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### 第五十三届会议

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#### 议程项目 3

促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

## 对日本的访问

### 境内流离失所者人权特别报告员塞西莉·希门尼斯-达玛丽的 报告\*\*\*

#### 概要

境内流离失所者人权特别报告员于 2022 年 9 月 26 日至 10 月 7 日对日本进行了访问。

2011 年 3 月日本东部大地震和海啸之后发生的福岛第一核电站核灾难是该国历史上前所未有的灾难性事件，造成 47 万余人流离失所。虽然大多数流离失所者已返回家园或得到重新安置，但数万名因核灾难而流离失所的人仍然面临着不确定的未来，对辐射怀有恐惧，无法确定辐射对健康造成的长期影响，在获得基本服务方面状况堪忧。

特别报告员赞扬日本政府迅速应对灾难，颁布具体措施确保向流离失所者提供紧急保护和援助及赔偿和补救，但是也对收到正式命令的疏散人员与自愿选择疏散的人员获得不同待遇表示关切。特别报告员重点指出流离失所者在实现人权方面面临的挑战，并就如何应对这些挑战提出建议。

\* 本报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。

\*\* 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。



## Annex

### **Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, on her visit to Japan**

#### **I. Introduction**

1. The Special Rapporteur on the human rights of internally displaced persons visited Japan from 26 September to 7 October 2022. She held meetings in Tokyo and travelled to the prefectures of Fukushima, Hiroshima and Kyoto. The objective of the visit was to assess the human rights situation of internally displaced persons – also known as “evacuees” in Japan – from the Fukushima Daiichi nuclear disaster that followed the great east-Japan earthquake and tsunami in 2011.
2. The Special Rapporteur met with representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of the Environment, the Reconstruction Agency, the Energy Agency, the Cabinet Office, several members of the National Diet, the prefectural authorities of Fukushima, Kyoto and Hiroshima, and the municipal authorities of Aizu-Wakamatsu, Okuma, Futaba, Iwaki and Kyoto. She also met with former senior government officials in charge of the response to the disaster in 2011.
3. The Special Rapporteur spoke with internally displaced persons and communities in Fukushima, met civil society organizations, human rights activists, lawyers, writers and academic specialists with expertise on the disaster, internal displacement, health and environmental concerns, and human rights issues.
4. The present report was shared with the Government of Japan before its publication and the response of the Government is being issued separately.<sup>1</sup>
5. The Special Rapporteur thanks the Government of Japan for the invitation to visit the country, for the cooperation extended to her mandate before and throughout the visit, and for its openness to international scrutiny, and also thanks prefectural and municipal officials for their willingness to engage in meaningful dialogue. Furthermore, she thanks the civil society organizations, lawyers, academics and activists for their engagement and contribution, to the United Nations University for hosting her in Tokyo and, above all, to internally displaced persons and victims of the nuclear disaster for their moving testimonies.

#### **II. Context and background of the displacement**

6. On 11 March 2011, a 9.0 magnitude earthquake off the eastern coast of Japan wrought significant terrestrial destruction in addition to triggering tsunami waves of up to 40 metres. More than 20,000 persons died or went missing, and more than 1 million buildings were completely or partially destroyed.
7. The tsunami precipitated a nuclear accident at the Fukushima Daiichi nuclear power station, where emergency preparedness and disaster mitigation measures had failed to account for the possibility of a disaster of that scale. Waves as high as 14 metres overwhelmed the plant’s sea walls and flooded its turbine buildings, leading to a power blackout. A series of nuclear meltdowns and hydrogen explosions within the power station led to the release of multiple radioactive materials.<sup>2</sup>
8. On 11 March 2011, the Government declared a “nuclear emergency situation”, officially triggering emergency response measures and obligating the authorities to inform

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<sup>1</sup> [A/HRC/53/35/Add.3](#).

<sup>2</sup> [A/HRC/23/41/Add.3](#), para. 8.

the public of the situation. This led to the issuance of the first series of evacuation orders later the same evening.

## A. Determination of mandatory evacuation zones

9. While existing guidelines from the Nuclear Safety Commission of Japan prescribed a radius of 10 km as a precautionary evacuation zone, an initial radius of 3 km was ordered based on general guidelines from the International Atomic Energy Agency and the fact that a larger evacuation zone could create traffic congestion, preventing those closest to the disaster site from evacuating in a timely manner.<sup>3</sup> A lack of coordination led to conflicting evacuation orders during this phase, with prefectural authorities ordering evacuation within a radius of 2 km, minutes before federal authorities mandated a radius of 3 km.<sup>4</sup> Residents between 3–10 km of the plant were initially ordered to shelter indoors, but this was revised on the morning of 12 March to an evacuation order. Later that day, the evacuation radius was expanded to 20 km.<sup>5</sup> On 15 March, residents within a radius of 20–30 km were ordered to shelter indoors; 10 days later, they were advised to begin “voluntary evacuation”. On 22 April, residents of areas more than 30 km and as far as 50 km from the plant, including Kawamata, Iitate and parts of Minamisōma, were ordered to evacuate due to high levels of detected radiation.<sup>6</sup>

10. As indicated by the Investigation Committee on the Accident at the Fukushima Nuclear Power Stations of Tokyo Electric Power Company, the Government could have used the System for Prediction of Environment Emergency Dose Information (SPEEDI) to delineate evacuation zones based on predictions of radiation spread, instead of using general guidelines.<sup>7</sup> The system collecting emissions data from within reactors that SPEEDI relies upon was damaged and, as a result, SPEEDI was not used immediately after the disaster, though predicted emissions could have been used.<sup>8</sup> The Fukushima Nuclear Accident Independent Investigation Commission acknowledged that, while determination of the initial evacuation radius of 3 km was informed by expert guidance, the evacuation radii of 10 and 20 km were “not decided on the basis of any kind of concrete calculations or rational grounds”.<sup>9</sup>

11. This failure to use scientific data to plan evacuations had significant repercussions. Mandatory evacuation zones did not necessarily correspond to the areas in which radiation risk was highest. Citizens in some relatively safe areas received evacuation orders,<sup>10</sup> while citizens in more irradiated areas were not told to evacuate in a timely manner.<sup>11</sup> Orders lacked detail on the timing and direction of evacuations to avoid the path of radiation, leading some citizens to “evacuate” from areas of relatively low radiation to or through higher-radiation areas.<sup>12</sup>

## B. Limitations in public information

12. Information about the scale and severity of the disaster and the extent of and rationale behind evacuation orders was not communicated effectively. This was partly beyond the Fukushima prefectural authorities’ control due to a shortage of radio lines and damaged

<sup>3</sup> Investigation Committee on the Accident at Fukushima Nuclear Power Stations of Tokyo Electric Power Company, *Final Report* (Tokyo, 2012), p. 264.

<sup>4</sup> *Ibid.*, pp. 263 and 264.

<sup>5</sup> *Ibid.*, pp. 264 and 265.

<sup>6</sup> A/HRC/23/41/Add.3, para. 17.

<sup>7</sup> Japan, National Diet, *The Official Report of the Fukushima Nuclear Accident Independent Investigation Commission* (2012), executive summary, p. 39. Available at <https://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naaic.go.jp/en/report>.

<sup>8</sup> Investigation Committee, *Final Report*, p. 441.

<sup>9</sup> National Diet, *Official Report*, chap. 3, p. 62.

<sup>10</sup> Investigation Committee, *Final Report*, pp. 267 and 268.

<sup>11</sup> A/HRC/23/41/Add.3, para. 17.

<sup>12</sup> Investigation Committee, *Final Report*, pp. 250–256.

communication infrastructure.<sup>13</sup> Authorities resorted to mass media to reach affected municipalities rather than communicating evacuation orders to each affected municipality as required by the country's Nuclear Emergency Response Manual. Consequently, municipal authorities learned about the orders at the same time as citizens and did not receive instructions to issue such evacuation orders.<sup>14</sup>

13. The Independent Investigation Commission concluded that, in an attempt to minimize ensuing panic, the Government had downplayed the extent of damage, by emphasizing that there was “no immediate danger” to citizens’ health as a result of the disaster, sidestepping the issue of long-term risks. Orders to evacuate or shelter indoors were framed as an abundance of caution rather than critical measures.<sup>15</sup>

14. An estimated 80 per cent of residents in the five towns closest to the plant received evacuation orders without an explanation of what happened, including the radiation risks that they were exposed to.<sup>16</sup> They were not informed of the projected duration of the orders to evacuate or stay indoors and consequently did not prepare adequately.<sup>17</sup> Although SPEEDI was used retroactively to accurately model radiation spread, the information was not made available to the public until 12 days later when partial data were released followed by full results a month later.<sup>18</sup>

### C. “Voluntary” versus “mandatory” evacuation

15. According to government-mandated investigations, the determination of evacuation zones was not a strictly scientific process, nor did they cover all areas at risk of radiation. Official reluctance to provide detailed information on the accident and sometimes contradictory messages undermined public trust, which declined even further when subsequent investigations revealed that critical information had been withheld or downplayed. Many citizens thus had to make their own decisions on evacuation instead of waiting for haphazard and delayed official evacuation orders.<sup>19</sup>

16. The Guiding Principles on Internal Displacement define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized State border.” According to this definition, evacuees from areas still under evacuation orders, evacuees from areas in which evacuation orders have been lifted and evacuees who fled without an order to avoid the nuclear disaster are all internally displaced persons with no distinction as to their rights. It is concerning that in the years since the disaster, the arbitrary distinction between “mandatory” evacuees and “voluntary” evacuees has crystallized into discriminatory provision of assistance and protection to internally displaced persons. The Government has contested the notion that any official distinction exists between the two groups of evacuees, which may be true insofar as their civil status; however, government policies on compensation and the duration of assistance have consistently been more generous to those who received evacuation orders than to “voluntary” evacuees.

17. Approximately 470,000 citizens were internally displaced by the tsunami, the earthquake and the nuclear meltdown.<sup>20</sup> The Reconstruction Agency estimates that between 154,000 and 165,000 citizens evacuated to avoid the effects of the nuclear disaster, of whom 109,000 did so as a result of evacuation orders.<sup>21</sup> The number of “voluntary” evacuees has

<sup>13</sup> National Diet, *Official Report*, chap. 3, p. 74.

<sup>14</sup> Investigation Committee, *Interim Report* (Tokyo, 2011), p. 306.

<sup>15</sup> National Diet, *Official Report*, chap. 3, pp. 79–83.

<sup>16</sup> *Ibid.*, pp. 79 and 80.

<sup>17</sup> National Diet, *Official Report*, executive summary, pp. 38 and 53–55.

<sup>18</sup> Investigation Committee, *Final Report*, pp. 259–261.

<sup>19</sup> National Diet, *Official Report*, executive summary, p. 38.

<sup>20</sup> Reconstruction Agency, “[Status of reconstruction and reconstruction efforts](#)” (December 2022).

<sup>21</sup> *Ibid.*; Reconstruction Agency, “Progress to date: the status in Fukushima”, March 2013; and Fukushima prefectural government, “Transition of evacuation designated zones”, 4 March 2019.

been estimated at between 25,000 and 36,000.<sup>22</sup> As of December 2022, at least 31,000 citizens remained internally displaced by the triple disaster.<sup>23</sup>

### III. Legal framework

#### A. International human rights law

18. Japan has ratified core human rights instruments. All evacuees from the Fukushima nuclear disaster meet the definition of internally displaced persons under the Guiding Principles on Internal Displacement, which outline the responsibilities of the relevant authorities towards internally displaced persons. The Framework on Durable Solutions for Internally Displaced Persons provides policy guidance on the process and conditions necessary for achieving a durable solution.

#### B. Domestic disaster legislation

19. The Basic Act on Disaster Management<sup>24</sup> enumerates the roles of Government at national, prefectural and municipal levels and the modalities for their conduct during all phases of the disaster, including prevention and preparation, emergency response, as well as evacuations, and disaster recovery. Authorities should consult with disaster victims, provide full information on the presumed condition of the disaster and measures to be taken, secure accommodation for displaced citizens and fund disaster recovery projects and special subsidies for victims.

20. The Act on Compensation for Nuclear Damage<sup>25</sup> establishes that nuclear operators are liable for all damage resulting from nuclear disasters. Although there is an exemption for instances of “a grave natural disaster of an exceptional character”, the Government judged that the circumstances of the Fukushima disaster did not meet that threshold and persuaded the Tokyo Electric Power Company (TEPCO) not to evoke the exemption.<sup>26</sup> There is no maximum limit in terms of the nuclear operator’s liability for compensation. The Act provides for the establishment of a committee to mediate disputes and establish guidelines on compensation. Nuclear operators must allocate funds to cover compensation claims and the Government is obligated to make up the shortfall should this be exhausted.

#### C. Fukushima-specific legislation

21. The Basic Act on Reconstruction in Response to the Great East Japan Earthquake<sup>27</sup> outlines principles under which reconstruction should proceed with an emphasis on recovery of all disaster-affected persons, including women, children and persons with disabilities, with due consideration of their opinions.

22. The Act on Special Measures for the Reconstruction and Revitalization of Fukushima<sup>28</sup> contains provisions on preferential access to public housing for evacuees, but limits its scope to those who previously resided in zones under official evacuation orders. The Act obligates the authorities to conduct health management surveys, measure radiation

<sup>22</sup> Michelle Yonetani, “Recovery postponed: the long-term plight of people displaced by the 2011 Great East Japan Earthquake, tsunami and nuclear radiation disaster” (Internal Displacement Monitoring Centre, 2017), p. 4.

<sup>23</sup> Reconstruction Agency, “[Status of reconstruction and reconstruction efforts](#)”.

<sup>24</sup> Act No. 223 of 15 November 1961.

<sup>25</sup> Act No. 147 of 1961.

<sup>26</sup> Nuclear Energy Agency and Organisation for Economic Co-operation and Development (OECD), *Japan’s Compensation System for Nuclear Damage* (Paris, 2012), pp. 42 and 43.

<sup>27</sup> Act No. 76 of 24 June 2011.

<sup>28</sup> Act No. 25 of 31 March 2012.

levels in the prefecture and carry out decontamination efforts; it also outlines modalities for the development and revitalization of various industries.

23. The Act on Promotion of Support Measures for the Lives of Disaster Victims to Protect and Support Children and Other Residents Suffering Damage Due to Tokyo Electric Power Company's Nuclear Accident<sup>29</sup> defines "disaster victims" inclusively, covering those who received an evacuation order but also residents of areas in which radiation levels increased but not enough to warrant an evacuation order. Crucially, the Act recognizes that support measures must be implemented so as to enable each disaster victim to make a voluntary choice to integrate locally, return home or settle elsewhere, while ensuring that appropriate support is offered irrespective of the person's choice. Regardless of whether victims return or settle elsewhere, the Act obliges the Government to ensure that they are able to access housing, education, employment and public services. Those at risk of radiation should receive further support, including medical care, food testing and psychosocial support, and "voluntary" returnees should be supported to find housing and employment. Support measures for the lives of disaster victims should continue for as long as needed, and the Act does not describe any predetermined time limit. The Government is obliged to "take measures necessary for reflecting the opinions of the residents of the areas affected", including in designing assistance programmes.

## IV. National responses

### A. Emergency assistance

24. Following the disaster, the Government established thousands of evacuation centres across the country in public buildings and requisitioned hotels. However, these centres lacked essential supplies, including power and running water, and were not designed in a gender-sensitive manner or to meet the needs of specific groups, including children, older persons and persons with disabilities. Evacuees had to change centres multiple times as more information became available on the spread of radiation.<sup>30</sup>

25. Within a year, most centres had closed as the Government focused on longer term housing. While some 53,000 prefabricated temporary housing units were constructed for evacuees,<sup>31</sup> their suitability for the needs and preferences of internally displaced persons varied; some units were constructed in urban areas with access to services and livelihoods, while others were in more remote areas.<sup>32</sup> A more empowering policy was the Government's signing of some 68,000 rental agreements for private housing chosen by evacuees.<sup>33</sup> Public housing, including housing for civil servants and low-income housing, was made available to evacuees throughout Japan, in some cases free of charge.<sup>34</sup> The Government, through Fukushima Prefecture, provided housing to evacuees without distinction as to the "voluntary" or "mandatory" nature of their evacuation, although such a distinction would later determine the assistance provided.

26. Local governments in Japan are responsible for providing medical care, housing support, welfare, education and other essential services, but normally only to citizens registered as residents of their jurisdiction. The Act on Exceptions of Administrative Matters for Nuclear Disaster Evacuees and Measures for Nuclear Disaster Migrants on the Great East Japan Earthquake<sup>35</sup> was a positive measure to facilitate the process for local governments

<sup>29</sup> Act No. 48 of 27 June 2012.

<sup>30</sup> Toshiaki Keicho, "[Knowledge note 3-5, cluster 3: emergency response – evacuation center management](#)" (World Bank and Global Facility for Disaster Reduction and Recovery), p. 3.

<sup>31</sup> Miki Ishimori, "[Right to housing after Fukushima nuclear disaster: through a lens of international human rights perspective](#)" (International Federation of Red Cross and Red Crescent Societies, October 2017), p. 4.

<sup>32</sup> Sayuri Umeda, "[Japan: legal responses to the Great East Japan Earthquake of 2011](#)" (Law Library of Congress, Global Legal Research Directorate, 2013), p. 24.

<sup>33</sup> Ishimori, "Right to housing", p. 4.

<sup>34</sup> Umeda, "Legal responses", pp. 22 and 23.

<sup>35</sup> Act No. 98 of 2011.



hosting internally displaced persons to provide them with these services, even while they were officially registered as residents of their areas of origin. However, the services evacuees received varied depending on the prefecture or municipality to which they fled.

27. The Government provided incentive payments to small and medium enterprises that hired disaster victims by September 2012, and subsidies to local governments that hired them for short-term projects. These steps were complemented by measures to ease administrative burdens on evacuees, including tax liabilities.<sup>36</sup> The Government authorized unemployment benefits to evacuees whose workplaces were no longer functional as a result of the disaster, and extended evacuees' eligibility for unemployment benefits.

## **B. Compensation and remedy**

### **1. Direct compensation**

28. Immediately after the disaster, TEPCO began provisional compensation to internally displaced persons, however, only to "mandatory" evacuees.<sup>37</sup> It initially provided households with 1,000,000 yen (750,000 yen for single-person households), with later payments of between 100,000–300,000 yen per person depending on the circumstances of their evacuation.<sup>38</sup> To expedite compensation, the Government made provisional payments on behalf of TEPCO and claimed reimbursement from the company by acquiring the victim's right to compensation.<sup>39</sup>

29. A Dispute Reconciliation Committee for Nuclear Damage Compensation was established within the Ministry of Education, Culture, Sports, Science and Technology. It developed guidelines to determine which losses should be compensated and the level thereof.<sup>40</sup> Compensable losses included health examinations for radiation exposure, evacuation and voluntary return expenses, including moving costs, injury or death, mental anguish, loss of ability to work, and damages and loss of value to businesses and property. While initial versions of the guidelines were only applicable to "mandatory" evacuees, the supplement to the interim guidelines released in December 2011 widened eligibility for compensation to include "voluntary" evacuees; however, their compensation was less generous.

30. Under the second supplement to the interim guidelines, the benchmark payment for "mental anguish" to "mandatory" evacuees was set at 100,000 yen a month, lasting until the lifting of their evacuation orders. Residents of "restricted residence zones", in which the annual cumulative radiation dose, estimated on the basis of the air dose rate, exceeded 20 mSv (millisieverts), but was below 50 mSv, could opt for a lump sum of 2.4 million yen, covering a two-year evacuation period. Residents of "difficult to return zones" in which the above dose rate exceeded 50 mSv initially received a lump sum of 6 million yen, covering a projected five-year evacuation period. The fourth supplement to the interim guidelines provided "mandatory" evacuees from "difficult to return zones" with an additional 7 million yen.<sup>41</sup> In addition, "mandatory" evacuees could also claim compensation for costs related to relocation separately.

31. Among "voluntary" evacuees, children and pregnant women were eligible for one-time payments of 400,000 yen covering the period through the end of 2011; all other "voluntary" evacuees were eligible for a one-time payment of 80,000 yen for this period, which covered both mental anguish and evacuation-related expenses. Since January 2012, pregnant women and children can continue to claim damages on a case-by-case basis.<sup>42</sup>

<sup>36</sup> Umeda, "Legal responses", pp. 16–24.

<sup>37</sup> See [www.tepco.co.jp/cc/press/11041502-j.html](http://www.tepco.co.jp/cc/press/11041502-j.html) (in Japanese).

<sup>38</sup> Umeda, "Legal responses", p. 34.

<sup>39</sup> Nuclear Energy Agency and OECD, *Japan's Compensation System for Nuclear Damage*, pp. 25 and 26.

<sup>40</sup> Ibid., pp. 22 and 31.

<sup>41</sup> Nuclear Energy Agency and OECD, *Nuclear Law Bulletin*, vol. 2014/2, No. 94 (2014), p. 151.

<sup>42</sup> Ibid.

32. In December 2022, the Reconciliation Committee issued a fifth supplement to the interim guidelines to provide additional compensation to evacuees in recognition of their psychological damages; however, compensation for “mandatory” evacuees remains more generous.<sup>43</sup>

33. “Mandatory” evacuees are now eligible for several categories of compensation. Payments for “emotional distress caused by the loss or transformation of livelihoods” were 7 million yen to those from “difficult to return zones”, 2.5 million yen to those from “restricted residence zones” and “zones preparing to lift evacuation orders” (where it was confirmed that the annual cumulative radiation dose, estimated on the basis of the air dose rate, had fallen to below 20 mSv), and 500,000 yen for those from “emergency evacuation preparation zones” (areas between 20 km and 30 km from the plant that received evacuation orders but in which radiation levels did not significantly rise). “Mandatory” evacuees who were within 20 km of Fukushima Daiichi or within 10 km of Fukushima Daini Nuclear Power Station at the time of the accident were eligible for 300,000 yen for “emotional distress caused by severe evacuation conditions”, while those who were 8–10 km from Fukushima Daini, but not within 20 km of Fukushima Daiichi, could receive 150,000 yen. “Mandatory” evacuees were also eligible for 300,000 yen due to “emotional distress caused by health concerns as a result of staying in areas with a considerable level of radiation dose for a certain period of time”, rising to 600,000 yen for those who were pregnant or children at the time of the accident. “Mandatory” evacuees could also claim an increase in their compensation based on specific circumstances.

34. In contrast, the latest revision of the guidelines recognizes only one ground for “voluntary” evacuees to claim compensation. “Voluntary” evacuees are now eligible for a lump sum of 200,000 yen, though if they received the 80,000 yen for which they were eligible under the previous guidelines, they can only claim an additional 120,000 yen. They do not have any scope to raise this based on specific circumstances.

## 2. Alternative dispute resolution

35. Alternative dispute resolution has been favoured for claims considered to be challenging under the limited compensation criteria of TEPCO, and by those who were not satisfied with its payments or did not wish to engage with it. Mediators hold multiple discussions and make proposals until agreement is reached.<sup>44</sup> The flexibility and additional discretion to determine compensation afforded to mediators, both under the guidelines issued by the Reconciliation Committee and internal “general standards”, is a positive step as it enables them to reduce discrepancies in compensation faced by “voluntary” evacuees and others who have been able to advocate for the recognition of damages not covered under the Reconciliation Committee’s guidelines.<sup>45</sup>

## 3. Litigation

36. Unlike cases brought before TEPCO or alternative dispute resolution, the courts do not impose eligibility criteria for plaintiffs or predetermined ceilings on compensation; in addition, they receive claims for harms not covered by the Reconciliation Committee’s guidelines, provide for collective complaints and for internally displaced persons to seek criminal accountability. Litigation does not require the assent of TEPCO and is thus preferred by internally displaced persons who believe that the courts will be more independent and impartial.

37. The Ministry of Justice reports that there are approximately 30 ongoing cases seeking redress for the disaster. Internally displaced persons have filed lawsuits under the Act on Compensation for Nuclear Damage and under the country’s Civil Code and Constitution.<sup>46</sup> Groups of internally displaced persons, often organized by area of displacement and ranging from a few dozen to thousands of plaintiffs, have lodged collective cases. Groups of internally

<sup>43</sup> See [www.aec.go.jp/jicst/NC/iinkai/teirei/siryo2023/siryo02/3-2\\_haifu.pdf](http://www.aec.go.jp/jicst/NC/iinkai/teirei/siryo2023/siryo02/3-2_haifu.pdf) (in Japanese).

<sup>44</sup> Eric A. Feldman, “Compensating the victims of Japan’s 3-11 Fukushima disaster”, *Asian-Pacific Law & Policy Journal*, vol. 16, No. 2 (2015), p. 142.

<sup>45</sup> *Ibid.*, p. 143.

<sup>46</sup> *Ibid.*, p. 145.



displaced persons whom the Special Rapporteur met explained that collective lawsuits targeted the Government, TEPCO or both, with different aims, including civil damages from the Government and/or the company, criminal accountability for the company and monetary accountability for its shareholders.

38. Many court cases have sought to establish the Government's liability by arguing that it could have foreseen the disaster and ordered TEPCO to take preventative measures, given that a government-commissioned assessment in 2002 predicted the possibility of a tsunami caused by an earthquake on the coast of Fukushima Prefecture. Lower courts have been divided on the Government's responsibility. In June 2022, the Supreme Court ruled in four cases that the Government could not be held responsible in those cases. This ruling is likely to influence future efforts to hold the Government accountable.

39. Civil and criminal cases against TEPCO management had divergent impacts. One lawsuit brought by shareholders against the company's executives led to a 13 trillion yen settlement in the plaintiffs' favour. A criminal case brought against the company's executives resulted in not-guilty verdicts for those charged, upheld by the Supreme Court. However, the company has consistently been found accountable by the courts. This has generally resulted in larger amounts of compensation awarded to evacuees than under direct compensation or alternative dispute resolution, which has led to an upward revision of the Reconciliation Committee's guidelines; the fifth supplement is based explicitly on "the final judgment of class action lawsuits".<sup>47</sup>

40. Some court cases have challenged the arbitrary distinction between "mandatory" and "voluntary" evacuees. In Kyoto, a judge issued damages to a group of mixed "mandatory" and "voluntary" plaintiffs, recognizing that "voluntary" evacuation was rational in light of the uncertain impacts of low-dose radiation.<sup>48</sup> In other instances, however, judges presiding over collective cases have awarded greater damages to "mandatory" evacuee plaintiffs.<sup>49</sup>

## C. Recovery and reconstruction

41. Coordination of reconstruction falls under the remit of the Reconstruction Agency, which is staffed by seconded employees from other ministries who are rotated after a few years. Internally displaced persons and civil society report that the short tenures and frequent turnover are a challenge in terms of their engagement.

42. As of December 2022, 570 km of road had been rehabilitated, and mass transit linkages restored. Farming in the 12 municipalities affected by the nuclear disaster stands just below 43 per cent of pre-disaster levels. Fisheries in Fukushima have reportedly recovered up to 20 per cent of their pre-disaster levels. Prefectural authorities carried out a campaign to counteract reputational damage to products from the prefecture, resulting in a decrease in the price gaps between products from Fukushima Prefecture and the national average.<sup>50</sup> The Reconstruction Agency acknowledges that further efforts are needed to ensure access to medical care, education and services; this was echoed by prefectural and municipal authorities.

43. Reconstruction efforts include hubs for new industries in Fukushima Prefecture. The Fukushima Innovation Coast Framework consists of a state-of-the-art museum on the disaster and research and development facilities for decommissioning, robotics and drones, energy, environment, recycling, aerospace, medicine, and "cutting-edge technology" for agriculture, forestry and fisheries. Joining this will be the Fukushima Institute for Research, Education and Innovation, an applied research and development, industrialization and human resource development centre aimed at developing new scientific and technological industries.

<sup>47</sup> See [www.aec.go.jp/jicst/NC/iinkai/teirei/siryo2023/siryo02/3-2\\_haifu.pdf](http://www.aec.go.jp/jicst/NC/iinkai/teirei/siryo2023/siryo02/3-2_haifu.pdf) (in Japanese).

<sup>48</sup> Kyodo News, "Gov't, Tepco ordered to pay damages to Fukushima evacuees", 15 March 2018.

<sup>49</sup> "Voluntary evacuees granted only small awards in Fukushima nuke disaster damage case", *The Mainichi*, 18 March 2017.

<sup>50</sup> Reconstruction Agency, "Status of reconstruction and reconstruction efforts".

## D. Moving beyond reconstruction: the need for a rights-based approach

44. Since 2014, the Government has been lifting evacuation orders based on three criteria: (a) the annual cumulative radiation dose, estimated on the basis of the air dose rate, should not exceed 20 mSv; (b) infrastructure and essential services should be re-established in the area concerned; and (c) consultations are held between the Government of Japan, the prefecture, municipalities and residents.<sup>51</sup> These criteria and their implementation are problematic in several aspects.

45. Under guidelines of the International Commission on Radiological Protection, in “normal, planned exposure situations”, the 20 mSv standard is only applicable to adults with occupational exposure to radiation – for example, nuclear power plant workers – while the recommended maximum annual radiation dose for the general public is 1 mSv,<sup>52</sup> which is also the civilian limit under Japanese law, but only applied to areas not affected by the disaster.<sup>53</sup> Many oppose using this standard for civilians, especially children who are more susceptible to radiation.

46. The Government maintains that the situation in Fukushima still constitutes an “emergency exposure situation”, which under the 2007 guidelines of the International Commission on Radiological Protection would allow a reference level of 20–100 mSv.<sup>54</sup> The Government informed the Special Rapporteur that, out of an abundance of caution, the lowest level within the emergency exposure range was selected as the maximum exposure threshold for areas in which evacuation orders are lifted. However, in accordance with the Commission’s latest guidance on radiological protection in the event of a large nuclear accident, during the “long-term phase”,<sup>55</sup> the updated reference level for exposure is “20 mSv per year or below” only in “a restricted area not open to the public”.<sup>56</sup> For public areas in which protective actions are implemented, the reference level is “the lower half of the 1–20 mSv per year band”.<sup>57</sup>

47. As regards the second criterion, the Special Rapporteur was informed that, in Futaba town, where evacuation orders have been partially lifted since 2020, no school or hospital existed, although the resumption of such essential services was meant to precede the lifting of evacuation orders. It is conceivable that other evacuation orders have been lifted without these services in place. Finally, many internally displaced persons reported that “consultations” related to the lifting of evacuation orders consisted largely of the authorities’ informing stakeholders of their preconceived plans to lift the evacuation order, rather than seeking consent or allowing them to shape the process.

48. The lifting of evacuation orders is problematically tied to the cessation of assistance. The interim guidelines outline that no further compensation will be provided for mental anguish or evacuation-related expenses after a “reasonable period following the lifting, etc. of an evacuation instruction”;<sup>58</sup> the fourth supplement clarifies that this “reasonable period” is set at one year as a benchmark.<sup>59</sup> “Mandatory” evacuees thus lose housing assistance from

<sup>51</sup> Ministry of the Environment, “Designation of areas under evacuation orders”, in *Booklet to Provide Basic Information Regarding Health Effects of Radiation*, 3rd ed. (2020).

<sup>52</sup> International Commission on Radiological Protection, “Dose limits”, 20 June 2019.

<sup>53</sup> A/HRC/23/41/Add.3, para. 46.

<sup>54</sup> International Commission on Radiological Protection, “The 2007 Recommendations of the International Commission on Radiological Protection”, Publication 103, *Annals of the ICRP*, vol. 37, Nos. 2–7 (2007).

<sup>55</sup> This begins when the authorities “consider that the damaged facility is secured” and “have made their decisions concerning the future affected areas, and have decided to allow residents, who wish to do so, to stay permanently in these areas”. See International Commission on Radiological Protection, “Radiological protection of people and the environment in the event of a large nuclear accident: update of ICRP Publications 109 and 111”, Publication 146, *Annals of the ICRP*, vol. 49, No. 4 (2020), para. 176.

<sup>56</sup> *Ibid.*, para. 190.

<sup>57</sup> *Ibid.*, p. 78, table 6.1.

<sup>58</sup> Nuclear Energy Agency and OECD, *Japan’s Compensation System for Nuclear Damage*, pp. 130 and 135.

<sup>59</sup> Nuclear Energy Agency and OECD, *Nuclear Law Bulletin No. 94*, p. 151.

Fukushima Prefecture one year after the lifting of evacuation orders on their area of origin. “Voluntary” evacuees lost this assistance in March 2017. Meanwhile, there are financial incentives for those who return. Fukushima Prefecture informed the Special Rapporteur that returnees receive 50,000–100,000 yen for residential fees. The Guiding Principles on Internal Displacement specify that internally displaced persons must be able to voluntarily choose whether to return to their areas of origin or settle elsewhere, and the Framework on Durable Solutions for Internally Displaced Persons specifies that this choice must be made without coercion, including tacit coercion such as “making assistance conditional on specific choices” or “setting arbitrary time limits to end assistance”.<sup>60</sup> The Special Rapporteur believes that policies that end assistance to those displaced while continuing assistance to returnees may amount to such coercion.

49. Reconstruction efforts appear to be funded at the expense of support for internally displaced persons who do not wish to return. Fukushima Prefecture informed the Special Rapporteur that the cessation of housing support for evacuees outside the prefecture was financially necessary as the cost was no longer tenable. However, significant investments continue for projects of unclear relevance to internally displaced persons and Fukushima residents. The Fukushima Innovation Coast Framework has been estimated to cost as much as 10 billion yen annually,<sup>61</sup> yet many experts expressed scepticism that internally displaced persons and Fukushima residents would benefit from this knowledge-economy project, given that the primary economic sectors before the disaster were agriculture and fisheries. However, the Government notes that the project may benefit those who were previously in Fukushima’s nuclear industry. Some municipal authorities had not heard of the project when asked, and one survey found that 83.4 per cent of the prefecture’s residents were not aware of what it was.<sup>62</sup>

50. Reconstruction policies have expanded from targeting returnees and disaster-affected residents of Fukushima Prefecture towards attracting new residents. The “promotion of migration and settlement of new residents” is now an explicit goal for the Reconstruction Agency.<sup>63</sup> The 2019 revision of the Basic Guidelines for Reconstruction from the Great East Japan Earthquake acknowledges that “considering the intentions of residents, it is difficult to achieve the reconstruction and revitalization of the area simply by promoting the return of residents” and that “for this reason, actions shall be taken ... such as promoting relocation ... in addition to development of an environment that allows residents to return home”.<sup>64</sup> The 2021 revision of this policy echoes the need to “promote the migration and settlement of new residents and expand the non-resident population in addition to continuing efforts to rebuild and dispel rumours”.<sup>65</sup>

51. The Government rightly acknowledges that a significant number of displaced residents of Fukushima Prefecture do not wish to return. **Instead of focusing on the prefecture’s repopulation, the Special Rapporteur recommends prioritizing measures to ensure that internally displaced persons who do not wish to return can achieve a durable solution outside the prefecture, while residents of and returnees to the prefecture can enjoy the full spectrum of their human rights. Once the restitution of disaster victims is achieved, measures to attract new residents to the prefecture may be appropriate. This requires a rights-based approach to recovery, including positive measures to address the ongoing human rights challenges confronting internally displaced persons.**

<sup>60</sup> A/HRC/13/21/Add.4, para. 29.

<sup>61</sup> See <https://web.archive.org/web/20220522074845/http://www.fukushimaminponews.com/news.html?id=1010>.

<sup>62</sup> Shunji Matsuoka, “Reconstruction under nuclear disaster and making resilient society in Fukushima”, in *Sustainable Development Disciplines for Society*, Shujiro Urata, Ken-Ichi Akao and Ayu Washizu, eds., Sustainable Development Goals Series (Singapore, Springer, 2023), p. 26.

<sup>63</sup> Reconstruction Agency, “Status of reconstruction and reconstruction efforts”.

<sup>64</sup> Reconstruction Agency, “Basic guidelines for reconstruction from the Great East Japan Earthquake after the ‘reconstruction and revitalization period’ (provisional translation)” (December 2019), p. 34.

<sup>65</sup> See [www.reconstruction.go.jp/topics/main-cat12/sub-cat12-1/20210311135501.html](http://www.reconstruction.go.jp/topics/main-cat12/sub-cat12-1/20210311135501.html) (in Japanese).

## **V. Recommendations to address the human rights challenges affecting internally displaced persons from the Fukushima disaster**

### **A. Right to information**

52. At the onset of the disaster, the failure to release SPEEDI emissions data, the lack of information justifying evacuation zones and attempts to downplay the severity of the situation prevented citizens from making informed decisions on evacuation and eroded trust in government information about radiation. Since the disaster, this policy of downplaying radiation risks has been further codified in legislation, including the original Act on Special Measures for the Reconstruction and Revitalization of Fukushima of 2012, which specifies efforts to increase public understanding of radiation will be taken “to eliminate health concerns ... over contamination by radioactive materials discharged”. The Ministry of the Environment has a project targeted at reducing by half the percentage of citizens who believe radiation exposure will affect the health of future generations in Fukushima Prefecture.<sup>66</sup>

53. Aerial radiation monitoring posts throughout the prefecture provide real-time data, accessible online. Some municipalities provide information sessions regarding radiation, and others send reports on radiation levels to their residents, including those who are still evacuated. However, some internally displaced persons have asked for more information on soil radiation and the risk of recontamination, noting that measuring posts are not located in the areas in which radiation is highest and that they only measure aerial radiation. Monitoring posts only reflect the radiation dose in the immediate vicinity of the instrument while radiation in the surrounding areas may vary.<sup>67</sup>

54. Recognizing the efforts of civilian radiation monitors and finding ways to collaborate could help rebuild public trust. The Special Rapporteur was impressed by donation-funded laboratories run by self-taught concerned mothers, which test soil, water and food for radiation, conduct health check-ups and publish information on radiation.

55. The Special Rapporteur recommends that the Government provide neutral scientific information rather than information filtered to reassure residents about radiation, while continuing the practice of monitoring and publishing aerial radiation levels and extending this to include soil radiation. To rebuild public trust, the authorities must expand their efforts to listen and respond to citizens’ concerns and adjust information provision based on their feedback.

### **B. Right of internally displaced persons to participate**

56. Evacuees are neither represented on nor consulted by the Reconciliation Committee when determining guidelines and eligibility for compensation. Although adequate consultation is one of the three criteria to lift evacuation orders, many internally displaced persons report that they are merely informed and see no possibility to challenge decisions. Participation of affected communities is often indirect. Although the Act on Special Measures for the Reconstruction and Revitalization of Fukushima highlights the need to “respect the opinions of a diverse range of residents”, the modalities thereof are not described and the only required consultations are between federal, prefectural and municipal authorities. The Reconstruction Agency informed the Special Rapporteur that direct feedback from evacuees on its activities was only collected on an ad hoc basis when evacuees contacted livelihood support bases. The main purpose of these bases is to orient evacuees towards assistance, but evacuees occasionally offer opinions on the work of the Reconstruction Agency.

57. Social tensions and discrimination make it challenging for internally displaced persons to participate in society, whether they are still displaced or after their return.

<sup>66</sup> Ministry of the Environment, *Initiatives of Ministry of the Environment for Reconstruction and Revitalization from the Great East Japan Earthquake* (2022), p. 58.

<sup>67</sup> A/HRC/23/41/Add.3, para. 50.

Evacuees were stigmatized as supposed carriers of radiation and faced resentment over the compensation that they may have received. “Voluntary” evacuees were criticized for being disloyal, excessively paranoid about health concerns or greedy for compensation. There are also tensions between “mandatory” and “voluntary” evacuees over the disparate levels of assistance and compensation received. The Government did not provide detailed information on efforts to address these tensions. Some internally displaced persons believe that government policies contribute to their isolation by insisting that returns are safe and evacuation is a matter of individual choice. Some evacuee associations used to hold regular public events with both “mandatory” and “voluntary” internally displaced persons to build intercommunal relations, but these ceased in 2017 as government support for their organizations ended.

**58. Efforts to engage internally displaced persons and residents of disaster-affected municipalities must go beyond merely informing them of preconceived plans. The Special Rapporteur recommends direct consultations with an intersectional range of internally displaced persons and modifying approaches to assistance, compensation, reconstruction and durable solutions based on their feedback. Authorities should make greater efforts to foster the social (re)integration of internally displaced persons in their host communities or their communities of origin and proactively address social tensions or conflicts, including through restoring support for evacuee organizations working on these issues.**

**59. The Japanese system of political participation that enables internally displaced persons to make a free choice whether to vote in their municipality of origin or in their area of residence elsewhere is an excellent practice that avoids electoral disenfranchisement of internally displaced persons. For internally displaced persons who are still evacuated and who vote in their residence of origin, the Special Rapporteur recommends simplifying the process for absentee voting, which some report is quite arduous, especially for older persons.**

## **C. Right to remedy**

60. The scope of persons eligible for direct compensation is narrow and discriminatory in its treatment of “voluntary” and “mandatory” evacuees. Many internally displaced persons described the application process as complex and burdensome. Some municipal authorities informed the Special Rapporteur that the process to obtain compensation from TEPCO was so challenging that public funds were set aside for lawyers to assist with applications. It is also challenging for evacuees to collect supporting documentation for their claims, particularly health-related claims, as hospitals do not maintain records for more than five years. There is also a potential conflict of interest given that TEPCO is the entity responsible for the damages related to the nuclear disaster.<sup>68</sup>

61. As with direct compensation, the outcome of alternative dispute resolution depends on the goodwill of TEPCO; internally displaced persons report that payments are insufficient and the process is slow. Claimants find it challenging to locate the necessary documentation on their own and must travel at their own expense to mediation centres. Confidence in the alternative dispute resolution system was significantly undermined when the Nuclear Damages Dispute Resolution Centre’s bureaucracy was exposed for maintaining a confidential internal policy of discounting damages by 50 per cent, by determining the full extent of claimants’ losses, then offering damages equivalent to half that amount.<sup>69</sup>

62. The outcome of court cases varies significantly depending on the jurisdiction. Damages in collective cases are awarded individually based on each plaintiff’s circumstances, resulting in significant variations in the amount awarded. Internally displaced persons have advocated for greater harmonization of the various remedy mechanisms. Successful plaintiffs in the collective case brought by evacuees in Kyoto appealed their

<sup>68</sup> Feldman, “Compensating the victims of Japan’s 3-11 Fukushima disaster”, p. 136.

<sup>69</sup> Ibid., pp. 143 and 144.

judgment so that 64 evacuees whose claims had been rejected could receive damages.<sup>70</sup> Lawyers for plaintiffs who successfully won damages from the Supreme Court that exceeded those in the guidelines of the Reconciliation Committee called for the upward revision of those guidelines to reflect the amounts awarded by the courts.

63. **The Special Rapporteur recommends simplifying the application process for compensation, expediting decisions on compensation and alternative dispute resolution cases and ensuring compensation is comprehensive. It is recommended to harmonize the compensation that internally displaced persons receive regardless of the mechanism through which that remedy is achieved, bringing it into line with the more generous standard established by courts. This would help address disparities in the compensation awarded and ensure parity for internally displaced persons who cannot afford prolonged court cases and who opt for direct compensation or alternative dispute resolution. Finally, both “mandatory” and “voluntary” evacuees must be compensated on an equal basis.**

#### D. Right to family life

64. Multigenerational families previously living together were separated during evacuation, partially due to divergent evacuation patterns, but also due to policies governing access to emergency temporary housing, which did not allow larger families to stay together.

65. Many mothers chose to seek safety with their children outside the prefecture, while their husbands remained behind due to differing perceptions of safety, out of men’s loyalty to their employers or their belief that they would not be able to make an adequate living elsewhere. These dynamics have led to divorce and the break-up of families or put families under the strain of living permanently apart and financially maintaining two households.

66. **The Special Rapporteur recommends that public and emergency housing programmes be refined to prioritize the cohesion of families as they are constituted, whether nuclear or multigenerational. Social welfare programmes should prioritize persons affected by family separation, including single or separated mothers and older persons, who may be more vulnerable or at risk of isolation in the absence of family support networks. The Government has implemented some good practices in this regard, including the possibility for mandatory evacuees to have their assistance increased as a result of maintaining two households, and reducing or exempting separated families from expressway tolls.**

#### E. Right to adequate housing

67. Emergency shelters did not meet the definition of adequate housing, as they were overcrowded and lacked essential services, including energy and running water, and facilities for women, older persons and children. Prefabricated temporary houses were an improvement; however, they posed challenges in terms of their location and inability to accommodate larger or multigenerational families. As late as April 2020, hundreds of evacuees remained in temporary houses,<sup>71</sup> despite the fact that they are generally not intended for habitation beyond two years, though this can be extended through special administrative approvals. **The Special Rapporteur recommends that future emergency preparedness efforts strictly follow Sphere standards as a minimum, engage affected populations beforehand to ensure adequate responses, and provide shelter that meets the intersectional needs of diverse populations and prefabricated housing that can be adapted for protracted displacement.**

68. The provision of public housing, including vacant dormitories for civil servants, and payment of rent for internally displaced persons by Fukushima Prefecture were forward-thinking measures. The Special Rapporteur met internally displaced persons who could not otherwise have afforded housing. It is regrettable that over time the prefecture has unilaterally

<sup>70</sup> Kyodo News, “Gov’t, Tepco ordered to pay damages”.

<sup>71</sup> See [www.reconstruction.go.jp/topics/main-cat7/sub-cat7-2/20230227\\_ref1.pdf](http://www.reconstruction.go.jp/topics/main-cat7/sub-cat7-2/20230227_ref1.pdf) (in Japanese).



stopped providing this assistance to all “voluntary” evacuees and to “mandatory” evacuees whose evacuation orders have been lifted. The Special Rapporteur was informed that much of the public housing occupied by internally displaced persons consisted of vacant civil servant dormitories that were otherwise scheduled for demolition. Nonetheless, the prefecture has sued evacuees who remain in public housing after their official support ends, demanding their eviction, back rent and payment of compensation equivalent to twice the amount of rental fees, even after they have moved out.

69. The Special Rapporteur considers that evicting internally displaced persons from public housing, without measures to prevent their involuntary return to places where their life or health would be at risk, is a violation of their rights and may in some instances amount to forced evictions. As it is primarily households without the means to move elsewhere that continue to require public housing, evictions result in an untenable choice between poverty and potential homelessness or returning to their communities of origin despite their concerns about irradiation and lack of basic services.

70. Housing provided to returnees may not meet the definition of adequate housing based on location as it should be away from polluted sites and close to essential services; however, decontaminated areas of Fukushima rest beside highly contaminated areas, and radiation hotspots remain a risk. The economy of Fukushima Prefecture has not fully recovered, and many report that job opportunities are relatively scarce. Local authorities informed the Special Rapporteur that schools and hospitals in some areas of return either did not exist or were severely understaffed due to the challenges of recruiting and retaining qualified personnel in the area.

71. Evicting households from public housing outside the prefecture is a regressive policy that targets the poorest households of internally displaced persons, further impoverishing them, as they face becoming rent-burdened or homeless outside the prefecture or face returning to a potentially irradiated area with fewer job opportunities and essential services. **The Special Rapporteur recommends ending this practice and expanding measures to enable internally displaced persons who qualify to access low-income housing. While it is positive that some local authorities outside Fukushima continue providing housing to evacuees, this should be systematized for all evacuees.**

## F. Right to health

72. The quasi-scientific determination of evacuation zones and the chaotic roll-out of evacuation orders exposed citizens to avoidable radiation risks. Older persons, persons with disabilities, bedridden hospital patients and disaster responders faced delays in evacuation with adverse impacts on their health, as evacuation plans did not systematically consider their specific needs.

73. Many sources have expressed concern over the Government’s policy of lifting evacuation orders for areas in which the annual cumulative radiation dose, estimated on the basis of the air dose rate, is at or below 20 mSv a year, above the limit for civilian exposure prescribed by the International Commission on Radiological Protection. Although the Commission permitted Japan to derogate from those limits to allow a reference level of 1–20 mSv a year as the standard for disaster-affected areas, it cautioned that this should only be implemented if all the necessary protective measures were in place, abandonment of the areas concerned could not be envisaged and there was a long-term goal of reducing radiation to 1 mSv a year.<sup>72</sup> Furthermore, the standard is applied without a distinction between adults and children. There is no scientific consensus on the long-term effects of exposure to low-dose radiation (less than 100 mSv a year). The International Commission on Radiological Protection itself notes that radiation risks increase in proportion to the dose received, even below 100 mSv.<sup>73</sup> **The Special Rapporteur recommends that the Government address**

<sup>72</sup> International Commission on Radiological Protection, “Fukushima nuclear power plant accident”, 21 March 2011.

<sup>73</sup> Reiko Hasegawa, “Disaster evacuation from Japan’s 2011 tsunami disaster and the Fukushima nuclear accident”, *Studies*, No. 5/13 (Institute for Sustainable Development and International Relations, 2013), p. 37.

**these concerns and re-examine the validity of the exposure standard of 20 mSv a year, particularly for children.**

74. Recognizing the potential long-term health risks of radiation, the Government supported the Fukushima Health Management Survey, comprising multiple annual components, including a self-reporting survey on the basic health status of all residents at the time of the disaster, physical examinations and a self-reporting survey on mental health and lifestyle for “mandatory” evacuees, a pregnancy and birth survey for resident mothers or those who gave birth in Fukushima Prefecture during the disaster, and thyroid screening for residents of the prefecture during the disaster who were under 18 at the time or born within a year of the disaster.<sup>74</sup> **The Special Rapporteur recommends strengthening these measures by ensuring that “mandatory” and “voluntary” evacuees benefit from the same health services.**

75. Another good practice is the coverage of health-care costs for all children in Fukushima Prefecture up to the age of 18 and lifelong coverage of all costs related to diagnosis and treatment of thyroid cancer for residents who were children during the accident. However, many internally displaced persons have advocated for official recognition of the linkages between the accident and increased rates of cancer, which the Government currently attributes to the “screening effect” of regular health surveys. Thyroid cancer patients reported feeling stigmatized for seeking assistance and compensation for their treatment and suffering, and that the process of obtaining health-care coverage is cumbersome and that many claims for related treatment expenses are denied as they are not directly related to cancer.

**76. The Special Rapporteur recommends that these processes be streamlined to facilitate coverage for cancer patients and that the authorities officially recognize the links between the disaster and radiation-related conditions. The authorities should cover regular health screening and cancer treatment for those who were adults in Fukushima at the time of the disaster and expand screening and coverage of treatment to include other radiation-related conditions, including leukaemia.**

77. Access to health care remains a major challenge for returnees. Prefectural authorities reported it was extremely challenging to convince medical personnel to work in Fukushima and that many hospitals remain closed or understaffed. **While projects that aim to improve hospitals and attract doctors to disaster-affected areas are a positive step, such as the Regional Medical Care Revitalization Fund, internally displaced persons should not be coerced, including tacitly by assistance policies as defined in the Framework on Durable Solutions for Internally Displaced Persons, to return to areas without health care.**

78. A majority of internally displaced persons reported facing mental health challenges, anxiety, depression and suicidal thoughts, having experienced the triple disaster, health concerns, loss of their homes and communities, family break-ups, stigmatization and bullying, loneliness, financial struggles and uphill battles for assistance and compensation. According to some studies, more than 40 per cent of internally displaced persons are at risk of experiencing post-traumatic stress disorder, the potential prevalence of which over time has remained relatively consistent for those displaced from Fukushima. One study attributes this to the particular pressure Fukushima evacuees face to return to an area that they deem unsafe.<sup>75</sup>

79. Officials informed the Special Rapporteur that they struggle to identify enough mental health service providers for evacuees. Services accessible to evacuees are mainly provided by non-profit organizations, which lack funding. **The Special Rapporteur was encouraged by the opening of 14 government mental health care centres, and encourages further efforts to expand these services and cover, to the extent possible, the costs for internally displaced persons. Such efforts could be made directly and by increasing support for civil society organizations already working on these issues.**

<sup>74</sup> Kenji Kamiya, Hitoshi Ohto and Seiji Yasumura, eds., *Report of the Fukushima Health Management Survey 2011–2020* (Radiation Medical Science Center for the Fukushima Health Management Survey, 2021).

<sup>75</sup> Takuya Tsujiuchi, “Post-traumatic stress due to structural violence after the Fukushima disaster”, *Japan Forum* (2020).

## G. Right to a clean, healthy and sustainable environment

80. The Government reported that, as of March 2018, “whole area decontamination” had been completed in 100 municipalities in 8 prefectures. However, the phrase “whole area”, in practice, only refer to homes, roads, farmlands, and forests close to residential areas.<sup>76</sup> In many districts targeted for decontamination, more than 80 per cent of the territory consists of mountainous forests far from residential areas; “whole area decontamination” may therefore cover as little as 5 per cent of the district’s territory.<sup>77</sup> In “restricted” areas, in which radiation levels remain particularly high, “whole area decontamination” is not employed; rather, certain tracts of land designated by municipal authorities are strategically decontaminated.<sup>78</sup>

81. As decontaminated areas are beside highly contaminated areas, there is a risk of recontamination from materials carried down to previously decontaminated areas by rain, streams and rivers or material from plants and trees.<sup>79</sup> Citizen radiation measurement centres reported numerous instances of contamination in areas that had supposedly already been decontaminated, including schools. **The Special Rapporteur recommends that decontamination efforts be extended to cover the full territory of areas for which evacuation orders have been lifted or, if such decontamination is not feasible, to reconsider the validity of the decision to lift these evacuation orders.**

82. Internally displaced persons and Fukushima residents have voiced concerns regarding the impact on their environment, health and livelihoods of releasing 1 million tonnes of wastewater from the nuclear power station into the sea as part of decommissioning. While the water is treated to remove most radionuclides, the possibility of certain radioactive isotopes remaining in the water after treatment, some of which may build up to toxic quantities in fish and threaten humans, remains problematic.<sup>80</sup> **The Special Rapporteur recommends that the authorities, guided by impartial scientific expertise, reconsider releasing this wastewater in light of feasible alternatives that could garner more public acceptance, and carry out consultations that allow for two-way feedback with those that will be affected, including persons involved in the fishing industries.**

## H. Right to livelihood

83. The share of Futaba County’s population aged 15–64 who reported being full-time employees has fallen from 62.1 per cent before the disaster to 45.6 per cent, while those who reported being unemployed has nearly tripled from 9.8 to 25.3 per cent, well above the national unemployment rate of 2.8 per cent.<sup>81</sup> Trends over time suggest that, while there was an initial recovery after the disaster, this quickly plateaued, leaving unemployment rates permanently higher. Markets are limited in many areas in which the population remains lower than before the disaster, especially for fisherfolk and farmers.

84. The Special Rapporteur commends the Government for supporting the livelihoods of internally displaced persons by establishing 26 “livelihood rebuilding support bases” around Japan that refer internally displaced persons to relevant services and opportunities, public campaigns to address the stigma around agricultural and fishery products, and subsidies for the purchase of farm equipment. The provision of incentives to companies hiring evacuees and the use of the Employment Creation Fund to incentivize local governments to hire

<sup>76</sup> Ministry of the Environment, “Decontamination”, available at <http://josen.env.go.jp/en/decontamination>.

<sup>77</sup> Greenpeace, “Fukushima Daiichi 2011–2021: the decontamination myth and a decade of human rights violations” (2021), p. 11.

<sup>78</sup> Ministry of the Environment, *Initiatives of Ministry of the Environment for Reconstruction*, p. 13.

<sup>79</sup> Greenpeace, “Fukushima Daiichi 2011–2021”, p. 12.

<sup>80</sup> OHCHR, “Japan: UN experts say deeply disappointed by decision to discharge Fukushima water”, 15 April 2021.

<sup>81</sup> Fuminori Tamba, “Survey of evacuees in nuclear disasters” (paper on file with the Special Rapporteur), figure 5.

evacuees through contractors were good initial steps to preserve the livelihoods of those displaced.

85. **The Special Rapporteur recommends that referrals to service providers through support bases be complemented by more robust initiatives such as career counselling and retraining, labour intermediation services, job fairs, advocacy with employers, and entrepreneurship support, which would go further towards helping evacuees re-establish their livelihoods. Special consideration should be provided to agricultural and fisheries workers.**

## I. Right to education

86. The right to education has been seriously affected by displacement. Many children were obliged to change schools multiple times. Internally displaced children's learning has been disrupted by bullying from classmates and teachers for their "choice" to leave, for the perception that their parents have unjustly received large sums of compensation or due to erroneous beliefs about radiation-affected persons.

87. The authorities have taken some positive steps, including dispelling myths about persons exposed to radiation in educational materials, holding regular symposiums to stop discrimination and bullying of evacuees. The adoption of anti-bullying legislation, implementation of complaint windows at schools and efforts to investigate bullying are good practices. However, internally displaced youth report that anti-bullying materials produced by the Ministry of Education Culture, Sports, Science and Technology do not address the specific issue of Fukushima evacuees being bullied and, generally, they must first report bullying to initiate action. **The Special Rapporteur recommends more systematic efforts to proactively prevent and eliminate bullying faced by internally displaced children, rather than waiting for traumatized children to first raise these complaints. This will require providing specific information and training for teachers to prevent bullying and increase their capacity to detect warning signs.**

88. **The Special Rapporteur reiterates the as-yet unimplemented recommendation, made by other human rights mechanisms,<sup>82</sup> that educational materials should accurately reflect the risks of and increased vulnerability of children to radiation exposure. Current educational materials suggest, inter alia, that the risks of radiation exposure are comparable to the risks of a high-sodium or low-vegetable diet, do not fully distinguish between background radiation and the higher doses associated with nuclear contamination and do not address the specific impacts of radiation on children.**

## J. Specific groups

### 1. Women

89. Emergency shelters lacked privacy for women and breastfeeding mothers, and relief goods provided did not cater to women's needs.<sup>83</sup> Surveys of "voluntary" evacuees, who have consistently been afforded less support and compensation than "mandatory" evacuees, highlight that they are predominantly women – mothers who feared for their children and fled without waiting for government instructions.<sup>84</sup>

90. Women face discrimination from policies that disburse compensation to the predominantly male head of the household, resulting in compensation being withheld from divorced or separated women or victims of domestic abuse.<sup>85</sup> Divorce, family separation and the dispersal of family networks compelled many mothers to seek full-time employment, while depriving them of the extended family that provided childcare. Other women

<sup>82</sup> A/HRC/23/41/Add.3, para. 51; and CRC/C/JPN/CO/4-5, para. 36 (f).

<sup>83</sup> Keicho, "Knowledge note 3-5", pp. 6 and 7.

<sup>84</sup> Hasegawa, "Disaster evacuation from Japan's 2011 tsunami disaster", p. 42.

<sup>85</sup> Kendra Ulrich, *Unequal Impact: Women's & Children's Human Rights Violations and the Fukushima Daiichi Nuclear Disaster* (Tokyo, Greenpeace, 2017), p. 5.

previously had part-time jobs that allowed them to balance childcare responsibilities but could not find similar opportunities in displacement, particularly as part-time jobs were more affected by the disaster.<sup>86</sup>

91. The ability of displaced women to participate in decisions affecting them is constrained by their political exclusion. Among federal bodies that set reconstruction policy, in no instance are more than one third of members women.<sup>87</sup> Women on average comprised less than 10 per cent of members on regional disaster management councils and only approximately 11 per cent of members on municipal-level reconstruction planning committees.<sup>88</sup>

92. Despite these structural disadvantages, women are at the forefront of efforts to seek justice for evacuees. The Special Rapporteur was impressed by the many women who had stepped up in the wake of the disaster to provide mutual aid, mental health services and radiation measurements and advocate for the rights of internally displaced persons. **The Special Rapporteur recommends measures to increase women's participation in decision-making processes on emergency preparedness and post-disaster reconstruction, targeted measures to support single and separated internally displaced mothers and to build partnerships with women-led organizations. Expanding access to childcare is essential to enable single and working mothers' economic participation.**

## 2. Older persons

93. Evacuation plans did not adequately accommodate older persons, who in some instances, including patients at Futaba Hospital, were left behind for a prolonged period during the hasty evacuation, eventually leading to multiple preventable deaths.<sup>89</sup> Older persons living in multigenerational households were sometimes separated from their care-providing families because of occupancy limits on temporary housing.

94. Older persons are disproportionately represented among returnees.<sup>90</sup> The Special Rapporteur was informed that older generations tended to trust government assurances of safety and did not have young children susceptible to radiation. Some older persons, although reluctantly, choose to return for the financial incentives that enable them to live independently rather than burdening family, although many face loneliness and neglect amid the loss of family and community support networks. Older returnees face a lack of health-care services and infrastructure in depopulated areas.

95. **The Special Rapporteur recommends specific measures to enable older persons to make a voluntary decision on return, including targeted support that would enable them to stay closer to their families while displaced. It is critical that criteria for lifting evacuation orders related to the availability of services should be respected. Measures to expand access to services should be implemented for older returnees to areas in which local services are limited.**

## VI. Conclusions

96. **In the face of an unprecedented disaster, Japan is to be commended for the rapidity and scale of its emergency response, the establishment of multiple channels for internally displaced persons to claim compensation and support for such persons in the aftermath of the disaster provided by federal and prefectural authorities. However, protection and assistance measures – notably housing assistance and compensation for emotional distress – have diminished over time as the authorities shift focus to**

<sup>86</sup> Ibid.

<sup>87</sup> Greenpeace, “[The Fukushima Daiichi nuclear disaster and violations of survivors' human rights](#)” (submission to the Human Rights Council, March 2017), p. 2.

<sup>88</sup> Cabinet Office, “Disaster prevention and reconstruction from a gender equal society perspective: lessons from the Great East Japan Earthquake: summary” (June 2012), pp. 14–16.

<sup>89</sup> Investigation Committee, *Final Report*, pp. 270–278.

<sup>90</sup> “Proportion of elderly people high in Fukushima areas after lifting of evacuation orders”, *The Mainichi*, 12 March 2019.

reconstruction and reopening the prefecture, despite associated human rights challenges. Evacuees who prefer to remain displaced, particularly “voluntary” evacuees who received less support, feel under financial and social pressure to return.

97. All evacuees from Fukushima, whether displaced because of evacuation orders or fear of the nuclear disaster’s effects, are internally displaced persons with the same rights. All internally displaced persons have the right to an informed and voluntary decision on which durable solution to pursue, which emanates from the right to freedom of movement and residence.<sup>91</sup> The Guiding Principles on Internal Displacement establish the rights of all internally displaced persons to seek safety in another part of the country and to be protected against forcible return to any place in which their life or health would be at risk, and that Governments bear the primary duty and responsibility for ensuring conditions that allow internally displaced persons to return voluntarily, safely and in dignity, or to resettle voluntarily elsewhere. The safety and equal protection of all Japanese citizens is guaranteed under the Constitution.

98. The Framework on Durable Solutions for Internally Displaced Persons obliges authorities to ensure that internally displaced persons can exercise this choice without coercion, including tacit forms of coercion, such as the provision of erroneous and deliberately misleading information, making assistance conditional on specific choices and setting arbitrary time limits to end assistance before the minimum conditions conducive for durable solutions are established.<sup>92</sup> In this light, providing only reassuring information on radiation, disbursing more generous assistance to returnees than those in displacement and ending assistance to internally displaced persons before conditions are fully conducive to return run contrary to international law standards and infringe upon the rights of such persons to evacuation and to a durable solution of their choice.

99. In the context of the Fukushima disaster, many internally displaced persons remain reluctant to return given the levels of radiation with uncertain long-term impacts, the lack of livelihoods, education, health and essential services in areas of return, and the limited extent of decontamination, challenges that also affect the human rights of internally displaced persons who do return. Addressing these issues rather than papering over them is critical to ensure the durability of solutions and the recovery. It is also important to recognize that many internally displaced persons may exercise their right to settle permanently elsewhere in Japan. These internally displaced persons should not face discrimination for this choice and should receive support and compensation – on equal terms, regardless of whether their displacement was “voluntary” or “mandatory” – to enable their settlement.

100. As an overall recommendation, the Special Rapporteur urges the Government of Japan to categorically adopt a human rights-based approach to protection, humanitarian assistance and durable solutions for all persons internally displaced by the Fukushima disaster, with a particular focus on those who are still displaced.

101. Underlying this, the Special Rapporteur strongly recommends that the discriminatory distinction between “mandatory” and “voluntary” internally displaced persons be completely eliminated in all administrative and legal policies and their actual implementation.

102. In line with the international human rights commitments of Japan, the Guiding Principles on Internal Displacement and the Framework on Durable Solutions for Internally Displaced Persons, the Special Rapporteur reiterates the recommendations made in section V to address the specific human rights challenges faced by displaced persons from Fukushima.

<sup>91</sup> A/HRC/13/21/Add.4, para. 21 (d).

<sup>92</sup> Ibid., para. 29.