

The Nuclear Accident at Fukushima

Education and the right to health

Anand Grover, UN Special Rapporteur on the right to health

21 March 2014

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
- **State has three kinds of obligations – 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
- There must be **non-retrogression** in policies

State Obligation

- **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** who 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
- Lack of participation led to ill-equipped evacuation shelters. Some **people returned** to their homes in contaminated areas
- Affected communities should be involved in **decision-making processes** including, planning disaster management and **evacuation zones**, designing temporary **shelters, implementing and monitoring** these decisions

Importance of Education and Information to the Right to Health

Link between education, information and the right to health

- **Article 13, ICESCR –Right to education** is necessary for the full development of the human personality and a **sense of dignity**, and respect for rights and freedoms. It shall enable all persons to **participate effectively** in a free society
- Education is also **an underlying determinant** of the right to health, which means that the full realization of the right to health is dependent on providing accurate education and information to people
- It is the **State's obligation** to recognize education as a right in addition to an underlying determinant of the right to health

Link between education, information and the right to health

- Information in **textbooks** gives the impression that exposure to **radiation dose below 100mSv is safe**
- Textbooks fail to mention the greater **vulnerability of children** to irradiation and that special protection should be accorded to them
- People have the right to education and the right to **right to seek and receive correct, accurate and scientific information**
- It **empowers** people to **provide informed consent**

Link between education, information and the right to health

- Informed consent includes **refusal to consent** and agree with, and oppose decisions, including policies of the State which are being imposed on an individual
- Informed consent allows individuals to make their own choices which lends itself to the **autonomy** of the individual
- Without sufficient information, people will be **unaware of unsafe radiation levels** and harm that is likely to be caused by radiation exposure

Link between education, information and the right to health

- Lack of information will play a role in people's decision to continue to **stay in evacuation zones** or move elsewhere
- As radioactive debris is buried in playgrounds, without information through children friendly signs and warnings, **children may get exposed to radiation**
- Without information there will be **no effective participation** by affected communities and vulnerable groups in health related decision-making processes, including implementing, monitoring and enforcing such decisions