Need for a Rights-Based Approach in Government Support for the Victims of Fukushima Nuclear Accident

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I. THE FUKUSHIMA NUCLEAR ACCIDENT AND THE JAPANESE GOVERNMENT’S RESPONSIBILITY ..................................................... 186
II. THE NATURE AND MAGNITUDE OF THE FUKUSHIMA DISASTER ...... 187
III. AN UNCERTAIN FUTURE ................................................................. 188
IV. NEED FOR ADOPTION OF A RIGHTS-BASED APPROACH ...................... 189
V. THE GOVERNMENT’S RECONSTRUCT AND RETURN POLICY ............ 190
VI. THE VISION AND FAILED IMPLEMENTATION OF THE VICTIM SUPPORT ACT .............................................................................. 191

I. THE FUKUSHIMA NUCLEAR ACCIDENT AND THE JAPANESE GOVERNMENT’S RESPONSIBILITY

The focus of this paper is the Japanese government’s support for the victims of the Fukushima Nuclear Accident, rather than the compensation provided by the Tokyo Electricity Power Company (TEPCO). While it is true that TEPCO is mainly liable for the compensation of victims under the Nuclear Damage Compensation law in Japan; at the same time, the formulation and promotion of nuclear energy policy, the setting of safety standards, and the giving of permission for the operation of nuclear power plants remains the role of the Japanese government. In this sense, the government is also liable for restoring the life and livelihoods people affected by the accident. The two Acts discussed below each acknowledge that the State has a ‘social’ responsibility due to its role in promoting nuclear energy use and policy. But the existence of an additional legal responsibility—the obligation to pay compensation to victims based on the fault of the government for failure to foresee the magnitude of the Tsunami and to exercise its power of regulation to mitigate the scope of the disaster—is now rigorously debated in the many lawsuits brought against the Japanese government by the victims of the accident.

The victims of the accident lost their lands, communities, and ties to their families, at least in part due to the Japanese government’s promotion of nuclear energy, and presumably because of the government’s failure to prevent the accident. This paper examines the Japanese government’s policies regarding victim support, based on a recognition

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that the government is ‘socially’, and maybe even legally, liable for the accident.

II. THE NATURE AND MAGNITUDE OF THE FUKUSHIMA DISASTER

The accident at the Fukushima Daiichi Nuclear Power Plant (the “Plant”) was a new type of disaster, in terms of both its nature and magnitude. Radioactive substances coming from the plant spread out over many areas across Eastern Japan. Under international standards, the acceptable radiation dose limit for members of the public is 1m Sievert\(^1\) (mSv) per year. In Japan, the area where people are exposed to an annual dose of more than 1 mSv is not limited to the Fukushima Prefecture, but extends across Eastern Japan. Under the law regarding the decontamination of radioactive materials from the Accident, which was enacted five months after the Accident, it is now within the authority of the Minister of the Environment to designate the ‘Area for the Intensive Study on the Status of Pollution.’ This Area is defined as the place where for ‘level[s] of radiation etc... in or around the area, the status of pollution [in the] environment caused by the Accident-related radioactive materials does not meet, or [is] significantly likely not to meet, the standard set forth in an order of the Ministry of Environment’,\(^2\) which is 1mSv per year.\(^3\)

Under this standard, the Minister of the Environment designated 104 local municipalities as the Area for the Intensive Study on the Status of Pollution, including 64 local municipalities outside the Fukushima Prefecture (Iwaki, Miyagi, Ibaraki, Tochigi, Gunma, and even Chiba and Saitama, which are next to Tokyo Metropolis).

The Japanese government designated two main evacuation areas. One is the ‘Restricted Area’, the area within a 20km radius of the Plant, and the other is the ‘Deliberate Evacuation Area’, which is outside the 20km radius, but where there was a concern that the cumulative air dosage of radiation might reach 20mSv within a one-year period after the accident.\(^4\) For areas with a range of radiation pollution between 1mSv and 20mSv, the Japanese government has continued to claim that there would

\(^1\) Sievert is a unit to measure the health effect of ionizing radiation on a human body.

\(^2\) Heisei 23 nen 3 gatsu 11 nichi ni hasseishita Tohokuchiho Taiheiyo oki jishin ni tomonau genshiryokuhatsudensho no jiko niyoru hoshutsu sareta houshaiseibushitsu niyoru kankyo heno osen heno taisha ni kansuru tokubetsu sochi ho [Act on Special Measures concerning the Handling of Pollution by Radioactive Materials], Law No. 110 of 2011, art. 32, para.1.

\(^3\) Osen haikibutsu taisaku chiiki no shitei no youken to wo sadameru shorei [Ministry Order to Decide the Standard for Designation of the Areas for Handling Polluted Waste etc.], the Order of Ministry of Environment No. 34 of 2011, art 4.

be no immediate health impacts, leaving people to decide for themselves whether they will evacuate or not.

Nearly 150,000 people have evacuated from the Restricted Area, the Deliberate Evacuation Area, and the ‘Evacuation Preparation Area in case of Emergency’ (areas 20-30km from the power plant, excluding the Deliberate Evacuation Area).\(^5\) It is also estimated that more than 60,000 people evacuated from areas not designated as evacuation zones by the government.\(^6\) They are known as “voluntary evacuees,” although they themselves do not think of their evacuation as voluntary. Some of them evacuated right after the Accident in March 2011, and others started their evacuation several months later due to growing information on the level of contamination and its health impacts. Most of the voluntary evacuees were concerned about the health impacts of exposure to radiation; though some have already returned to their original homes for economic reasons. There have been many cases where only a mother and her children evacuated to avoid the radiation exposure, while the father remains in Fukushima to earn a living wage. Such households have faced severe economic and mental difficulties in attempting to live in two places.

III. AN UNCERTAIN FUTURE

One of the unique aspects of the damages of the Accident is uncertainty. Many issues surround the health impacts of the exposure to radiation. How high will the radiation levels be several years after the Accident? How much have our children been exposed to the radiation? How big, if any, are the chances of health impacts caused by the radiation from the Accident? These are important issues for the affected people. However, there are many and contradicting scientific accounts on the health impacts of low-level radiation exposure. Furthermore, the government failed to make systematic efforts to estimate individual dose levels and to collect information on the health status of the affected. Such failure on the side of the Japanese government has further compounded the uncertainty about the health impacts caused by the Accident.

Also, there is uncertainty regarding the future livelihood of evacuees. Is there any place to work if the evacuees return to their original homes? Will there be any social services and communities available to help provide support for their lives? Also, the prospect of government assistance and/or compensation payments from TEPCO is uncertain, making it difficult for evacuees to make decisions about their future.

\(^5\) Id. at 2-3.

\(^6\) Ministry of Education, Culture, Sports, Science, and Technology estimated that the number of voluntary evacuees were more than 50,000 on September 22, 2011, though it admitted that this number did not include a certain number of people (Monbu Kagaku sho [Ministry of Education, Culture, Sports, Science and Technology], Fukushima-ken no jishuteki hinansha su [Number of Voluntary Evacuees from the Fukushima Prefecture], 2011).
There is too much uncertainty about the future of evacuees, and it is inevitable that each individual/family has different choices to make for their future. People living outside the evacuation zones have faced decisions about whether they will evacuate or remain. People evacuated have faced or will face decisions about whether they will continue to remain evacuated or return to their original places. Furthermore, some evacuees consider their evacuation as a temporary next step while they decide their course, while other evacuees have decided that their move was a permanent migration to a new place, and they have abandoned the idea of returning to their homes. Such choices may differ within families, communities, and across generations, based on family composition (especially whether evacuees have small children or not) and other considerations.

According to the results of a survey regarding the evacuees’ intention to return to their original homes in Namie Town—where the entire area has been designated an evacuation zone—37.5% responded that they could not make their decision, while another 37.5% responded that they would not return. Comparisons between generations clearly show that the younger generations will not return, while elder generations are more willing to return.

Another survey, polling the residents of Fukushima city which is outside of the evacuation zone, showed that, in May 2012, one year and two months after the Accident, more than half of all pregnant women and parents with infants or children in elementary school thought that they were likely to evacuate if their situation allowed them to. On the other hand, most of the survey respondents have not actually evacuated for many reasons.

IV. NEED FOR ADOPTION OF A RIGHTS-BASED APPROACH

These surveys show that people have different preferences between continuing stay in their homes, evacuating, and returning to their homes. The government should recognize the rights of each victim to design their own future after the Accident, including the right to choose whether they continue to live in affected areas, evacuate from affected areas to avoid exposure to radiation, or return to their original areas. The uniqueness of the damages of the Accident requires new types of support for the victims under a rights-based approach. We need to respect the choice of each

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8 Id.

victim, and the government should support each victim’s choice, even if it is to remain, evacuate, or return.

The core of the rights of victims of the nuclear accident can be formulated as the ‘right to avoid unnecessary exposure to radiation.’ Such right includes the right to receive information regarding health implications of the exposure to radiation, the right to government assistance for evacuation if the victim chooses to evacuate, the right to government assistance for help in avoiding additional exposure to radiation if the victims choose to remain in contaminated areas, and the right to access medical checks and assistance for medical services.

I would like to emphasize the importance of information provided to the affected people. The main messages of information coming from the government has been that there will be no immediate (or discernable in terms of epidemiology) health impacts from the radiation, so the victims should not worry about it. The government calls it ‘risk communication.’ This approach failed to gain the trust of affected people. Parents are remain concerned about the future of their children, even if the health impacts are not immediate or discernable. Information provision by the government should be fair and impartial, and help people to decide their future.

The right to avoid unnecessary exposure to radiation and its components are quite a new concept in Japan. But I argue that such a right is derived from article 25 of the Constitution of Japan, which embraces the right to maintain wholesome or healthy living. Also, article 12 of the International Covenant on Economic, Social, and Cultural Rights clearly provides that people have the right to enjoy the highest attainable standard of physical and mental health. The Convention on the Rights of the Child has the same language, protecting the rights of children. These provisions in the Japanese Constitution and human rights instruments form the basis of the right to avoid unnecessary exposure to radiation.

V. THE GOVERNMENT’S RECONSTRUCT AND RETURN POLICY

The government responded to this new type of disaster by legislating the old-fashioned Reconstruct & Return (R&R) policy. The government-proposed “Act on Special Measures for Reconstruction and Rehabilitation of Fukushima”\(^\text{10}\) was enacted on March 2012, one year after the Accident. The Act’s aim is to reconstruct and rehabilitate Fukushima. Fukushima here is defined as the Fukushima prefecture only, although surrounding areas outside Fukushima prefecture have also been affected by the radioactive substances as already discussed. The majority of the assistance provided in the Act focuses on how to rehabilitate the evacuation zones after the lifting of the evacuation orders. Rehabilitation

\(^{10}\) Fukushima saisei fukko tokubetsu sochiho [Act on Special Measures for Reconstruction and Rehabilitation of Fukushima], Law No. 25 of 2012.
of public infrastructure and reconstruction of industries are given clear priority. Tax reduction and subsidies for industries are the main tools for “reconstruction”. There is little language in the Act which aims to support the daily lives of evacuees, who face uncertainty as to how long they have to be evacuated. We can call this a traditional adoption of a Reconstruct and Return Policy in which people’s different choices are not recognized or respected.

The government started to lift the evacuation order, starting in April 2014. In 2013, the Nuclear Damages Compensation Panel established new compensation guidelines which set forth that the compensation for pain and suffering of evacuation would be terminated one year after the lifting of the evacuation order. Such decision, made without the involvement of the evacuees, further limits the choices of the evacuees.

VI. THE VISION AND FAILED IMPLEMENTATION OF THE VICTIM SUPPORT ACT

The legislators responded to the concerns of the evacuees by enacting the legislator-proposed Act on Promotion of Measures Supporting Lives of Victims affected by the TEPCO Fukushima Nuclear Accident\(^\text{11}\) (hereafter referred to as the “Victim Support Act”). The Victim Support Act passed both the House of Representatives and the House of Councilors by unanimous votes in June 2012.

The Act clearly states that its aim is to contribute to easing health concerns coming from radiation and the rebuilding of stable lives, thus focusing on the lives of the people affected by the Accident, rather than on the reconstruction of Fukushima prefecture.\(^\text{12}\) The Victims Support Act recognized the importance of a rights-based approach by declaring that the government’s support for the victims of the Accident shall enable each victim to choose between continuing to live in the affected area, evacuation, and return to the original area by his/her own will.\(^\text{13}\)

The Act outlines the programs of assistance for those who continue to live in the affected areas,\(^\text{14}\) have evacuated to other areas,\(^\text{15}\) and have

\(^{11}\) Tokyo denryoku genshiryoku hatsudensho jiko niyorihisaishita kodomotachi wo hajimotosuru juminto no seikatsu wo mamori sasaerutameno hisaisha no seikatsu sushien ni kansuru shisaku no suishin ni kansuru horitsu [Act on Promotion of Living Support Measures to Protect and Support Lives of the Victims, Especially Children, Affected by the Tokyo Electric Power Nuclear Accident (Victims Support Act)], Law No. 48, 2012.

\(^{12}\) Victims Support Act, art. 1.

\(^{13}\) Victims Support Act, art. 2, para 4.

\(^{14}\) Victims Support Act, art. 8.

\(^{15}\) Victims Support Act, art. 9.
returned to their original homes.\textsuperscript{16} The Act also provides that the government shall estimate the individual radiation dosage received by victims,\textsuperscript{17} conduct health impact surveys,\textsuperscript{18} and provide assistance for the medical expenses of the victims.\textsuperscript{19}

However, the assistance programs outlined in the Victims Support Act suffered severe lack of implementation and funding. The Reconstruction Agency published a “Basic Policy for Promotion of Victims Support Measures,”\textsuperscript{20} which the government was mandated to establish under the Victims Support Act, in October 2013. Not only did it take nearly one and a half years to finalize the Basic Policy, the Policy’s concrete assistance programs were focused on support for the people continuing to live in the affected areas, while little support was provided for the evacuees, especially those evacuated from the areas outside the evacuation zones. The Target Areas for Support was narrowly defined to include parts of Fukushima Prefecture only.

The weakness of the legislation itself was one of the reasons for the lack of implementation. The Act was aspirational rather than practical. The Act only outlines the Support Measures and the Act is not legally binding. It did not set specific timeframes for implementation and it did not have specific language for funding of the Support Measures. The definition of the Support Area is too vague. Other important issues for the implementation of the Act have been left to the discretion of the government.

It is not only the weakness of the Act which led to the lack of implementation. After the conservative Liberal Democratic Party took office in December 2012, the government’s push for a Reconstruction and Return program became more evident and clear. For example, the government issued new policies on reconstruction in December 2013, further emphasizing the government’s strong support for ‘early return’.\textsuperscript{21} From the viewpoint of the administration, the principles of a rights-based approach behind the Victims Support Act contradict government policies promoting the return of the victims to Fukushima, and such contradiction has led to insufficient implementation of the Act. Also, the government

\begin{itemize}
\item \textsuperscript{16} Victims Support Act, art. 10.
\item \textsuperscript{17} Victims Support Act, art. 13, para 1.
\item \textsuperscript{18} Victims Support Act, art. 13, para 2.
\item \textsuperscript{19} Victims Support Act, art. 13, para 3.
\item \textsuperscript{20} Fukko cho [Reconstruction Agency], Hisaisha seikatsu shient to shisaku no suishin ni kansuru kihontekina hoshin [Basic Policy on Promotion of the Victims Living Support etc. Measures], December 2013.
\item \textsuperscript{21} Genshiryoku saigai taisaku honbu [Headquarters Addressing Nuclear Disaster], Genshiryoku saigai karano fukko no kasoku ni mukete [For Acceleration of Reconstruction of Fukushima from Nuclear Disaster], December 2013.
\end{itemize}
officials strongly believe that there will be no health impacts caused by the low-level exposure to radiation. The government officials are motivated to make the damages caused by the Fukushima disaster look as small as possible in order to pave the way for restarting the operation of other nuclear power plants in Japan—all of which are currently not operating and waiting for operations licenses under the new safety standards.

Considering the new nature of the damages caused to the victims of the Accident, a new, rights-based approach should be the center of the government's policy for supporting the victims. In order to mainstream such an approach, new legislation, such as a Basic Act for Victims Support, is needed, and other laws on reconstruction and victims support should be reorganized, strengthened, and implemented to adopt a rights-based approach.