

Article 11 – The right to an adequate standard of living

Article 12 -- The right to physical and mental health

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The author sets out the following information which came to his knowledge, regarding the questions raised by the Committee in the list of questions, in paragraphs 21, 20 and 23 respectively.

Paragraph 21

1. Information on any relaxation of the legal provisions defining the circumstances under which evictions may take place
2. Information on any impact on the right to housing of vulnerable individuals and groups, such as older persons
3. Information on specific measures taken to ensure access to adequate and affordable housing with legal security of tenure, particularly for disadvantaged and marginalized groups, such as older persons

Paragraph 20

4. Information on measures taken to support the livelihood of those affected by earthquakes, including the Great East Japan Earthquake
5. Information on how the implementation of evacuation and re-settlement plans has taken account of the needs of the persons evacuated and, in particular, vulnerable groups, such as older persons, persons with disabilities, children and pregnant women

Paragraph 23

Information on steps taken to reconsider and strengthen the plans for the prevention of nuclear-power accidents as well as of measures taken to protect and fulfill the right to health of those affected by nuclear accidents, including the Fukushima Daiichi Nuclear Power Plant accident.

Introduction

The Government's Replies to the List of Issues in paragraph 110 completely misunderstands the meaning of the "relaxation of the legal provisions" in paragraph 21 of the List of Issues, and lists measures that are unrelated to the question. It must be seen as an avoidance to provide a faithful response.

The government omits information regarding the relaxation of legal provisions defining circumstances under which evictions may take place, and its serious impact on the legal security of tenure of housing for the elderly. This was the result of the relaxation of restrictions on the requirements for reconstruction under Article 62 of the Act on Building Unit Ownership amended in 2002, which was a major deregulation measure that occurred after the examination of the Second Report of Japan.

Meanwhile, a more essential issue regarding public housing is that of publicly subsidized rental housing (Article 5 paragraph 5, Act on Public Housing). Although continued residence is necessary, residents may be required by the municipalities, who provide the subsidies, to vacate the housing, due to the end of the rental period from private entities, or when residents can no longer pay rent for lack of income. The government fails to mention these problems.

Since this problem is more serious for victims of earthquakes, I will return to this point below.

No. 1 Information on any relaxation of the legal provisions defining the circumstances under which evictions may take place

1. Overview of the relaxation of legal provisions restricting evictions by the three powers.

The Constitution of Japan adopted the separation of three powers, in which the legislative, executive and the judicial powers check on each other for any abuse of powers. Each of those powers has a duty to comply with the treaty obligations. Therefore, each of the three powers has a duty to strictly regulate conditions allowing forced evictions, which are incompatible with the right to adequate housing protected under Article 11, in particular, the primary element of “legal security of tenure.” The relaxation of the legal provisions was possible, because the function of the three powers to check each other has not been effective.

(1) The legislative branch

The legislative branch has the duty to observe faithfully the treaties that Japan has ratified, (Article 98 paragraph 2 of the Constitution), yet has relaxed the requirements for reconstruction of buildings under Article 62 of the Act on Building Unit Ownership in 2002. It also created the new Article 70, making combined reconstruction of housing complexes possible, and amended the Act to make it easier to deprive housing unit owners who oppose to rebuilding, as well as to evict them by force.

Earlier, the legislative branch had drastically amended the Code of Civil Procedures in 1996 (which entered into force on October 1, 1998). The amended Code limited the grounds for appeal to the Supreme Court to violation of the Constitution (Article 312 paragraph 1), removing violation of laws (including those of treaties) from the list of grounds. The limitation on the grounds of appeal itself does not amount to a relaxation of the restriction on forced evictions, but it has rendered the Supreme Court’s examination into violations of the Covenant more passive. It has the effect of denying “effective measures for remedies,” and plays a crucial role in relaxing the conditions for forced evictions. This is clearly a “regressive measure” in ensuring the rights (Article 2 paragraph 1 of the ICESCR).

(2) The executive branch

The Ministry of Land, Infrastructure, Transport and Tourism, which oversees housing issues, has the obligation to prepare draft legislation in domestic law and to fully implement the right to housing protected by the Covenant (Article 73 paragraph 1 of the Constitution, Article 2 paragraph 1 of the ICESCR), but it has obstructed the legislation and implementation of the right. The legislative council under the Ministry of Justice that discussed the amendment to the Act on Building Unit Ownership has aided in the relaxation of the restriction by not selecting experts who have sufficient knowledge of the ICESCR as members.

(3) The judicial branch

The Supreme Court has the duty to carefully examine the constitutionality and the treaty compatibility of laws (Article 81 of the Constitution). Article 98 paragraph 2 of the Constitution, providing for the faithful observance of treaties, requires the Court to treat Article 312 paragraph 1 of the Code of Civil Procedures as void, or examine appeals on grounds of treaty violations according to Article 98 paragraph 2. But the Supreme Court has refused to examine appeals on violations of international human rights treaties, in particular, the ICESCR, finding them based on just “violation of laws.” The appeals based on violation of treaties, including those including important matters regarding interpretation of laws should be accepted, but the Supreme Court fails to do so, without giving any reasons.

As a result, the rights to an effective remedy (Article 2 paragraph 3 of the ICCPR), and to a fair trial (Article 14 of the ICCPR) are not protected. This has led to the tendency by the lower courts not to examine seriously cases of violations of ICESCR, in particular, the relaxation of restrictions on forced evictions, which form the

core of the right to housing, since these would not be considered by the Supreme Court. These violations amount to “regressive measures” in ensuring the rights, and it has given the official approval to the relaxation of restrictions on forced evictions, thus completing the deregulation policy.

Further, the courts themselves engage in de facto deregulation by their interpretation of the laws. The courts did not consider strictly the requirements for forced evictions in examining the application for execution by proxy of forced evictions under the Civil Provisional Remedies Act, as well as the application for forced evictions during pending trial based on the declaration of provisional execution attached to the judgment in the first instance. They also did not consider the request for stay of execution based on the Civil Execution Act, or consider the request within a relevant period, thereby aiding in the deregulation by inaction on a daily basis.

The same applies to execution by proxy by the administration, which is done by a far more simple procedure. The attitude of the courts, in which the above has become habitual, has clear effects on the examination of the amended laws relaxing the conditions for evictions. Without improving the daily practice, it is impossible to expect decision respecting the “legal security” of tenure under the amended laws.

2. Relaxation of the conditions on forced evictions by the legislative branch

The Amended Article 62 of the Act on Building Unit Ownership (requirements for reconstruction) and the new Article 70 (provision for combined reconstruction of housing complexes)

(1) The Act on Building Unit Ownership was amended in 2002 under strong pressure from the construction development industry, to remove “deterioration by age” from the requirements for reconstruction under Article 62, making it possible to rebuild with just “approval by four fifths majority.” Further, in housing complexes with more than one building, instead of requiring separate votes among buildings that share the same site, combined reconstruction, involving the rebuilding of whole complexes, could now be decided by an approval of four fifths majority of the complex as a whole, including unit owners who do not share the same building or site. The new Article 70 requires a majority for each building is two thirds. This is a denial of the basic principle in the Civil Code regarding disposal of co-owned property (Article 251, principle of consent of all co-owners) and is also a denial of the right to housing, going against paragraph 53 of the Reporting Guidelines, strengthening discrimination. The creation of Article 70 did not follow the usual procedures of going through the legislative council, but was proposed directly in the Diet and adopted. The pre- and post amendment Article 62, Article 70 and paragraphs 1,2 and 4 of Article 63, which provide for the claim to sell, which has become an effective weapon to remove by force unit owners who oppose rebuilding, are attached hereto.

The purpose of the amendment was said to be to strengthen old buildings against earthquakes, and to revitalize housing complexes, which have become old and full of vacant units. This may be the case for some buildings, but the main purpose of the amendment was to relax rebuilding requirements for housing complexes constructed in the 1960s, that are in good locations, with plenty of space. Construction developers, which found fewer building sites in urban areas in favorable locations after continued construction of housing complexes, wanted to make it easier for them to evict residents, who wanted to continue living in the old buildings, to create new building sites in good locations, with room in the floor space ratio, where they could build high-rise buildings.

More than half of the residents living in such buildings, however, have acquired the units while they were in their forties, and have paid off their mortgages by the time they were older. They would only have to pay the fixed-asset tax and not have to worry about paying rent. They would now be in their seventies, and would consider their homes the “final abode” in which they can continue living for the rest of their lives. Many of them would have some kind of disability or illness, and it would be uncertain, whether they could adapt to new environments. Some may be in serious conditions, and unable to move. The rest of the owners have

purchased the units as assets to earn profits, and not to live there themselves. When the developers propose an “exchange for equal value” (a method, where owners provide the site and receive new buildings, without paying for the rebuilding), these owners agree, as they can raise the rent for new buildings. The relaxation of the restriction is a violation of the ICESCR for the following reasons.

(2) Violations of Article 11, Article 2 paragraph 1, 2, and Article 4

First, the “legal security of tenure,” which is at the core of the right to housing protected in Article 11 is denied for people in particular need of the right, such as those who are elderly, ill or with disabilities.

Second, the implementation of the right is regressing, despite the duty to achieve “progressively the full realization of the rights” in Article 2 paragraph 1.

Third, the amendment is a violation of Article 2 paragraph 2. The elderly have notably less physical, mental and economic strength. Further, it is almost impossible to organize an opposition group to rebuilding so that a four-fifths majority would not be achieved, if the younger residents, to whom they rely on in their daily lives, approve of the rebuilding. Such a move may lead to their isolation. Democracy within building complexes does not function in reality.

As the General Comment 20 (on Non-discrimination, 2009) states in paragraphs 23 and 29, holding an opposing opinion and age are prohibited grounds for discrimination in the context of rebuilding. The elderly, who are most affected by forced evictions, are discriminated and marginalized as pointed out in paragraph 53 of the Reporting Guidelines.

Fourth, the amendment violates the right to an adequate living standard protected in Article 11 of the Covenant. The owners of housing units in a building that is not deteriorating because of age, hold the strongest tenure based on complete ownership under Article 206 of the Civil Code. This is the basis of sustaining an adequate living standard. The owners who agreed to the rebuilding or developers who have been designated by these owners as the purchasers, deprive the other owners of their right to property through the claims to sell provided for in Article 63 paragraph 4 of the Act on Building Unit Ownership, making forced evictions possible.

Fifth, the deprivation of right of ownership of unit owners of buildings that are not deteriorating due to age goes beyond restrictions of rights, and violates Article 4 of the ICESCR, which provides that only “such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society” may be placed on the rights.

No2. Information on specific measures taken to ensure access to adequate and affordable housing with legal security of tenure, particularly for disadvantaged and marginalized groups, such as older persons

Both the Act of Stable Living for the Elderly and the Act on Promotion of Rental Housing Supply for people in need of Securing Housing are for creating a system of registration of rental housing for the elderly. The law no longer requires a building to be damaged by age for the decision to rebuild to be taken by the owners under the Act on Unit Ownership of Buildings. It has made it easier for developers and owners who are not resident themselves, but own the units for rent income, to rebuild for profit. As a result, the system forcibly evicted the elderly residents, many of whom have acquired the housing units by paying off the loans while working when they were young, and have lived there without having to worry about paying rent. There is no greater betrayal or deception, for rental housing can be a huge burden for the elderly whose sole income is from pension benefits, and they would be forcibly evicted again, when they can no longer pay the rent.

No3. Information on measures taken to support the livelihood of those affected by earthquakes, including the Great East Japan Earthquake

The Government reports refers to assistance to intensive-care old people's homes in disaster hit areas and loans to cover the cost of rebuilding homes. But the biggest problem is the fact that while about 300,000 households had their houses fully-destroyed (185,000 were judged as fully-destroyed, and 250,000 half-destroyed of which about half were demolished at government expenses. Thus, the total number of fully destroyed-houses is about 300,000), the number of housing units provided is only about half of it (173,311 units in public and private sectors combined).

The number of housing units provided was only about half of the units needed because of the Official Notice to Governors by Administrative Vice Minister Regarding the "Level of Assistance in Accordance with the Disaster Relief Act" dated May 11, 1965 which was still in force at the time. The Notice says that the number of temporary housing units to be built shall be "30% or less" of the fully burnt or fully destroyed houses.

No4. Information on how the implementation of evacuation and re-settlement plans has taken account of the needs of the persons evacuated and, in particular, vulnerable groups, such as older persons, persons with disabilities, children and pregnant women

Those who couldn't enter temporary houses couldn't enter disaster recovery houses either. This generated a large number of disaster victims who evacuated to other prefectures, and couldn't come back to their original place of residence.

Many of those who could enter public disaster recovery houses were evicted as Kobe-city sued them to make them vacate the houses. These people couldn't pay rents because of old age and loss of employment.

The people who entered "recovery housing units rented from private sector" (many of whom are in their 70's, 80's and even 90's) are intimidated by the advance notice that they have to vacate their home in a few years because of the initial contract that stipulates they could live there for a period of 20 years.

Article 12 The right to physical and mental health

Paragraph 23

Information on steps taken to reconsider and strengthen the plans for the prevention of nuclear-power accidents as well as of measures taken to protect and fulfill the right to health of those affected by nuclear accidents, including the Fukushima Daiichi Nuclear Power Plant accident.

- 1 Concerning reactor installment licensing, as the standard of the Safety Assessment Review, in addition to the requirement of providing multiple layers of safety facilities to prevent radiation hazard to the surrounding population, the Guideline for Siting (in the Guideline for Nuclear Reactor Siting Evaluation) defines and requires that the area within "the range in a specified distance" from the nuclear reactor, where person may be exposed to radiation damage if they remain there under a "Major Accident" shall be the "non-residential area" where the public do not reside in principle; and that the region within the range in specified distance from the nuclear reactor and outside the "non-residential area" shall be the "low population zone" where appropriate countermeasures can be provided to prevent significant radiation hazard in the case of a "Hypothetical Accident."
- 2 In the 1970's when the Ikata Nuclear Power Plant was in safety review, the standard annual dose which would not prevent radiation hazard to the surrounding population was stipulated to be 0.5 rem by the notice of the General Secretary of the Environment Agency, which should

be observed either for the case of a “Major Accident” or a “Hypothetical Accident.” In spite of the above notice, the actual safety assessment didn’t use this standard but the so called “referential dose” of 25 rem, which is 50 times of 0.5 rem, to include both the “non-residential area” and “low population zone” in the plant compound, and so the license was granted.

- 3 The Paragraph(f), Clause 8, General Comment 4, Article 11 (the right to adequate housing) of the International Covenant on Economic, Social and Cultural Rights says as follows:
Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.
- 4 The General Comment’s requirement that housing should not be built on polluted sites nor in immediate proximity to pollution sources should be interpreted presently that, as there were villages in the close vicinity of the construction sites of nuclear power plants in the early development years of 1970’s, those power plants which would hold ultra-poisonous fission-products and spent fuels should have not been built in immediate proximity to the housing of the people. And how close is the “immediate proximity” must be decided by how strong the lethal potential and transmitting power of radioactive materials from the power plant should be.
- 5 The accident at the Fukushima-daiichi Nuclear Power Plant on March 11, 2011, revealed how the safety assessment review underestimated the possible range of radiation hazard in the cases of accidents, not only overestimating safety defense facilities but also designating the immediate area out of 700 m radius to the “low-population zone.” It is a widely well-known fact that radioactive materials reached and fell far beyond the 40 km radius of the reactors.
- 6 Therefore, to securely provide preventive measures against accidents, it is not sufficient at all only to strengthen the functions of the nuclear regulatory agencies and the defensive facilities, even if the evacuation plans are improved as well. It is definitely necessary that sufficient measures to by distance “isolate” the reactor from the population in the surrounding area are necessary.
- 7 The government licensed the Ikata plant with the compound boundary at a radius of only 700 m, because if the radius was two times bigger, as the effect of radiation on the population is in inverse to the distance, the compound space should be four times bigger, and because that would be impossible economically. About the details of this issue, please see my article “Fuskushima Nuclear Disaster and the Supreme Court Ruling on Ikata Nuclear Power Plant – Thinking for the third time of Natural Disasters and National Defense” in *Hogaku Seminar*, June 2011 (translated by Hajime Nakao).
- 8 Consequently, the safety measures of the government without any effective reasonable “isolation” of the reactor from the public are not going to prevent occurring again of accidents.

translated by Hajime Nakao