



TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 28 June 2018

A/TO: His Excellency
Mr. Junichi Ihara
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
Permanent Mission of Japan
to the United Nations Office and other international organizations in Geneva

FAX: +41 22 788 38 11

EMAIL: mission@gv.mofa.go.jp

DE/FROM: Beatriz Balbin
Chief
Special Procedures Branch
OHCHR

A handwritten signature in blue ink, appearing to read "Beatriz Balbin".

FAX: +41 22 917 9008

TEL: +41 22 917 9543 / +41 22 917 9738

E-MAIL: registry@ohchr.org

REF: AL JPN 5/2018

PAGES: 10 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

OBJET/SUBJECT: **JOINT COMMUNICATION FROM SPECIAL PROCEDURES**

Please find attached a joint communication sent by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences.

We would be grateful if this letter could be transmitted at your earliest convenience to His Excellency Mr. Taro Kono, Minister for Foreign Affairs.



PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9543 / +41 22 917 9738 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

REFERENCE:
AL JPN 5/2018

28 June 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 36/15, 33/9 and 33/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning issues **faced by workers employed in the ongoing decontamination and resettlement program in the Fukushima Prefecture of Japan, more particularly, the existing and potential risks to which they are exposed to, inconsistencies in the monitoring and implementation of guidelines aimed at protecting their security and required working conditions, reported consistent violations of their labour rights and their right to physical and mental health, including unsatisfactory levels of health and security safeguards in place.**

A related communication, concerning the decision of Japanese authorities to lift, by March 2017, evacuation orders relating to areas in Fukushima where radiation levels allegedly remained high, was transmitted to your Excellency's Government by several UN Special Rapporteurs on 20 March 2017 (case no. JPN 2/2017). We acknowledge receipt of the response of your Excellency's Government dated 8 June 2017 and take note of the various points raised in relation to the decontamination program as well as measures which have been undertaken so far by the Japanese authorities. The

.../2

His Excellency
Mr. Taro Kono
Minister for Foreign Affairs

explanations provided spread light on a number of important issues, however do not alleviate the general concerns we have previously expressed and we continue to have, especially in light of the new allegations concerning the particular situation of workers employed in the disaster zone.

On a related note, in March 2018 the Japanese Government supported recommendations made within the framework of the third cycle of the Universal Periodic Review (UPR) of Japan, which suggested to respect the rights of persons living in the area of Fukushima, in particular of pregnant women and children, to the highest level of physical and mental health, notably by restoring the allowable dose of radiation to the 1 mSv/year limit, and to continue providing support for the voluntary evacuees from the high-radiation areas of Fukushima, with housing, financial and other life-assisting means and with periodic health monitoring of those affected. We welcome the Japanese authorities' decision to support these recommendations, which fully reflect our preoccupations and encourage your Excellency's Government to proceed with full-fledged implementation of points reflects in the UPR recommendations.

According to the information received:

In 2011, as a result of the nuclear energy accident at Fukushima Daiichi Nuclear Power Station, operated by Tokyo Electric Power Company (TEPCO), various areas of the Fukushima Prefecture and further beyond were contaminated with significant radioactive caesium and other radionuclides. In 2012 the Government of Japan initiated a decontamination programme, which aimed to contribute to the reduction of radiation levels and allow for the lifting of evacuation orders for the heavily affected areas of the disaster zone.

Within the framework of the realization of this programme, tens of thousands of workers have been recruited over the past seven years. The Ministry of Health, Labour and Welfare of Japan, in a report published in 2016, indicates that 46,386 workers have been employed in 2016; the Radiation Worker Central Registration Centre of Japan indicates as many as 76,951 decontamination workers have been recruited in the 5 year period up until 2016.

In August 2011, the Parliament of Japan approved legislation to fund decontamination work, which however did not apply existing legal regulations concerning the construction industry to newly commencing decontamination activities. The decontamination contracts were granted to several large contractors, however hundreds of small companies, without the relevant experience, were subcontracted in the process. Among those subcontracted companies many were allegedly not even officially registered with the Ministry of Reconstruction of Japan. It is also reported that brokers were then engaged to recruit a considerable number of the actual workers. This situation, in many instances, created favourable instances for and led to abuse and violation of workers' rights as well as breaches of required health and safety safeguards.

Internal and external contamination, as well as exposure to external radiation, remain one of the major hazards for workers involved in decontamination work. Prior to the Fukushima Daiichi accident, industry nuclear workers were permitted to be exposed to a dose of 20 mSv per year. As of March 2011, in the emergency circumstances following the nuclear disaster, the allowed dose rate which industry nuclear workers could receive was increased up to 100 mSv. Between March and December 2011, in the emergency phase of the accident, under a special allowance, workers at the Fukushima Daiichi plant were permitted doses up to 250 mSv. In December 2011, this limit was lowered back down to 100 mSv. It is also understood that the same conditions and radiation dose limit applied and reportedly continue to apply to all decontamination workers, who are not to be considered as industry nuclear workers.

Governmental Guidelines requiring regular health examinations are mandatory for decontamination workers. Yet, information received indicates that the diligent application of these guidelines may have been hampered because of the nature of the recruitment of workers, as well as the uncertainty surrounding the number of official workers and those recruited by sub-contractors. In the meantime, evidence suggests that radiation exposure of workers involved in decontamination exercise could be producing serious underlying effects on their health. A report produced by the Japanese Ministry of Health, Labour and Welfare in 2013 detailed abnormal findings in terms of white and red blood cell counts, and hemoglobin and red blood percentages (Hematocrit or HCT). The results for 2012 showed a general increase in the numbers of observed abnormalities in comparison to 2010. Although the Ministry reported that the findings could be within the error margin, and the reported results were not necessarily directly related to radiation exposure, the report was nevertheless conscious that there might have existed a correlation between the increase in certain blood indicators and radiation exposure.

During the past five years, the Labour Bureau of the Fukushima Prefecture and the Ministry of Health, Labour and Welfare have reported an alarmingly high number of consistent violations of decontamination workers' rights in Fukushima, as well as breaches of security regulations, including: misuse of dose badges by workers and incorrect use of protective gear. Tens of thousands of decontamination workers have reportedly been exploited in terms of poor pay, working conditions and radiation exposure, amongst them migrant workers, asylum seekers, as well as homeless persons. Reports indicate that a number of contractors have been found not to be paying premium rates as required for hazardous work or not paying the due allowances to the workers and have identified multiple instances of workers who have been required to work beyond the established working hours (40 hours per week, 7 hours per day).

In addition, in December, 2017, the Japanese Government approved official plans to begin decontamination work in the exclusion zone of Namie where radiation levels remain considerably high. This allegedly means that decontamination workers working in this area will be subjected to unjustifiable radiation risks for a

programme that only decontaminates a small fraction of the overall area and where a large fraction of the landmass is composed of mountainous forests which cannot be decontaminated.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concern regarding the overall situation of workers employed in the framework of the decontamination programme in the Fukushima Prefecture of Japan, including violations to their right to health and serious safety risks conditioned by radiation exposure in the context of decontamination works. Deep concern is also expressed about the alleged violation of labour rights, in particular the right to just and favourable remuneration, right to safe and healthy working environment and the right to just and favourable conditions of work.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

In view of the urgency of the matter, we would appreciate a response on the steps and measures taken by your Excellency's Government to safeguard the rights of workers employed within the framework of the decontamination programme in the Fukushima Prefecture in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide further information regarding the measures which have been taken in order to inform the workers employed in the disaster-affected zones about exposure levels at their workplace, the related risks and their rights vis-à-vis the hazards and working conditions which they endure.
3. Please provide information on procedures established to carry out medical checkups of decontamination workers, the regularity and consistence of their implementation and measures taken by your Excellency's Government to limit the risk of their exposure to radiation and to ensure decontamination workers' access to any needed healthcare, including treatment and rehabilitation.
4. Please provide information regarding the circumstances and underlying reasons, which led the Japanese authorities to take a decision to raise the exposure limit for decontamination workers. Consequently, we would also appreciate receiving further information on any special considerations

which have been undertaken for prevention of risks and providing remedy as a result of the increased dose limits.

5. Please explain the modalities which are in place for ensuring the suitability of the recruitment process of decontamination workers, the screening process of the suitability of contractors and sub-contractors involved in the Fukushima decontamination process and measures, which are being undertaken by the Japanese authorities, including local authorities of the Fukushima Prefecture for ensuring compliance with existing norms and regulations.
6. Please explain if any trainings are being provided to workers, including migrant and homeless workers, with the aim of ensuring that they are not a risk to themselves or others before starting the work.
7. Please also provide additional information on any measures your Excellency's Government has put in place to prevent, investigate, punish and redress numerous human rights abuses to which decontamination workers have allegedly been subjected to by contractors and sub-contractors.

We would appreciate receiving a response as soon as possible. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken with a view to protect public health and the environment; and to ensure the accountability of any person responsible for any alleged violation.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.



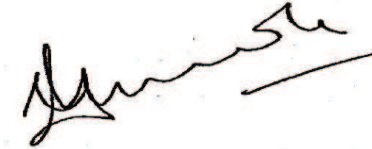
Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes



Dainius Pūras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health



Urmila Bhoola

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The International Convention on the Elimination of All Forms of Discrimination Against Women;

We wish to draw your Excellency's Government's attention to obligations under international human rights instruments, to which Japan is party, recalling Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which guarantee the right of every individual to life, liberty and security. The UDHR proclaims that every organ of society shall strive to promote respect for human rights and fundamental freedoms and to secure their universal and effective recognition and observance. We would also like to call your attention to General Comment No. 6 of the Human Rights Committee (HRC) on the right to life. According to the HRC, the expression "inherent right to life" should not be interpreted in a restrictive manner. The protection of the right to life therefore requires States to adopt positive measures to implement this right, including measures to reduce infant mortality and increase life expectancy.

We would also like to draw your attention to Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The right to health is also guaranteed as a part of the UDHR, Article 25, which is read in terms of the individual's potential, the social and environmental conditions affecting the health of the individual, and in terms of health services. General Comment No. 14 describes the normative content of ICESCR Article 12 and the legal obligations undertaken by the States parties to respect, protect and fulfil the right to physical and mental health. In paragraph 11 of General Comment No. 14, the Committee on Economic, Social and Cultural Rights (CESCR) interprets the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information".

We would also like to draw your Excellency's Government's attention to Article 7 of the ICESCR, enshrining the right of everyone to the enjoyment of just and favourable

conditions of work, including safe and healthy working conditions. In relation to the right to healthy natural and workplace environments, General Comment No. 14 provides that improvement of all aspects of environmental and industrial hygiene comprises, *inter alia*, “preventive measures in respect of occupational accidents and diseases” and “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” (para 15).

Moreover, the CESCR in General Comment No. 14 indicates that States are required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose, they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil (para. 36). General Comment No. 14 also notes that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). This is further codified in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 12 and in Article 5(e)(iv) of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The right to maintain wholesome or healthy living is also enshrined in Article 25 of the Constitution of Japan. These provisions in the Japanese Constitution and human rights instruments for the basis of the right to avoid unnecessary exposure to radiation.

We believe it is pertinent to refer to the thematic report presented by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes to the thirty sixth session of the Human Rights Council in September 2017 (A/HRC/36/41), which included guidelines for good practices in relation to the human rights obligations related to the environmentally sound management and disposal of hazardous substances and waste. The report stated, *inter alia* that the enjoyment of the right to information is critical in the context of toxics. Despite notable improvements in many countries over recent decades, the right to information remains insufficiently realized in the area of hazardous substances and wastes, particularly with respect to protecting the most vulnerable from adverse impacts of exposure, whether from consumer products, at the workplace or via food, water, air or other sources. Information on toxics is essential in order to prevent adverse impacts, to ensure the realization of freedom of expression and to enable individuals and communities to participate in decision-making processes and to seek and obtain remedy.

We would also like to reiterate the report by the former Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health after his visit to Japan in November 2012. The Special Rapporteur encouraged the Government to address a number of serious challenges and to consider particular areas for improvements in the nuclear emergency response system; including the scope and extent of the basic

and detailed health management surveys; the dose limits of radiation; access to accurate information on radiation and its impact on health; the transparency and accountability of the nuclear industry and regulatory authority; and participation of affected communities in decision-making processes. In particular, the Special Rapporteur urged, “Even though the law requires compulsory medical check-ups for workers when they are hired, a significant number of workers, employed through layers of sub-contractors for short periods of time, are not provided with proper, effective and long-term monitoring of their health. The Government should take all measures to provide an environment that does not exacerbate their vulnerability and provide access to affordable and quality health facilities, goods and services at all times to all workers.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.