved, it cannot be said that the living condition of

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<sup>67</sup> Human Rights Now, "Report on Minamisoma"(July 2011), available at, <http://hrm.or.jp/activity/20110721minamisouma.pdf>

<sup>68</sup> Human Rights Now, "STATEMENT REGARDING THE ESTABLISHMENT OF EVACUATION CENTRES WITH DUE CONSIDERATION OF THE VARIOUS NEEDS OF RESIDENTS INCLUDING THOSE OF WOMEN"(MAY 2011), pp. 1 ff (Appendix 3)

people in evacuation centers meets the adequate living standard guaranteed by the Covenant.

This situation has continued much longer than the emergency phase. Most people moved from an evacuation centre to a temporary shelter in summer or fall in 2011. Thus, most evacuees had to endure very severe conditions at an evacuation center for several months.

Further, it was announced that food distribution service would be terminated when affected people move to the temporary shelter. Although some evacuees were moving to the temporary houses in summer, those who could not depend on themselves did not want to do so because the food provision to the temporary houses was terminated. As a result, people facing a severe economic situation and the most vulnerable people had no choice but to endure the poor conditions of evacuation centers for a long period.

#### ***ii. Poor conditions in the temporary housing***

3.12 Of particular concern, as already mentioned, is the termination of food aid to residents in temporary housing or their own houses<sup>69</sup>, and insufficient transportation services to medical facilities<sup>70</sup>. Those who moved to the temporary housing always encountered adversities in transportation. Elderly or people with disabilities face the greatest difficulty of these situations. Even though many people claim that they want cycle, bus or other such transportation services, such demand was not fulfilled in most of the devastated areas. Also, it was found that heaters were not established in the temporary housing until late in winter.

3.13 According to the investigation conducted by Human Rights Now in February 2012, it is clear that there are still various unsolved problems regarding the right to adequate housing even though a year has passed. In some temporary shelters in Kesenuma city, where it gets severely cold in winter, for instance, adequate heating appliances were not provided until the end of 2011. Also, since plumbing was set up in

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<sup>69</sup> Human Rights Now, "PROPOSAL REGARDING AFFECTED PEOPLE'S RIGHT TO HOUSING AND ADEQUATE LIVELIHOOD SUPPORT, 2011"(May 2011), available at, <http://hrm.or.jp/eng/activity/area/japan/statement-proposal-regarding-affected-peoples-right-to-housing-and-adequate-livelihood-support/>

<sup>70</sup> *Ibid.*

ineffective ways, most became frozen in December. Some are even located in dangerous areas, where a cliff could potentially fall<sup>71</sup>.

Although the temporary housing in Kesenuma has many elderly residents, there is no medical support or medical checks from the local government. No food has been provided or distributed by the local government to the residents living in temporary shelters. In its second review of Japan, the Committee expressed concern and recommendation on people's living condition after the Hanshin-Awaji Earthquake disaster, and the exact same concern and problems are indeed raised and unsolved this time.

*Many resettled earthquake victims who are over 60 years of age lack community centres, access to health centres and outpatient nursing<sup>72</sup>,*

*'The Committee recommends that State party encourage Hyogo Prefecture to step up and expand its community service, in particular to older and disabled persons'<sup>73</sup>*

3.14 The issues elaborated above should suffice to show the failure of the government to provide adequate housing to the victims of the Great East Japan Earthquake as well as nuclear accident.

### **C. PROPOSED LIST OF ISSUES**

3.15 Human Rights Now suggests the Committee to include the following as the list of issues:

- Provide information on the government survey of status and condition of all evacuated people after the Great East Japan Earthquake, length of living in evacuation centers and their current status;
- Provide detailed information of living conditions of the evacuation centers accommodating affected people by the Great East Japan Earthquake;
- To what extent were food supply, social services, social benefits, education and health-care services available to persons who have lived at evacuation centers;

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<sup>71</sup> Fukushima Report, *supra* note 19 (See Appendix 1).

<sup>72</sup> *Ibid.*, para. 27.

<sup>73</sup> *Ibid.*, para. 54.

- Described detailed measures taken by the government to protect vulnerable people such as women, children, persons with disabilities, foreign nationals, elderly and single mothers living in evacuation centers, and fulfill their special needs;
- Provide detailed information of living conditions of the temporary shelter accommodating affected people after the Great East Japan Earthquake;
- Explain to what extent food supply, social services, social benefits, and health-care services were available to persons who are living in temporary shelters;
- Describe detailed measures taken by the government to protect vulnerable people such as women, children, persons with disabilities, foreign nationals, the elderly, and single mothers living in temporary shelters and fulfill their special needs.

#### **D. PROPOSED RECOMMENDATIONS**

3.16 Human Rights Now suggests the Committee to adopt the following recommendations in the concluding observations:

- to survey the conditions of each evacuation centre, monitor the application of the Disaster Relief Act in each evacuation centre and adequately guarantee the affected people's rights to food, health and housing by providing support to local governments if necessary;
- to investigate the conditions of temporary shelter and monitor the situation of affected people, and immediately provide support for the affected people whose rights to food, health and housing are not fully guaranteed. The focus should be given the status of vulnerable people, including children, women, elderly, persons with disabilities, foreign nationals, and single mothers.
- to ensure local governments provide basic health care and periodic medical checks by medical professionals, and support of transportation services in all temporary shelters, as well as provide food supply if necessary.

- to conduct nationwide and local level training for both national and local government staffs regarding the internationally recognized human rights standard on protection of affected people, such as this Covenant, UN Basic Principle of Internally Displaced People and IASC guideline, and establish effected guidelines based on such standard.

## IV. RIGHT TO ADEQUATE FOOD (ARTICLE 11)

### A. LEGAL FRAMEWORK

4.1 Article 11 of the ICESCR protects the right of adequate food. In its General Comment No. 12, the Committee was of the view that ‘[E]very State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe (emphasis added)’<sup>74</sup>. The Committee also emphasized that State parties bear such an obligation ‘even in times of natural or other disasters’<sup>75</sup>.

### B. FACTUAL BACKGROUND

4.2 As mentioned already, food provision to evacuation centers and temporary housing are problematic. The food was not nutritious and not delivered in a timely manner. Moreover, the government officially announced that the food aid to temporary housing would be terminated, which renders evacuees reluctant to move to temporary housing.

4.3 Equally of particular concern in relation to the right to food is the safety of food and products in Fukushima prefecture, where a great extent of nuclear radiation was leaked. The consumption of food and products exposed to nuclear radiation leads to a serious issue of internal nuclear exposure.

In March 2011, the government has immediately set out provisional standards for food in the wake of the Fukushima nuclear plant disaster<sup>76</sup>, but such standards are set unusually low compared to standards set by WHO or other countries. For example, WHO’s standard for radionuclides in drinking water is set at no more than 10 Becquerel (Bq)/L for I-131, Cs-134 and Cs-137, respectively<sup>77</sup>, whereas the Japanese standard for ordinary people is set at no more than 300 Bq/L for radioactive iodine, such as I-131, and no more than 200 Bq/L for radioactive cesium, and set at no more than 100 Bq/L for infants<sup>78</sup>. With regard to the level of radioactive cesium in foods

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<sup>74</sup> Committee on Economic, Social and Cultural Right, “GENERAL COMMENTS 12 THE RIGHT TO ADEQUATE FOOD (ARTICLE 11)”, E/C. 12/ 1999/5 para. 14.

<sup>75</sup> *Ibid.*, para. 6.

<sup>76</sup> Ministry of Health, Labour and Welfare, “Handling Radiation Contaminated Foods” (March 2011), available at, <http://www.mhlw.go.jp/stf/houdou/2r9852000001558e-img/2r9852000001559v.pdf>

<sup>77</sup> World Health Organization, “Guidelines for Drinking-water Quality, third edition”(2004), p. 203, available at, [http://whqlibdoc.who.int/publications/2004/9241546387\\_jpn.pdf](http://whqlibdoc.who.int/publications/2004/9241546387_jpn.pdf)

<sup>78</sup> Ministry of Health, Labour and Welfare, “Handling foods contaminated by radiation” (March 2011), available at,

consumed by infants, while it is set at no more than 37 Bq/kg in Belarus, 40 Bq/kg in Ukraine and 40 to 60 Bq/kg in Russia<sup>79</sup>, the Japanese provisional standard for vegetables is set at more than 500 Bq/kg for radioactive cesium and no more than 2000 Bq/kg for radioactive iodine such as I-131, with no restrictive standard for foods consumed by children<sup>80</sup>.

The Government announced that a stricter standard would be adopted in April, 2012<sup>81</sup>. This is summarized in the following table.

<u>The current tentative standard</u>		<u>The new standard</u>	
<u>Products</u>	<u>Permissible Dose (Bq/kg)</u>	<u>Products</u>	<u>Permissible Dose (Bq/kg)</u>
Drinking water	200	Drinking water	10
Milk, dairy products	200	Milk	50
Vegetable	500	General products	100
Cereal products			
Meat, fish, eggs		Products for infants	50

However, two issues remain in this regard. Firstly, it still remains unclear whether the new standard will be substantially and effectively implemented so as to guarantee the safety of food and products, and secondly, in any event, the new standard for some products is still generally higher than that used in other countries, in particular the strict standards in the affected states of the Chernobyl accident, such as Belarus and Ukraine<sup>82</sup>.

<http://www.mhlw.go.jp/stf/houdou/2r9852000001558e-img/2r9852000001559v.pdf>

<sup>79</sup> International Atomic Energy Agency (IAEA), "ENVIRONMENTAL CONSEQUENCES OF THE CHERNOBYL ACCIDENT AND THEIR REMEDIATION: TWENTY YEARS EXPERIENCE" (2006)[hereinafter IAEA Chernobyl Report], P71, available at, [http://www-pub.iaea.org/mtcd/publications/pdf/pub1239\\_web.pdf](http://www-pub.iaea.org/mtcd/publications/pdf/pub1239_web.pdf)

<sup>80</sup> The provisional standard allows for a radioactive cesium level of 200Bq/kg for drinking waters and dairy products, and 500Bq/kg for other food products. This is five times greater than the radioactive waste clearance level used by the Nuclear Safety Commission of Japan, which set the level by recommendation from ICRP.

<sup>81</sup> Safety Division, Pharmaceutical and Food Safety Bureau, Ministry of Health, Labour and Welfare, "DOCUMENTS FOR 2011 RELEVANT DIRECTORS CONFERENCE NATIONAL FOOD SANITATION" (February 2012), available at, [http://www.mhlw.go.jp/topics/bukyoku/iyaku/syoku-anzen/gyousei/dl/h23\\_katyoukaigi\\_02\\_01.pdf](http://www.mhlw.go.jp/topics/bukyoku/iyaku/syoku-anzen/gyousei/dl/h23_katyoukaigi_02_01.pdf)

<sup>82</sup> IAEA Chernobyl Report, supra note 75, p. 71.

4.4 In addition to the issue of standards, the food testing system is also a problem. A food safety check system was established by the Fukushima prefectural government, and data on cesium in food products is disclosed in daily newspapers; however, it was found that the check system is ineffective, in particular, in terms of sampling. The result of the interview Human Rights Now conducted with the prefecture officials<sup>83</sup> could be summarized as follows (See also Appendix 1).

<u>Food and products</u>	<u>Sampling method</u>
Rice	<ul style="list-style-type: none"> <li>- in Fukushima city, one sample will be taken out of one bag of rice (30 kg).</li> <li>- in Evacuation recommended spots, one sample will be taken from one household. If a household produces more than fifty bags, another sample will be taken from every fiftieth bag.</li> <li>- in other areas where nuclear radiation was detected, the sampling method is under consideration.</li> </ul>
Vegetables	- the authorities will directly go to the designated areas and take a sample of about 0.6 – 1kg.
Mushrooms	<ul style="list-style-type: none"> <li>- in the case of a farm, the officials will take a sample of 500g from 1 farm regardless of the amount of production.</li> <li>- in the case of wild mushrooms, in principle, a sample of 300g will be taken but sometimes taking sample is impossible.</li> </ul>
Mountain vegetables	-there is no clear standard but, roughly, a sample of 300-500g will be taken.
Marine products	<ul style="list-style-type: none"> <li>- in general, a sample of 100 products will be taken once a week</li> <li>- in the case of the sea, the territorial sea within Fukushima is divided into 9 sections, from each of which, a sample will be taken.</li> <li>- in the case of a river, basically, a sample will be taken once a month.</li> </ul>
Processed products	- a sample of 500g will be taken from each factory.

These data reveal the lukewarm attitude of the Government regarding the sampling method for food testing, the results of which concern residents' safety.

4.5 What is of even greater concern is the school lunches that students are forced to

<sup>83</sup> Fukushima Report, *supra* note 19, Table 5, pp. 1-3 (Appendix 1).

eat. The products used for the school lunches are from Fukushima prefecture. Based on the above incomplete check system, the safety of food in school lunches is problematic. While some schools permit students to bring their own rice and milk, some do not. Human Rights Now found in the investigation that although they worried about the safety of the food, many students were hesitant to bring their own lunch, for that would make them isolated from the majority of their peers.

4.6 The loose testing issue can also be found here. In Fukushima city, the school lunch centers have tested school lunches only once a week, and the schools which provide their own lunches test only twice a month. In Koriyama city, the testing system is yet to be introduced (as of January 2012)<sup>84</sup>.

4.7 The government announced that it would allocate the 2011 budget for the school lunch testing system but the amount is roughly 100 million yen. This would mean that one prefecture will be able to buy approximately five testing machines. In February 2012, the Fukushima Prefectural Government publicly announced that the food safety testing for all school lunches will be introduced at the school lunch centre in Fukushima Prefecture. However, this depends on the national budget of 2012 fiscal year, and whether it would be effectively implemented still remains unclear.

4.8 Thus, the failure of the Government to take effective measures should raise great concerns as to its obligation under Article 11 of the ICESCR to ensure access to food which is safe.

## **C. PROPOSED LIST OF ISSUES**

4.9 Human Rights Now suggests the Committee to include following as the list of issues:

- Provide information on the national standard of food security;
- Provide measures taken by the government to ensure the safety of food from nuclear contamination;
- Explain how often the food safety testing has been conducted;

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<sup>84</sup> *Ibid.*, p. 17.

- Explain whether, and to what extent, the Government has taken measures necessary to guarantee the safety of school lunches provided for students;
- Explain how samples have been taken for testing (this clarification should cover as many kinds of products as possible);
- Explain whether, and to what extent, the Government is making public the information regarding food safety testing.

#### **D. PROPOSED RECOMMENDATIONS**

4.10 Human Rights Now suggests the Committee to adopt the following recommendations in the concluding observation:

- to conduct urgent inspection for contamination of seafood as well as the soil and agricultural produce in farms and plantations in all affected areas, as well as decontamination of the soil in accordance with the results of such inspection;
- to establish a system of sufficient inspection of all products associated with all food ingredients in the affected area and disclose the results of safety testing;
- to take measures to ensure that all schools and school lunch centres are able to effectively test school lunches, and allocate the budget necessary to achieve that.

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