

Proposal for Human Rights Principles Pertaining to
Accidents at Nuclear Power Facilities

The Japan Federation of Bar Associations (JFBA)

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I. Foreword

The strong earthquake and subsequent tsunami that seized eastern Japan on March 11, 2011 caused great casualties, as well as physical and property damage, along and around the Pacific coast of the Tohoku (northeastern) region of Japan. Furthermore, the multiple accidents they triggered at the Fukushima Daiichi Nuclear Power Station not only made it impossible for local residents to continue living there, but also to this day bring the invisible threat and fear of radiation to people in a wide area centered on the eastern region of Fukushima prefecture.

International human rights law sets out various principles and guidelines for the protection of those stricken by disaster or forced to move in natural calamities and wars. Such principles and guidelines have been introduced in Japan as a response to the Great East Japan Earthquake, providing important guiding principles such as the necessity to protect vulnerable individuals who tend to be overlooked by blanket policies seeking to protect a large number of victims.

On the other hand, regarding accidents at nuclear power facilities (hereinafter “nuclear accidents”), particularly those of such a magnitude as Fukushima Daiichi’s, there exist agreements including international treaties that govern technical guidelines concerning the measurement and management of radiation, or the compensation and liability for damage. However, it appears that nothing has been compiled from a human rights perspective about the rights that victims, workers, and the wider population influenced directly or indirectly are entitled to under international human rights law, and the measures that governments are obligated to provide.

Therefore, the JFBA recognizes the need for an effort to identify, through the various rights enshrined in international human rights law and the actual human rights issues that have surfaced since the Fukushima Daiichi accident,

principles to base all policies and measures upon.

By virtue of their nature as human rights principles, the principles to be discussed below are designed to avoid addressing detailed policies and measures, instead serving as a foundation for them. It also goes without saying that many arguments surround the existence, necessity, and dangers of nuclear power facilities, which we will not get involved in for our present purposes. (The JFBA has released the “Opinion Paper Requesting a Retreat from Nuclear Energy and the Nuclear Fuel Cycle” on July 15, 2011.) The same goes for technical guidelines on the measurement and management of radiation, and procedures for determining damages and civil or criminal liabilities.

Finally, these human rights principles are not by any means exhaustive, but to be elaborated on by contributed opinions and further research.

II. Proposal for Human Rights Principles Pertaining to Accidents at Nuclear Power Facilities

1. The Rights to Life and Health

A. Human Rights Principles

- (1) The central and local governments (hereinafter, “the government”) has an obligation to protect the life and person of residents against releases and waste from nuclear accidents.
- (2) In order to fulfill the aforementioned obligation, the government shall adopt the following measures. Each of them requires consideration for those especially vulnerable (such as the elderly, disabled, foreign nationals, pregnant women, new mothers, infants, and children):
 - (a) Determining, with review and reconsideration at suitable times, standards (including that of the general public health; industry workers; waste; agricultural, forestry or aquatic products; and foodstuffs) based on accurate information regarding the effects of internal and external exposure to radiation on physical functions, etc.;
 - (b) Proper decontamination and handling of waste;
 - (c) Mapping the contamination in detail;
 - (d) Undertaking an accurate and comprehensive study of the amount of radiation, and uninterrupted monitoring thereof;
 - (e) Establishing a research regime necessary to protect against radiation;
 - (f) The sweeping and continuous execution of an adequate investigation into health management;
 - (g) Expanding the testing system and implementing a full-scale examination for food safety;
 - (h) Evacuation measures and the protection of evacuees;
 - (i) Effective measures respecting the right to self-determination (right of election) concerning the necessity and destination of evacuation, as well as appropriate protection (the prohibition of disadvantageous treatment based on choice); and

(j) Proper health monitoring for workers engaging in labor that exposes them to radiation.

(3) In order to fulfill the obligation set forth in (1), the government shall establish a body to receive complaints, investigate cases, and adopt remedial measures in regard to protection against radioactive material.

B. Commentary

(1) Relevant International Human Rights Law and International Instruments

(a) The Right to Life

The right to life is the most fundamental of rights. International human rights law expressly asserts that it is in fact a right, and that its realization is an obligation on the state. The Universal Declaration of Human Rights stipulates the right to life (Article 3), along with the right to freedom of movement and residence within the borders of each state (Article 13), and the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law (Article 8).

Article 6, Clause 1 of the International Covenant on Civil and Political Rights states “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of this life.” Article 2 imposes obligations on state parties to adopt such laws or remedial measures as may be necessary to give effect to the rights.

(b) The Right to Health

Under international human rights law, the right to health is of fundamental importance alongside the right to life. All people have a right to “the enjoyment of the highest attainable standard of physical and mental health” (Article 12, Clause 1 of the International Covenant on Economic, Social and Cultural Rights).

To achieve full realization of this right, Article 12 Clause 2 imposes obligations on signatory states. Of these, “the improvement of all

aspects of environmental and industrial hygiene” (Article 12, Clause 2 (b)) includes “the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health,” according to the General Comment No. 14 released by the Committee on Economic, Social and Cultural Rights.

States are required to take necessary measures for the realization of essential elements of the right to health: health facilities, procurement of the right to access supplies and services, and the security of access to a minimum, crucial level of nutritiously adequate and safe food, among others.

Children are entitled to special care and assistance (Article 25, Clause 2 of the Universal Declaration of Human Rights; Article 10, Clause 3 of the International Covenant on Economic, Social and Cultural Rights). At the same time, they have a right to “the enjoyment of the highest attainable standard of health” (Article 24 of the Convention on the Rights of the Child). Thus the State must give special consideration for children to enjoy the highest attainable standard of health.

Regarding the disabled, the Convention on the Rights of Persons with Disabilities stipulates the right to life (Article 10) and protecting the integrity of the person (Article 17). States must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk and humanitarian emergencies (Article 11).

In addition, upon implementing necessary measures to realize the right to health, the precautionary approach that declines to use the lack of full scientific certainty as a reason for postponing certain measures (Principle 15 of the Rio Declaration on Environment and Development) should be taken into account. Since children are sensitive to radiation, measures based on the precautionary approach are particularly needed.

(c) International Instruments Regarding Protection from Nuclear Accidents and Radiation

Though the safety standards of the International Atomic Energy

Agency (IAEA) likely require broad revision following an examination of the Fukushima accident, it stipulates, inter alia, that “an effective legal and governmental framework for safety, including an independent regulatory body, must be established and sustained (Principle 2: Role of Government),” with the fundamental aim of protecting people and the environment from the harmful effects of ionizing radiation.

Recommendations of the International Commission on Radiological Protection (ICRP), a non-governmental organization, are used worldwide as a basis for laws regarding protection from radiation. The ICRP’s Publication 111, “Application of the Commission’s Recommendations to the Protection of People Living in Long-term Contaminated Areas After a Nuclear Accident or a Radiation Emergency,” is a document describing technical schemes to protect against exposure to radiation. Although it does not address legal rights, obligations, and liabilities or refer to authority such as human rights norms, there are key specifications about matters such as living conditions, citizen participation in policymaking, and the sharing of information, which could lead to legal consideration. For example, it points out that implicit in the decision to allow people who wish to live in contaminated areas to do so is the ability to provide them with protection against the potential health consequences of the radiation, and sustainable living conditions including respectable lifestyles and livelihoods (Summary (d)); the potential importance of controlling the food supply to prevent internal exposure by ingestion and allow local produce to continue (bb); that exposures below the reference level should not be ignored—they should also be assessed to ascertain whether protection is optimized or further protective actions are needed (n); and that the priority of protection strategies implemented by authorities is to reduce all individual exposures associated with the event to as low as reasonably possible (t).

“The Guiding Principles on Internal Displacement” was submitted to the UN Commission of Human Rights by a special rapporteur (Francis Deng, February 11, 1998). It encompasses those forced to evacuate from the effects of a man-made disaster, and comprehensively

identifies fundamental principles such as the right of internally displaced persons to seek safety in another part of the country, respect for family life, and consideration for the vulnerable (there is a Japanese translation by the Commission of the GPID).

The Inter-Agency Standing Committee (IASC) is a mechanism for inter-agency coordination of UN and non-UN humanitarian partners. They released the “Operational Guidelines on the Protection of Persons in Situations of Natural Disasters” in January 2011. Its scope covers natural disasters, but presents a non-discriminatory principle and other proposals for protective measures such as life-saving efforts, food, health, and shelter (there is a Japanese translation by the NGO Human Rights Now). The IASC has also published the “Framework on Durable Solutions for Internally Displaced Persons” in April 2010.

While these international instruments make important fundamental indications, it cannot be said that lessons from incidents such as the 1986 Chernobyl accident have been adequately reflected. In particular, more detailed analysis is required from a human rights perspective.

(2) Issues Arising in the Accident at Fukushima Daiichi Nuclear Power Station

The series of destruction and explosions at the Fukushima Daiichi facilities caused by the earthquake and tsunami have released an enormous amount of radioactive material. Health effects are projected to pose a major concern over a wide area.

For instance, in the six months after the Great East Japan Earthquake, the atmospheric release of Cs137 (half-life of 30 years) was 6,000 to 12,000 terabecquerels, and 35,000 terabecquerels including releases into the ocean. This amounts to roughly a third of the 85,000 terabecquerels emitted by the Chernobyl accident. The releases still continue today.

Prompted by the radioactive releases from the nuclear power station, an evacuation zone was declared over a vast expanse of land. Even outside its boundaries, high radiation levels greatly exceeding exposure

limits for the general public have been detected. Concerns for life and health have not been eradicated. Children, especially, are more susceptible to the effects of radiation than adults, so there is a heightened concern for their future health. Also, numerous individuals are working in response to the accident both inside and around the plant.

Yet the government has not established clear decisions and policies regarding the safety standards of radiation dose, necessity for evacuation, decontamination, waste disposal, and other issues, with frequent delays and changes. As for permissible exposure levels, there is not necessarily a scientific consensus, and it is likely that effects on lives and health will vary among individuals. Residents in an extended area continue to question the necessity for, and degree of, evacuations. Furthermore, measurements of the air radiation dose have been confined to limited spots, and the disclosure of results has not been satisfactory. The same can be said of soil contamination. Even though the government has commenced decontamination, there are inherent limits to cleansing the environment. The measures to store and dispose of radioactive waste can hardly be characterized as adequate.

The elderly and disabled suffered violations of the right to life and health from the accident. Power outages and the evacuations of helpers resulted in countless lapses in care, ranging from mechanical failure of respirators and artificial dialysis machines to medical care, meals, personal hygiene, and the changing of posture positions.

Moreover, because of a lack of reasonable consideration regarding access to information and evacuation procedures, examples such as the following abounded: evacuation notices did not reach the hearing impaired, who were left behind for days; elderly and disabled residents could not move as they were confined to their beds; those with sight impairment and developmental disabilities were unable to evacuate from fear of an unknown setting, or some were forced to give up on evacuating because it was logistically impossible, even if they wished to; others ended up not evacuating swiftly because there was trouble along the way.

Even when evacuation did take place, there were instances of health issues and disabilities worsening because of the circumstances, or

forfeiture by those experiencing difficulties in daily routines such as meals and personal hygiene at evacuation centers that were not barrier-free.

Since immediately after the accident, many workers involved in the relief effort have sustained exposure to radiation, but monitoring and studies of their health (including radiation dose) are extremely unsatisfactory. On March 14, 2011, the government modified the acceptable limit of radiation exposure (effective dose) for the emergency relief effort from 100mSv/year to 250mSv/year (and back to 100mSv on December 16, 2011). However, in July 2011 six workers were confirmed to have exceeded even the lenient 250mSv limit. Numerous cases have been reported of workers with unmeasured exposure levels and some who can no longer be contacted.

(3) The Need for Human Rights Principles

In order to prevent such delays, changes, and deficiencies in decisions and measures, and to minimize residents' anxieties and concerns over such inconsistencies, it is necessary to establish human rights principles for the right to life and health to ground all policies upon.

Also, residents have the right to determine by their free will whether to stay in their place of residence or to evacuate, and if evacuating, to choose the destination. The government must respect that discretion, and victims must not suffer any political, economical, or social disadvantages due to exercising that option. This requires a footing in human rights principles as well.

2. The Right to Adequate Conditions of Life

A. Human Rights Principles

- (1) The government has an obligation to present residents with adequate conditions of life, upon consideration of the health effects of radiation caused by a nuclear accident.
- (2) Upon fulfilling the aforementioned obligation, the government shall implement the following measures, giving special consideration to

vulnerable individuals including the elderly, disabled, foreign nationals, pregnant women, new mothers, infants and children.

(3) In order to achieve the obligation set out in (1), the government shall adopt the following measures:

- (a) Regeneration of the foundations for daily life, business and employment including agriculture and fishery, and the local community;
- (b) Uninterrupted provision of housing and employment opportunities at the evacuees' destinations;
- (c) Sweeping and continuous execution of an adequate investigation into health management;
- (d) Expanding the testing system and implementing full-scale examinations for food safety;
- (e) Measures to put into practice appropriate recreational programs and the guarantee of the right to familial bonding; and
- (f) The provision of barrier-free, welfare and medical services for the elderly and disabled.

(4) In order to fulfill the obligations set forth in (1), the government shall establish a body to receive complaints, investigate cases, and adopt remedial measures regarding the provision of sustainable conditions for life.

B. Commentary

(1) Relevant International Human Rights Law and International Instruments

(a) The Right to Adequate Conditions of Life

Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing, medical care, and necessary social services (Article 25, Clause 1 of the Universal Declaration of Human Rights; Article 11, Clause 1 of the International Covenant on Economic, Social and Cultural Rights). Not only that, everyone has the right to realize the

economic, social and cultural rights crucial to human dignity and the free development of self-character (Article 23, Clause 1 of the Universal Declaration of Human Rights; Article 15, Clause 1 of the International Covenant on Economic, Social and Cultural Rights).

As stated above, children are entitled to special care and assistance (Article 25, Clause 2 of the Universal Declaration of Human Rights; Article 10, Clause 3 of the International Covenant on Economic, Social and Cultural Rights). At the same time, they have a right to “the enjoyment of the highest attainable standard of health” (Article 24 of the Convention on the Rights of the Child). Hence, the State must pay special consideration for children to enjoy the highest attainable standard of health.

Furthermore, international human rights law recognizes the right to familial bonding and of a family to live together (Articles 17 and 23 of the International Covenant on Civil and Political Rights; Article 9 of the Convention on the Rights of the Child). The establishment of sustainable conditions for life demands adjustments against the separation of family members.

For the disabled, the Convention on the Rights of Persons with Disabilities includes the rights of living independently and being included in the community (Article 19), health services (Article 25), adequate standard of living and social protection (Article 28), and respect for home and the family (Article 23).

(b) International Instruments on Protection from Nuclear Accidents and Radiation

The ICRP Pub. 111 makes many more important determinations in addition to those mentioned above in Part One. They feature the implementation of a radiation and health surveillance program as a responsibility of the authorities (w), ensuring regular whole-body measurements of the affected population by the authorities (70), and establishing monitoring systems to assess current levels of human exposure and environmental contamination and predict their future development (74). These indications play a significant role in the contemplation of the government’s role in protecting against radiation.

(2) Issues Arising in the Accident at Fukushima Daiichi Nuclear Power Station

The accident has been detrimental for livelihoods, families, and communities. In other words, affected individuals have been forced to evacuate and lead lives of hardship, both economically and socially. In addition, as the population of a certain region must relocate to disparate places, communities forced to evacuate have collapsed. Moreover, in areas that did not receive official instructions to evacuate, many cases of familial and community disintegration have been reported, including the division of families due to separate evacuations or the conflict of opinions surrounding evacuation.

Residents under mandatory evacuation must rely on compensation for their livelihood, as they are not provided with employment opportunities. Life is financially difficult particularly in cases of voluntary evacuation from the deliberated evacuation zone, due to inadequate indemnification for not only employment opportunities but also housing provision.

There are residents who lead lives of isolation from the local community as well, without anyone to confide their troubles in, because they do not know anyone at their destination.

On the other hand, in localities where the government did not mandate evacuation, or those cleared of evacuation orders, the population has decreased since the accident, and infrastructure such as hospitals, schools and stores have suffered. In many instances, occasions of communal bonding such as festivals have failed to be regenerated in a divided community.

In addition, inhabitants who have remained in their original locations since the accident without evacuating feel concerned about the health effects of radiation. For such individuals, the elimination of such apprehension is vital. Yet the health study conducted by Fukushima Prefecture was merely founded on residents' recollections, evaluating an estimated exposure dose based on behavioral patterns following the accident. Outside Fukushima, nothing has taken place. In terms of internal exposure, only a portion of limited subjects has been analyzed.

Food safety testing lacks clear standards, and precision of the sampling regime is low.

The elderly and disabled were rendered unable to procure welfare and medical services crucial to survival and daily life. There were numerous cases in which evacuees became more dependent on such services because the circumstances aggravated their condition, but could not hire help for financial concerns, or could not commute to facilities regularly due to a shortage of staff.

(3) The Necessity of Human Rights Principles

Employment opportunities, secure housing, and community support are necessary for evacuees to continue on with their lives at their destination. At the same time, those who stayed back require minimization of their health concerns and rebuilding of their livelihoods and communities. For these reasons, human rights principles such as those set forth in (1) ought to be established.

3. The Right to Information

A. Human Rights Principles

- (1) The government shall not prevent anyone from accessing information about nuclear accidents.
- (2) The government shall lay a foundation that allows information about such accidents to flow freely.
- (3) The types and amount of radiation and radioactive material released, leaked, and disseminated from nuclear power facilities, their spread as well as rates and extents for the near future, are vital information for those whose lives or persons are potentially endangered by an accident, their families, and their communities. Not only must the government gather and provide all data swiftly and continuously, it must also summarize or edit them if so needed to aid in understanding.
- (4) In order to fulfill the obligations set forth in clauses (1) to (3), the government shall take the following measures:

- (a) Non-interference in the investigation, analysis, discourse, and publication by senders of information (media, NGOs, individuals);
 - (b) Regardless of whether the holder of information is a public or private entity, the government shall gather and compile information regarding the accident, securing information necessary for the self-determination of ordinary citizens so that they do not get lost in the process of distribution;
 - (c) To gather detailed and accurate information about the state of the accident, by-products generated, the type, amount, and effects on agricultural, forestry, and fishery products of radioactive material and radiation in the waste and leakage, as well as the topography and extent of their spread and distribution, and to project the level and areas of their diffusion in the near future;
 - (d) To request of the entity establishing, operating, managing, and supervising the nuclear power plant, whether they are private enterprises or public organizations, that they communicate all necessary information directly and swiftly;
 - (e) To disclose the information in (c) promptly and continuously in the mass media and on the internet;
 - (f) To provide the information in (c) promptly and continuously to those whose lives or persons are potentially endangered, their families, and their communities;
 - (g) In implementing the measures set forth in (e) and (f) to give special consideration to vulnerable people so that there are no discriminatory effects in the level of information received on the basis of age, gender, nationality, language or disabilities. In particular, to pay special consideration by providing information in forms such as Braille or audio guides for the seeing-impaired, sign language, and précis writing for the hearing-impaired, and plain language for the intellectually disabled; and
 - (h) To compile information for identifying and locating vulnerable people who need special consideration, such as the elderly and disabled, while being mindful of the protection of personal information.
- (5) In order to fulfill the obligations set forth in clauses (1) to (3), the

government shall establish a body to receive complaints, investigate cases, draft necessary plans, and adopt remedial measures for the dissemination of information (both “planning measures for the future” and “remedying past events”).

B. Commentary

(1) Relevant International Human Rights Law and International Instruments

(a) Article 19 of the International Covenant on Civil and Political Rights; Article 10 of the European Convention on Human Rights; and Article 21, Clause 2 of the Convention on the Rights of Persons with Disabilities

Article 19, Clause 2 of the International Covenant on Civil and Political Rights guarantees everyone the “freedom of expression,” and this right includes “freedom to seek, receive and impart information and ideas of all kinds.” Article 10, Clause 1 of the European Convention on Human Rights stipulates that everyone has the right to the “freedom of expression,” and that this right “shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority.”

Both are generally interpreted as passive rights, or in other words, “freedom from public authority,” but are discussed as an active right of “freedom through public authority” within certain bounds, in reference to a right to request the disclosure of information.¹ In the latter context, it could lead to the recognition of a right to request the government to establish a foundation to secure the free flow of information.

Article 21 of the Convention on the Rights of Persons with Disabilities provides for the “freedom of expression and opinion, and access to information,” and requests signatory states to take measures including “accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible

¹ CCPR Commentary 2nd Edition/ Nowak (henceforth ‘Commentary’), p447

means, modes and formats of communication of their choice by persons with disabilities in official interactions.”

- (b) Article 17 of the Convention on Civil and Political Rights; Article 8 of the European Convention on Human Rights; Article 22 of the Convention on the Rights of Persons with Disabilities

Article 17 of the Convention on Civil and Political Rights guarantees the right against “arbitrary or unlawful interference with [one’s] privacy, family, or home.” Article 8 of the European Convention on Human Rights guarantees the right to respect for “private and family life, [and the] home.”²

Both are understood not only as passive rights but also active rights.³

Article 22 of the Convention on Rights of Persons with Disabilities provides for respect for the privacy of people with disabilities.

- (c) Decision by the European Court of Human Rights

In the February 19, 1998 judgment for the case of GUERRA and others v. ITALY⁴, the European Court of Human Rights held that the defendant, Italy, failed to perform necessary obligations for the plaintiff’s enjoyment of the right to have his private and family life respected. In regard to residents of surrounding areas who could potentially suffer negative effects on the health of themselves and their families from serious environmental pollution, in the form of chemical compounds released by an accidental explosion at a chemical fertilizer plant, the Court indicated that the state’s failure in its obligations to provide information about potential dangers to the private and family life of residents that were necessary to assess evacuation was in violation of Article 8, Clause 1 of the European Convention on Human Rights.⁵

² “Everyone has the right to respect for his private and family life, his home and his correspondence.”

³ Commentary, p379

⁴ 116/1996/735/932

⁵ “The Court reiterates that severe environmental pollution may affect individuals’ wellbeing and prevent them from enjoying their homes in such a way as to affect their private and family life adversely. In the instant case the applicants waited, right up until the production of

- (d) Summary and remarks at the second review of the Japanese government's report on the Committee on Economical, Social, and Cultural Rights (September 24, 2001)

"The Committee [has] recommended improving the transparency surrounding safety issues at nuclear power facilities, as well as further disclosure of all necessary information to implicated residents, and prompted signatory states to draft a plan for the prevention of nuclear accidents and early response in the case of an accident" (p49).

(2) Analysis and Observations

- (a) Significance of the GUERRA case

It can be said that the GUERRA case, on the right to access information regarding environmental pollutants that potentially impact health adversely, chose the approach to recognize not an active right to request the disclosure of information based on Article 19 of the Convention on Civil and Political Rights and Article 10 of the European Convention on Human Rights, but instead an active right to receive the provision of information based on the right to have private and family life respected (Article 17 of the Convention on Civil and Political Rights; Article 8 of the European Convention on Human Rights), as the information directly concerns the safety of the lives, persons, and health of local residents and their families, who are the entities to enjoy the rights.

- (b) Similarities and Differences Between the GUERRA Case and Nuclear Energy

Focusing on the differences between chemical compounds from an explosion at a fertilizer factory versus the radioactive material and radiation emitted by a meltdown and subsequent explosion at a nuclear power plant, namely:

fertilizers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live at a town particularly exposed danger in the event of an accident at the factory." "The Court holds, therefore, that the respondent State did not fulfill its obligation to secure the applicants' rights to respect for their private and family life, in breach of Article 8 of the Convention."

- (i) That widespread, enormous, and long-lasting threats remain, and that the time frame of the natural reduction to a level safe enough for physical (genetic) impact and agricultural, forestry and fishery products is astronomical;
- (ii) Their unbounded potential to spread; and
- (iii) The high specialization and costs required by the gathering, management, analysis and interpretation of information;

The necessity and appropriateness of active intervention by public bodies are extremely strong.

For these reasons, first, the extensive and long-term gathering, management, analysis, interpretation and disclosure (full text and summary) of information are required of the government.

Second, contemplation of those who are or were in areas with direct or acute danger to the life or person is particularly required. Specifically, (i) swift and continuous provision of information to those whose persons or lives are potentially endangered, their families, and their communities, and (ii) speedy decisions and dissemination of evacuation orders.

(c) The Nature of Active Governmental Duty

Considering the nature of active governmental duty, special care is needed for “vulnerable people” in regard to the flow of information.

In other words, to the extent that there are diverse capabilities in the receipt of information based on age, gender, nationality, language, and disability, remedial measures must be taken, and maximum arrangements are necessary to prevent discriminatory effects.

Particularly for the hearing impaired, for whom it is difficult to receive audio data, in the event of an emergency evacuation in a nuclear incident, barriers to information delay evacuation and fatally endanger life and health. In the case of the accident at Fukushima Daiichi, there was an example in which a resident was stranded at home for several days, unaware of the situation, because a warning lamp failed.

Therefore, for the hearing impaired, access to an avenue of information that takes their disability into account is a life or death

matter. The same can be said of those with intellectual disabilities, who need plain language. The government must give reasonable consideration to such persons with disabilities.

(d) Broader Requests for the Disclosure of Information

Following from the nature of active governmental duty is the desirability of establishing avenues for broader requests for the disclosure of information, allowing citizens to obtain information about nuclear power from an active, as opposed to a passive, standpoint. This is a topic yet to be explored.

(3) Remedial Bodies

The mixture of passive and active rights renders imperative not only remedies and recovery for past damage but also a movement geared toward the future, in the form of drafting and suggesting new policies.

(4) Necessity for Human Rights Principles

To minimize fear and apprehension for all of humanity, regardless of one's country or region of residence, and for those whose own or family members' persons or lives are potentially endangered by nuclear accidents, the establishment of a human rights principle for the right to access information—as an authority for policy, grounded in legal principles founded in international human rights law, and as a part of standards applicable to international and domestic law—is required for the exercise of the right to self-determination in choosing appropriate measures.

4. The Right to Participate in Policy Decisions

A. Human Rights Principles

(1) Evacuees of nuclear accidents shall be given the opportunity to exercise their right of political participation to its full extent, through voting rights and eligibility for elections.

(2) The government shall endeavor to secure transparency and gender

equality in the process of decision-making and implementation for all policies originating from the accident.

- (3) Those impacted by the accident shall be guaranteed an opportunity to participate in the determination and execution of protective strategies adopted by the government and post-disaster reconstruction programs, either directly or through a representative.
- (4) Everyone must be guaranteed the opportunity to form and impart opinions involving all government policy decisions originating from the accident, through the right to access information as previously outlined.

B. Commentary

(1) Relevant International Human Rights Law and International Instruments

The International Covenant on Civil and Political Rights provides the right for everyone to hold opinions without interference and the freedom of expression (Article 19), in addition to the right to political participation with neither discrimination nor unreasonable restrictions, and the right to vote and to be elected (Article 25). Also, the right against arbitrary or unlawful interference with privacy, family, and the home (Article 17) implies that upon violation of such rights, the government must provide crucial information to remove the violation, as outlined in detail regarding the right to access information. This can be taken to demand participation in policy decisions utilizing such information as well. The Convention on the Rights of Persons with Disabilities guarantees to persons with disabilities, alongside the freedom of expression (Article 21), political rights and the opportunity to enjoy them on an equal basis with others (Article 29). Finally, the ICRP indicates that the opportunity should be guaranteed for groups affected by a nuclear accident to participate in the decision-making process of central and local policy regarding protective strategies and reconstruction programs (ICRP Pub. 111).

(2) Issues Arising in the Accident at Fukushima Daiichi Nuclear Power

Station

Problematic aspects in the response of government agencies and measures to minimize damage immediately after the accident, including but not limited to “problems in the provision of information to citizens and the international community,” have already been identified and discussed (cf. “VII Observations and proposals on issues identified so far through inquiry and investigations,” Interim Report by the Investigation Committee on the Accident at the Fukushima Nuclear Power Stations of Tokyo Electric Power Company, December 26, 2011).

In radiation management and reconstruction efforts to come, the general public, not to mention those affected by the accident, must be given the opportunity to participate in policy decisions. For example, following the accident the government raised the maximum annual dose for residents from the present 1mSv/year to 1-20mSv/year, with residents continuing to inhabit contaminated areas in mind. However, considering that said residents were not accepting exposure to radiation but remaining because they could not leave the locality for various reasons, such a policy change needed to reflect their wishes (cf. JFBA “President’s statement on the deliberation for revision of residents’ maximum annual dose by the Radiation Council Main Sub-group). After the emergency period passed, the government began to consider reorganization of the surrounding areas into three newly designated zones according to radiation dose. Such rezoning can be expected to cause practical effects in various forms such as compensation requests, the content of government aid, and life plans for the future. Thus “in the determination of each zone, adequate consideration should be given to the situations of communities and residents’ opinions, keeping in mind the rehabilitation of local communities” (JFBA “President’s statement on the reorganization of emergency zones in the accident at Fukushima Daiichi Nuclear Power Station of Tokyo Electric Power Company). The decontamination efforts to come, as well as other reconstruction plans such as the return of residents who can, also necessitate the incorporation of inhabitants’ diverse opinions, with gender equality as a priority.

The difficulties faced by the elderly and disabled in accessing

information, evacuation, welfare and medical services were as mentioned before, and pose heavy repercussions for lives and health. Hence those stakeholders must be able to participate in the determination and implementation of policies, with their experiences and opinions sufficiently reflected.

(3) The Necessity of Human Rights Principles

Upon integrating residents' diverse opinions in this way, the involvement in policy decisions by inhabitants and the general public must be recognized as a human right affirmed in international human rights law.

5. The Right to be Protected Against Discrimination

A. Human Rights Principles

- (1) The government has the obligation to prevent and abolish discrimination against local residents in the event of an accident at a nuclear power station. The government has the obligation to prevent and remedy disadvantages from unfounded discrimination suffered by those who treat byproducts and waste, in the handling of waste in the process of accident cleanup and material purported to be affected by the accident.
- (2) To fulfill the aforementioned obligation, the government shall engage in education and propaganda efforts regarding the following information:
 - (a) The fact that radiation exposure does not pass from person to person, together with accurate information and knowledge about matters such as the effects of internal exposure on bodily functions;
 - (b) Accurate data and knowledge regarding the amount of radiation from byproducts and waste, as well as their effects; and
 - (c) That exposure to, and contamination by radiation cannot be a cause of discrimination and prejudice.
- (3) In order to fulfill the obligation set out in (1), the government shall establish a body to receive complaints, investigate cases, and take remedial measures as necessary in response to discrimination.

B. Commentary

(1) Relevant International Human Rights Law and International Instruments

It is a fundamental principle of international human rights law that all persons are equal before the law and are entitled without any discrimination by the government to the equal protection of the law (Article 7 of the Universal Declaration of Human Rights; Article 26 of the Covenant on Civil and Political Rights). And under Article 26 of the Covenant on Civil and Political Rights, signatory states have the obligation to guarantee “equal and effective protection against discrimination on any grounds,” which requires them to provide information to the Committee on Civil and Political Rights on “whether the actual discrimination was by a public body or the local community, or a private individual or a private body,” and “legal prohibitions and executive measures to abolish or diminish such actual discrimination.”

Moreover, in regard to discrimination by private individuals within society, governments are under the obligation to take measures for the prevention and abolition of discrimination on the grounds of race, gender or disability (Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination; Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women; Article 4 of the Convention on the Rights of Persons with Disabilities).

Further, failure to provide reasonable care for the disabled amounts to discrimination. It should be noted that the numerous examples raised in this opinion paper not only violate rights of persons with disabilities, but are also instances of discrimination against them.

In these ways States are required under international human rights law to protect individuals from all forms of discrimination, and to prevent and abolish discrimination when it involves certain matters.

(2) Issues Arising in the Accident at Fukushima Daiichi Nuclear Power Station

After the accident, cases of discrimination were reported including the refusal of service by hotels and gas stations toward evacuees, bullying at elementary schools, and unfounded rumors such as “radiation is contagious.”

The government response included a direction against overreacting (statements at press conferences by the Minister for National Policy Koichiro Genba, and Cabinet Secretary Yukio Edano, on April 19, 2011), and the issuance of an emergency statement by the Human Rights Bureau of the Ministry of Justice (“Message Concerned with Damage by Rumor about Radiation Exposure,” April 21, 2011). Since then, local governments have published statements calling for understanding and restraint on the part of citizens in these issues of human rights violations and damaging rumors.

Yet according to reports by bar associations and various civic organizations, evacuees and people from Fukushima are subjected to discriminatory treatment and prejudice in various circumstances (“President’s statement requesting adequate measures to eliminate prejudice and discrimination against Fukushima residents evacuating from the accident at Fukushima Daiichi Nuclear Power Station of Tokyo Electric Power Company, especially children who have evacuated outside the prefecture,” by the Fukushima Prefecture Bar Association, May 30, 2011, among other sources).

In the evacuation accompanying the accident at Fukushima Daiichi, there was an example of an individual with a mental disability who was forced to live out of a car because emotional instability prevented sleeping alongside everyone else in an evacuation shelter. This is social exclusion and nothing other than a case of discrimination against persons with disabilities.

(3) The Necessity for Human Rights Principles

According to the Ministry of Justice, between the Great East Japan Earthquake and the end of December 2011, 491 inquiries sought advice about the disaster, and 45 of them “related to matters such as dignity and rumors” (Ministry of Justice, “A description of measures taken by human

rights bureaus under the Ministry of Justice regarding the Great East Japan Earthquake”). These are thought to include many instances of discrimination originating from the nuclear accident, and are only the tip of the iceberg. The Ministry of Justice also claims to have responded to such incidents by posters, propaganda campaigns, and requesting school principals to take appropriate measures. Such measures, however, are merely case-by-case responses to individual examples that are part of a larger problem. They cannot be regarded as comprehensive strategies rooted in the seriousness of the discrimination and the government’s obligation to combat them.

This situation will not readily improve, considering that the localized effects of the accident is still continuing, citizens’ concerns are also directed to products and waste from Fukushima, and that accurate knowledge about the physical effects of radiation exposure are not widespread among the general public. The government’s response is too little. Therefore, the government and local municipalities should not overlook the issue of discrimination and rumors caused by the accident, and must take steps to implement the previously mentioned human rights principles.