

# The Nuclear Accident at Fukushima

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# The Right to Health

- **Article 12, ICESCR** - Right of individuals to enjoy the **highest attainable standard of physical and mental health**
- **General Comment 14, CESCR**- lays down the **framework** of the right to health and **principles** contained therein
- It is *not* the right to be healthy
- It is built on **rights and freedoms, and entitlements** necessary to realize the right to health

# The Right to Health

- Rights and freedoms include the right to information, informed consent and right to **participation** in decision making processes
- Entitlements include **healthy environment**, adequate and nutritious food, education and information
- **Non-discrimination** in all aspects of and decisions taken towards the realization of the right to health

# The Right to Health

- **Independence, transparency, and accountability** must be ensured, including private non-state actors
- **Quality** health facilities, goods and services must be **available** in adequate and sufficient quantity; **accessible** without discrimination and; **acceptable**
- Laws impacting the right to health must be **evidence-based**

# State Obligation

- States have an obligation to
- **Respect** – States must **refrain from interfering** directly or indirectly with the right to health of people, such as by withholding information
- **Protect** – States must **prevent third parties** (non-state actors) from interfering with the right to health of people
- **Fulfill** – States must **adopt a national health policy and plan of action** and put in place appropriate measures towards the realization of the right to health

# State Obligation

- Right to health is **progressively realizable**
- Obligations are of three kinds – **continuing, immediate, and core** obligations
- **Continuing obligations** mean that the right to health is **progressively realizable**
- They are subject to maximum **available resources**
- State are obliged to **continuously take steps** and have a **time bound plan** towards the full realization of the right to health

# State Obligation

- There must be **non-retrogression** in policies
- **Immediate** obligations are **not resource dependent**
- They include **non-discrimination and participation**
- Taking **targeted, deliberate and time bound** steps towards the full realization of the right to health
- Putting in place **benchmarks and indicators** to measure progress
- **Core obligations** are **non-derogable** obligations of the State

# State Obligation

- There is **no justification** for non-compliance with them
- **Minimum essential levels** of the right, such as provision of essential medicines, must be satisfied
- Ensuring **participation** of affected communities is a **core and immediate obligation**
- Affected **community** and **not just their elected representatives** must be at the decision making table, for instance when formulating and implementing evacuation plans and shelters, resettlement and decontamination policy



# Content and Meaning of Recommendations in the Report

# Disaster Management and Dissemination of Information

- The government **lacked efficient disaster management** system to contain an accident of this scale and magnitude
- There was a **significant time lag** in disseminating information after the accident and **designating certain areas as evacuation zones**
- Evacuation orders were not coordinated
- **No distribution of Iodine prophylaxis**, which is a standard step in nuclear disaster management was not undertaken and undermines people's right to access essential medicines

# Post accident policies and decisions

- State has based its policy on the **ICRP recommendation**, there is no significant increase in cancer incidence in **doses below 100mSv**.
- Policies are based on information on **Chernobyl** which may not be reliable as it was released after 4 years
- **WHO and UNSCEAR dismissed evidence** of health anomalies, other than those related to thyroid
- **Long-term exposure** to low doses of radiation is linked to **increased incidence of cancer**

# Resettlement Policy

- The policy is based on the ICRP recommendation of increasing radiation dose to a reference level of **1mSv-20mSv/y** during emergencies, based on a **risk-benefit analysis**
- This is **contrary to domestic law** of the country which requires areas with radiation doses of 1.3mSv/quarterly to be designated as controlled areas
- Post the Chernobyl accident countries such as **Ukraine** instituted laws under which acceptable radiation dose for living and working without **limitations is 1mSv/year**

# Monitoring health risks of radiation exposure

- The government instituted four health monitoring **survey** (excluding basic health survey) based on reports after Chernobyl, which acknowledged only the effect of radiation on the **thyroid gland** in individual exposed during childhood
- Surveys are **restricted in scope**, as other health anomalies have been ignored and they do not capture all potential health effects
- Surveys were **not conducted in all affected areas**

# Monitoring health risks of radiation exposure

- **Results** of thyroid examination of children are **not easily accessible** to parents
- **Nuclear power plant workers** employed through layers of sub-contractors are the **most vulnerable**. They were exposed to high levels of radiation during the accident and clean-up have been given **no health survey or medical examination**
- **Monitoring stations** set up by the government to measure radiation dose in the atmosphere **do not capture radiation doses** of areas, including **hot spots**, further away from the stations

# Decontamination Policy

- There is **no concrete and time bound plan** for reducing levels of radiation dose to maximum acceptable level of 1mSv/year beyond 2013
- **Play grounds and residential areas** are used to bury contaminated soil, putting people, especially **children**, at risk of getting exposed to radiation. There are **no warning signs** indicating the presence of such radioactive debris

# Decontamination Policy

- Affected **communities are undertaking decontamination activities**. Though participation is good, the government should provide residents with necessary information and appropriate equipment before decontamination is undertaken
- There is **no plan for temporary or permanent storage** of the contaminated debris. In furtherance of its right to health obligation, the government should, at the earliest, announce the site for temporary and permanent shelters with the participation of communities.



# Transparency and Accountability

- TEPCO was not held accountable due to **collusion** between the previous regulatory regime and the industry
- Recognising the need for transparency and independence in governance, the government created the **Nuclear Regulation Authority**
- TEPCO is liable under domestic law but the **government's take over** of TEPCO may help it avoid accountability and liability for damages
- **Taxpayers** may have to continue bearing the **liability of the nuclear damage**, for which TEPCO alone should be liable

# Participation

- Direct and effective **participation** of affected community is **crucial** to fulfilment of the right to health
- It is necessary to take into account **needs of vulnerable groups** such as persons with disability, older persons, pregnant women and young mothers
- Affected communities should be involved in **decision-making** processes including, **planning** disaster management and evacuation zones, decontamination policy, designing temporary shelters, **implementing and monitoring** these decisions
- Lack of participation led to ill-equipped evacuation shelters. Groups, like **persons with disabilities returned** to their homes in contaminated areas