

[Proposal to the Japanese government]

Protecting the fundamental human rights of people affected by the Great East Japan Earthquake and residents evacuated from the vicinity of the Fukushima Nuclear Power Plants.

Human Rights Now

On 11 March, the earthquake and tsunami, both of which occurred in Eastern Japan, caused enormous damage and resulted in many deaths. Furthermore, more residents in the wider region of Eastern Japan have been seriously affected by the accidents at the Fukushima Nuclear Power Plants. HRN wishes to express its heartfelt sympathies to all the affected people and offer condolences for all families which have been bereaved.

HRN requests that the government of Japan, in its response to the current situation which has arisen after the Sendai earthquake, ensure that in all rescue, evacuation, repair and reconstruction processes, victims' fundamental human rights are ensured in accordance with the Constitution of Japan, domestic legislation relating to disasters and international human rights law. HRN thus recommends the following.

1. Protection of the human rights of people affected by earthquakes and tsunami 1) General Principles

The human rights of all the affected people are guaranteed by the Constitution of Japan, domestic law and international human rights treaties to which Japan is a state party (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Convention on the Elimination of All Forms of Racial Discrimination) and such protection includes the right to life, social and economic rights such as rights to housing, food, clean water, and health (medical care), and civil rights such as the right to privacy. The Japanese government has the primary duty and responsibility to protect these rights of all the affected people without discrimination of any kind, such as discrimination on grounds of sex, nationality, ethnicity, disability, nor discriminate between evacuation and disaster areas.

[Principles under international law]

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, as a result of natural or human-made disasters, and their groups are protected as 'internally displaced persons' under international law. The "Guiding Principles on Internal Displacement" adopted by the UN Commission on Human Rights is regarded as the international standard for the protection of internally displaced persons and their rights. Principle 1 stipulates that internally displaced persons shall enjoy, in full equality, without discrimination, the same rights and freedoms under international and domestic law as do other persons in their country. Principle 3 provides that national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2) Current situation and issues regarding the right to life, housing, food, clothing and medical care

Currently, the Japanese government, local authorities and civilian agencies are engaged in intense relief operations and it is reported that support and care at evacuation centers has improved. Also, some special measures have been adopted and announced to the public. However, it is also reported that there are still some evacuation centers which have not been provided with enough support, and that some people, for reasons such as disability and illness, who face difficulties in getting to an evacuation centre are spending their days in their homes, hospitals, or other places which are not evacuation centres, and that necessary support is not reaching many of these people. Further, there are also reports that those who are especially vulnerable in disaster situations, such as women, children (especially unaccompanied minors, foreigners, and single-parent households, etc. are not being given adequate support and consideration,.

It is essential to protect the right to life and social and economic rights such as housing, food, water, sanitation, health, as they are the most fundamental rights which form the foundation of disaster victims' survival.

Section 23 of *Disaster Relief Act* stipulates that local authorities that have been

nominated by the Japanese government must provide the following forms of support as well as necessary compensation:

1. Accommodation (including temporary housing).
2. Food, or stipends for food and potable water.
3. Provision or loan of clothes, bedding, and other basic necessities.
4. Medical care and midwife service.
5. Rescue services for disaster victims.
6. Temporary repair of affected houses.
7. Provision of stipends or loans for funds, equipment or information necessary for disaster victims' livelihoods.
8. Provision of school supplies.
9. Burial.
10. Other (set out under other government ordinances).

However, it is reported that there remains a serious gap between the forms of support listed above and the reality. HRN requests that the Japanese government employ all possible methods to take necessary measures to ensure the rights to health, housing, food, safe water, sanitation, health care, and health of all disaster victims in evacuation centres and those who live in their homes.

As such, HRN further requests that the Japanese government:

- Investigate, expeditiously, the situation of isolated victims who are not receiving aid, and identify those who require support, and create a system to provide the necessary support. Special consideration should be given to the provision of support necessary for the survival of people who are handicapped, have been exposed to radiation, or for some other reason cannot access an evacuation centre.
- Expeditiously identify the situation of those most vulnerable in disaster situations, especially women, children (especially unaccompanied minors), the disabled, elderly, or sick, foreigners, and single-parent households. Special consideration should be given to the provision of fundamental support for those people.
- Strengthen cooperation with local authorities, local civilian agencies, NGO and NPO engaged in support activities, and expedite the provision of accurate information, and cooperate with and assist them in carrying out

their activities.

- Request the cooperation of international organizations or other foreign institutions that have the ability to respond to, and have experience of rescue, humanitarian support, and protection of disaster victims in large-scale disaster situations.

[The Guiding Principles on Internal Displacement]

Principle 25

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2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a state's internal affairs and shall be considered in good faith.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

3) Protection of Human Rights and Vulnerable Persons

The dignity and human rights of the disaster victims, including those who are staying at the evacuation centers, should be protected and given special consideration.

Maximum consideration should be given to the layouts of evacuation centers so that the right of privacy is protected, and residents can live safely. Further, evacuation centers should also provide special spaces for woman and the elderly to protect their privacy, security must be maintained to minimize the risk of violence and violation of human rights, and non-discriminatory access to goods and services for the handicapped and elderly should be ensured.

[The Guiding Principles on Internal Displacement]

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights

and freedoms on the ground that they are internally displaced. (sub-principle 1)

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity. (sub-principle 1)

Principle 17

1. Every human being has the right to respect of his or her family life.
(sub=principle 1)

It is also crucial to give special consideration to the most vulnerable people such as women, children (especially unaccompanied minors), the disabled, elderly, and sick, foreigners, and single-parent households in the protection of rights of disaster victims.

With regard to these points, the “IASC operational Guidelines on Protecting Persons in Situation of Natural Disaster” adopted by the “Inter-Agency Standing Committee” (which is made up of United Nations aid institutions) establishes the international standards regarding support in times of emergency and disaster, and sets out detailed guidelines regarding each of the articles in its Annex 1. For instance, it provides the following guidelines for children and women:

IASC Guidelines [The protection of children]

The IASC has given the following directions on the protection of children

- ① The best interests of the child should be a primary consideration, and the child should be consulted and participate.
- ② Ensure access to basic goods and services.
- ③ Provide necessary support and resources to enable children to return to school and/or other educational program as soon as possible regardless of whether they are staying at an evacuation center or not.
- ④ Protect the property/assets of unaccompanied children and orphans.
- ⑤ Provide monetary, goods and legal assistance for unaccompanied children.
- ⑥ Support the reunification of families for separated children.

In addition, the following issues should be considered for children who have lost their parents:

- ⑦ Make arrangements for separated and unaccompanied children to be adopted for by

their friends or neighbors, and respecting children's preference for carers.

⑧ Avoid the placement of separated or unaccompanied children in orphanages or children's homes. Such placement, if necessary, should only be used as a temporary measure while more sustainable, community-based solutions are sought, or as a last resort when all other options have been exhausted.

The "Inter Agency Guiding Principle on Unaccompanied and Separated Children", issued by the International Red cross and Unicef, sets out more detailed guiding principles for the protection of, and future decision regarding children who have been separated from their parents.

IASC Guidelines [Protection of Women]

IASC has provided guidance on protection for women, among these are:

- ① Ensure the provision of support and goods for woman, and give particular consideration regarding food etc. for pregnant women.
- ② Provide of services corresponding to women's special needs.
- ③ Ensure safety in evacuation centers and the provision of safe space for women and children.
- ③ Prevent sexual violence, establish a care system for victims of sexual violence, and for the prosecution of sexual offenders.
- ⑥ Provide medical care which takes into account the special needs of women.

Sexual Violence against Refugees-Guidelines on prevention and Response, by the UNCHR, sets out more detailed guidance for the protection of evacuee women from violence.

The above guidelines have been adopted based on every country's accumulated experience and knowledge, and they address problems caused by the Great East Japan Earthquake. Therefore, we recommend that the Japanese government implements initiatives that give adequate consideration to the guidelines, and employs them in support activities in the field.

4) Access to information and the involvement of experts

In ensuring adequate access to goods and rights protection, protection, the right to information is crucial. Some people have still not been informed of rights under Section 23 of the *Disaster Relief Act*, and other systems and/or laws that support the affected people, and many disaster victims feel a tremendous

amount of anxiety and stress. Adequate measures should be taken to provide all disaster victims with information regarding their rights so that they are adequately able exercise them.

There is a need to provide adequate information regarding the provision of aid and support systems and legal rights to children who may not be able to adequately understand information, and to foreigners, who may have difficulties in communicating in a non-native language.

In addition, it is necessary to give consideration regarding special measures to ensure access to information regarding support systems for the disabled, who may find it difficult to access information.

Furthermore, the knowledge of social welfare, medical and legal experts, and the support of women's, children's and disability needs civilian experts, clinical psychologists and NGO's should be fully utilized. to ensure protection for vulnerable people.

5) Particularly important measures for the interim

a) Consolidating environments for the education and lives of children

The Japanese government has a primary duty and responsibility to ensure children's right to receive an education (Constitution of Japan (article 26), and *International Covenant on Economic, Social and Cultural Rights*)

As a new school year will soon commence, we request that necessary legislative, administrative, and financial measures be taken,so that an environment in which children can attend school is prepared..

In addition, we request that the necessary administrative and legislative measures be taken so that day care service is provided to children who need it.

Principle 23 of <i>The Guiding Principles on Internal Displacement</i> , stipulates that the right to education including free education in the elementary and fundamental stages must be ensured.
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b) Temporary Housing

Under the *Disaster Relief Act*, it is the primary duty and responsibility of the Japanese government and local authorities to construct temporary housing for the disaster victims. . HRN requests that adequate measures be taken to accommodate all affected people who wish to use temporary housing.

The *Disaster Relief Act* provides for the construction of temporary housing, but according to the news, the budget for temporary housing is too small to meet the wholesome and cultured living standard set out under Article 25 of *The Constitution of Japan*, and to ensure the “adequate standard” of living provided for by article 11 of the *International Covenant on Economic, Social and Cultural Rights*. In particular, with regard to the disabled and elderly, temporary dwellings should be built to accommodate their specific needs, such as a barrier free floor plan or removing all obstacles in temporary housing.

6) Consideration of the Reconstruction Support Law to Protect the Social Rights of the Affected People.

HRN has grave concerns that the current laws on disaster relief are inadequate for the support all disaster victims, and believes that it is necessary to revise and expand these laws.

For instance, under the *Act on Provision of Disaster Condolence Grant*, 5,000,000 Japanese Yen is provided for the death of the head of household, and 2,500,000 Japanese Yen is provided for the death of other family members. Further, under the *Act on Support for Reconstructing Livelihoods of Disaster Victims*, a maximum of 3,000,000 Japanese Yen can be provided to each household, but the amount varies depending on the scale of house destruction, and whether the house was owned or rented.

It is necessary that the framework of the current system be reassessed to see if it adequately ensures the right to maintain the minimum standards of wholesome and cultured living (Article 25 of *The Constitution of Japan*), and protection of article 11 of the *International Covenant on Economic, Social and Cultural Rights*, whether the principle of equal treatment is being violated, and to create an adequate compensation system.

Further, in light of the current situation, HRN requests that compensation be provided to factory, farm, and fishing workers in the primary and secondary sectors, who have lost their means of livelihood, be made eligible to receive compensation.

It is essential that the consultation and participation of disaster victims is ensured in the planning of recovery programmes so that victims can recover their livelihoods, and dwellings that realise the right to housing which fulfils housing standards. HRN requests that the government of Japan adequately

ensure this.

Principle 28 of the *Guiding Principles on Internal Displacement*, stipulates that internally displaced persons have a right to return voluntarily to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. In addition, it stipulates that “Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration”.

2. Human rights issues of residents and workers affected by the nuclear power plant accident

1) The Fukushima Nuclear Power Plant Accident

The accident at the Fukushima Nuclear Power plant, which was caused by the earthquake and tsunami, resulted in high levels of radioactive material spreading throughout the areas surrounding the plant, heavily contaminating valuable residential areas and production bases. The situation is still uncertain, and if the problem continues, there will be tremendous negative impact on citizens' health. The accident is a serious one, which could have caused the death of many human beings, and people were forced to evacuate because of radioactive contamination, thus the right to the health for many people had been violated. In addition, due to inadequate safety measures, the workers are exposed to radiation and even now, many people have no choice but to carry out dangerous work.. The current situation has taught us an important lesson, showing us the dangerousness of the situation that will arise and just how seriously people will be affected in the event of a nuclear power excursion.

The government of Japan has an obligation to all citizens living in its territory to ensure their right to life "the enjoyment of the highest attainable standard of physical and mental health" (ICESCR, article 12(2)(b) provides that “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the improvement of all aspects of environmental and industrial hygiene”), and the right to housing etc.

It is unacceptable to neglect these rights in a situation where they are likely to be violated in a serious and widespread manner. HRN calls on the the government of Japan to put in its utmost effort to avoid a worsening of the current situation, and requests it do carry out the following::

- ① Disclose, in an appropriate and timely manner, information about the nuclear power plant accident and any accurate and specific information regarding the government's and other bodies' responses to the problem;
- ② Give special consideration to safety policies and supervisory systems in order to prevent radiation exposure of the workers at the Fukushima nuclear power plant;
- ③ Disclose all information regarding the accident and its causes, and carry out a thorough investigation into the causes of the accident; and
- ④ Carry out safety checks of all nuclear power plants in Japan, and close those which show any sign of causing accidents, review all policies regarding the construction of nuclear power plants in regions in which earthquakes frequently occur from a human rights view point.

2) Protection and rights of people living near the Fukushima Nuclear Power Plant

a) People who have been ordered to evacuate

All people who received an evacuation order issued by the Japanese government must receive the same human right protection as those victims who are living in evacuation shelters .

HRN requests that the Japanese government, using all possible methods, to take the necessary measures to ensure that people who have been ordered to evacuate have adequate access to the rights of life, housing, food, clean water, and health (medical care), and ensure their social rights. HRN further requests that rights of those who have received an evacuation order be carry out assistance to the extent that is set out in Section 23 of *Disaster Relief Act*.

b) People in the area of voluntary evacuation recommended by the Japanese Government

People in the area of voluntary evacuation have been recommended by the Japanese government to stay indoors. It is reported that there is a shortage of daily necessities, including food, and that there is a situation of inadequate access to housing, foods, clean water, medical care, and the right to the health. The Japanese government has a duty to prevent people who are living in voluntary evacuation areas from suffering from damage to health and life as a result of radiation exposure, and a duty to provide them with the necessities for survival, which includes food, water, medical care, sanitation, and housing on a non-discriminatory basis.

HRN requests that the Japanese government comprehensively ensure shelter and goods necessary for survival listed above for people who have voluntarily evacuated, as well as to provide support necessary for survival for the people who do not wish to evacuate.

HRN further requests that all assistance programs provided to the affected people also be provided to the people in the area of voluntary evacuation.

c) People affected by the Fukushima Nuclear Power Plant accident

To minimize the radiation exposure and ill-effects on health caused by the nuclear power plant accident, HRN requests the government of Japan disclose to the residents and local governing bodies of all affected region accurate information regarding the dangers of radioactive contamination and internal radiation exposure, identify victims of radiation exposure and ensure medical care for them.

3) Support for recovery and rebuilding lives, and compensation

Citizens and workers are suffering from damage as a result of the Fukushima nuclear power plant accident. In addition, unfortunately, there are people who will, in effect, be deprived of the land which is the basis of their livelihoods as a result of radioactive contamination, and will therefore lose their place of residence and means of living. The accident has also created the risk that people will suffer damage to their health. The Fukushima nuclear plant accident was not a natural disaster, but a disaster caused by human neglect. The

Japanese government has an obligation to minimize violations of human right due to the accident, and, in addition, a responsibility to provide people who have been deprived of their human rights with adequate compensation.. The compensation should include not only damages but also restoration, care and rehabilitation for the affected people and the creation of policies to prevent recurrence (ICCPR, article 2(3)).¹

HRN requests that the Japanese government carry out the following:

- ① Make the utmost effort to decontaminate the soil so that the affected people can regain possession of their land;
- ② Continuously provide accurate information regarding dangers and radioactive contamination to the people who have been affected by the accident;
- ③ Provide adequate compensation and long-term care for the workers who have been exposed to radiation, and people suffering from the effects internal exposure to radiation, etc;
- ④ Provide adequate compensation and support for the restoration of livelihoods of residents who have been evacuated, all those who have suffered damage as a result of leakage of radioactive materials (such as those in farming and fishing industries), and those who have been deprived of their land, residences and means of living;
- ⑤ Make necessary amendments to the *Act on Compensation for Nuclear Damage* in order to provide adequate compensation for those listed in ④; and
- ⑥ Protect the people around the nuclear power plant from any discrimination by taking all necessary measures.

3. End Notes

Even in the recovery after the Hanshin-Awaji earthquake of 1995, the protection of human rights was a serious issue, with problems such as elderly victims who died alone in temporary housing and the spate of deaths linked to the disaster.

Given the scale of the Sendai earthquake, there is a danger that the lack of a human rights viewpoint will cause an even more serious situation than the current one. HRN requests that the government of Japan, from the very beginning, bear human rights in mind in all stages of the recovery process..

¹ Human Rights Committee, General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*

HRN aims for the adequate protection of human rights regarding the issues that people face at each stage of recovery, and using the opinions gathered from supporting organisations and the victims themselves as a base, intends to continue to provide policy proposals to the government of Japan.