

Quest for dignity:
The meaning of the *Guiding Principles on Internal Displacement*
in the context of the Great East Japan Earthquake

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At 2:46 pm on March 11, 2011, a massive once-in-a-thousand-year earthquake with a magnitude of 9.0 occurred off the northeastern Pacific coast of Japan and triggered devastating tsunamis causing enormous damage to many human lives. According to the National Policy Agency, 14,238 people were reported dead and 12,228 missing as of 23 April. At this date, 130,935 evacuees were living in evacuation centres.

Disaster-prone Japan has formulated numerous laws and policies for disaster mitigation and relief, notably after World War II. It goes without saying that these laws and policies laid the foundation for relief assistance by government authorities in the aftermath of the March 11 massive earthquake and tsunami.

For some time, the international community has been demonstrating a growing concern for internally displaced persons (IDPs). This led to the elaboration, in 1998, of the *Guiding Principles on Internal Displacement*, a non-binding document that set forth national responsibility and the rights of IDPs, which is now recognised as ‘an important international framework for the protection of internally displaced persons’.¹ Of importance is the fact that this document covers the displacement caused by natural and human-made disasters. The evacuees of the 3.11 tsunami as well as the Fukushima Daiichi nuclear power station accident are therefore included in ‘internally displaced persons’ identified by the Guiding Principles, raising the question about its applicability in the context of the Great East Japan Earthquake.

After explaining briefly the Guiding Principles, in the following sections the author examines to what extent international standards, such as the Guiding Principles, are relevant to the Great East Japan Earthquake and how those standards could contribute to improving the conditions for evacuees.

¹ 2005 World Summit Outcome, A/RES/60/1, 24 October 2005, para. 132.

The Guiding Principles and natural disasters

Viewed against the historical background in which the Guiding Principles were elaborated, it can be argued that their main objective was to address the situations of internal displacement resulting from armed conflicts and human rights violations in the post-cold war period of 1990s. It is fair to state that the Guiding Principles overall are not explicit in terms of specific disaster responses. However, they do not completely exclude the perspective of responding to natural and human-made disasters. A descriptive identification of the IDPs in the Guiding Principles includes those who have been displaced for the reasons of 'natural or human-made disasters' (Introduction 2.), leaving room for applying the Guiding Principles to such situations.²

More explicit in this regard is the recent *IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, formulated by the Inter-Agency Standing Committee (IASC) in cooperation with the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. Taking a rights-based approach, the IASC Operational Guidelines spell out criteria in protecting persons in natural disasters on the basis of international human rights law and other relevant standards. By nature, the IASC Operational Guidelines reflect the context of assistance activities in developing countries (sometimes in conflict situations) with an emphasis on outside actors' involvement rather than national response. Although having such an aspect, the IASC Operational Guidelines form a basic reference document for disaster response and the expectation is that they will be used to complement the Guiding Principles in various disaster situations.

The relevance of the Guiding Principles in the context of the Great East Japan Earthquake

So how relevant are the Guiding Principles in the context of the Great East Japan Earthquake? Actually, disaster-prone Japan has quite a number of disaster-related laws and policies, such as the Disaster Relief Act (1947), Disaster Countermeasures Basic Act (1961), and Act on Support for Livelihood Recovery of Disaster Victims (1998), to mention just a few. This gives the impression that it is unnecessary to refer to the Guiding Principles.

² It is true that even without the mention of 'natural disasters' in the descriptive identification, the Guiding Principles would be applicable to disaster-induced displacement, the 'in particular' clause ('in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters') being merely indicative and not exhaustive.

However, compared with the international trends in protection of persons in natural disasters, Japanese disaster-related laws and policies show a number of limitations. While stipulating administrative measures in detail, these laws and policies are, on the whole, not specific about the rights and dignity of disaster victims. Of course, the Disaster Countermeasures Basic Act clearly declares that the government should safeguard life and protect physical security and property from the danger of disasters (Article 3). As for the Disaster Relief Act, it certainly stipulates that it aims to *protect* disaster-affected people and secure public order (Article 1), and Article 23 of the Act identifies specific assistance based on the purpose of Article 1. However, despite its direct influence on protecting the lives of people in dire straits, the Disaster Relief Act and its enforcement ordinance, focusing too much on administrative procedures for conducting support operations, do not refer to the grand ideal of protecting the right to minimum standards of living and the dignity of those evacuated. The silence is striking.

As for the Guiding Principles, there are several factors to be considered when this document is to be applied in disaster situations. Compared with Japanese disaster-related laws and policies that include detailed stipulations on administrative measures, the Guiding Principles are written in a simple manner, presenting only broader, fundamental principles. To become concrete, this document still needs detailed mechanism of application. What could be inconvenient might be the fact that the Guiding Principles, by assuming a situation of humanitarian crisis, even mention genocide, murder, summary or arbitrary executions and enforced disappearances (Principle 10 (1)), hinting an atmosphere of extreme tension. Apparently such principles are difficult to apply to natural disasters in Japan. In addition, the Guiding Principles emphasise the importance of national responsibility, but in disaster situations, response capacities of government and municipalities could be either reduced or stretched and public activities have sometimes their limits. The Guiding Principles do not reflect the realistic idea that public authorities cannot avoid relying upon citizens' self-help and mutual help (the triangle of self-help (*jijō*), mutual help (*kyōjō*) and public help (*kōjō*) has been the dominant discourse in the disaster management in Japan). Moreover, the importance of assuring equity in protection and assistance activities is not necessarily clear in this document. Although the Guiding Principles aim to protect those who are displaced, in reality, it is essential not to overlook the needs of other non-displaced persons, who could be equally or more vulnerable (as is the case with the tsunami affected areas in Japan). That is, a primary criterion for protection and assistance should be the vulnerability of individuals, not necessarily the displacement itself.

It is true that the Guiding Principles may not be suited in a perfect manner to the

context of the Great East Japan Earthquake. However, this document contains a comprehensive set of human rights standards required in various situations of internal displacement. If one carefully chooses the relevant provisions from among the Guiding Principles, the selected principles can be effective guides in natural and human-made disasters. Let us examine specific examples with reports of the current situation.

There were reports about elder people dying in extremely severe conditions in evacuation centres in the initial phase (the *Yomiuri Shimbun* newspaper of 11 April mentions the number of such elder persons as 282). Local doctors still warn that as people live in evacuation centres longer, more elder people develop pneumonia and other diseases. We should remember that Principle 4 (2) stipulates that ‘Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs’. In light of this provision, much consideration should be given for especially vulnerable categories of affected peoples living in northeastern Japan.

In addition, securing privacy in evacuation centres has become an important issue. One report indicates that mothers and families with infants are obliged to live in uncomfortable and problematic situations.³ Unisex changing rooms and restrooms are particularly uncomfortable and problematic for women. Principle 18 (3) of the Guiding Principles stipulates that ‘Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies’. This could be considered as demanding that gender considerations should be reflected in planning the support for securing the necessities of life for evacuees.

According to some reports, restroom sanitary disposal in evacuation centres is not always appropriately conducted and increasing cases of diarrhoea and vomiting due to poor hygiene have been observed.⁴ It is significant to note Principle 11 (1) of the Guiding Principles declaring that ‘Every human being has the right to dignity and physical, mental and moral integrity’. The IASC Operational Guidelines also state that ‘The right to shelter should be respected and protected. It should be understood as the right to have an accommodation allowing persons to live there in security, peace and dignity’ (B-2-3).

3 ‘Female Reporter Covers Nervous Women in Longer Shelter Living’, *The Kahoku Shimpō*, 13 April 2011 (in Japanese).

4 ‘Increasing Infectious Diseases Triggered by 40% of Poor Restrooms in Evacuation Centres’, *Kyodo News*, 31 March 2011 (in Japanese). This article reports cases of wastewater leaking from installed restrooms in collective facilities, cases of people excreting in newspapers and bags, cases of wastewater and human waste leaking out of makeshift restrooms due to shortages of cesspool cleaning trucks, and cases of people excreting in newspapers and putting the waste in buckets for lack of even makeshift restrooms.

Despite the above-mentioned facts, it is fair to say, however, that the sense of dignity is not totally lacking in the provision of protection and assistance. Even if this word hardly appears in the texts of disaster-related legislation, many examples show that it is rooted in the spirit and mindset of those who are engaged in the disaster response. Take, for example, the Miyagi Prefecture's police department. After the DNA identification showed its limit, they went so far as to clean and dry the clothes of unidentified bodies in a hope to identify them, and if it succeeds, to return these cleaned clothes to the family of a deceased person as a remembrance...

The application of the Guiding Principles to Japan

Even if some statements of the Guiding Principles are effective for the improvement of disaster victim conditions, the question remains as to how they could be applied to Japan. As a non-binding experts' document, the Guiding Principles cannot be applied to Japan (or any other countries) as in the case of a ratified treaty. (U.N. General Assembly resolutions have been prompting the 'application' of the Guiding Principles, but the application in this sense means that their provisions will be incorporated into domestic laws and policies.) Japan already has a large number of disaster-related laws and policies and in this situation, it is inconceivable that a new law or policy on the protection of disaster victims will be drafted from scratch in accordance with the Guiding Principles (which has been the case with some post-conflict countries). Otherwise, there is a possibility of evacuees filing a suit against the government to call for judicial judgments on the provision of public assistance programs by quoting the text of the Guiding Principles. However, unlike the Constitutional Court of Colombia, it is unlikely that Japanese courts would perceive the Guiding Principles as having any authority in Japan. Unless the movement from civil society and their advocacy and awareness-raising campaigns become widely active, it is unimaginable that the Guiding Principles will impact the Japanese government in the current situation.

More realistic is that the Guiding Principles could play a leading role in reexamining existing disaster-related laws and policies. It is possible that relevant provisions in the Guiding Principles and the IASC Operational Guidelines could be used as credible reference; using these documents as a benchmark or checklist would allow re-examination of the compatibility of current disaster-related legislations with international standards, and the coverage, adequate or not, of the needs of affected persons by existing legal frameworks.

In natural disasters, human rights abuses tend to occur due to the mishandling of

relief activities and operational mistakes rather than intentional violations.⁵ This seems to be the case with Japanese tsunami-hit areas. Considering the dire situation in which the evacuees and other victimised populations are placed but also the encouraging fact that many officials are endeavouring at their own levels to protect the dignity of affected persons, it seems necessary to further clarify the ideal of guaranteeing the human rights and dignity of affected individuals and to embody this ideal in disaster-related laws and policies. It must be a basic concept for disaster relief as well as a superordinate framework for administrative measures.

Conclusion

As evacuees reside longer in evacuation centres, some observers hold the critical view that those people are denied opportunities for a human life, and that their dignity as well as their life should be guaranteed.⁶ This view is quite to the point. Recent trends in protection of persons in situations of natural disasters are decidedly shifting to the full protection of human rights. Such an orientation offers insightful suggestions for disaster-prone Japan. The time is right for such discussions to be promoted in Japan as a nationwide issue of concern to bring its disaster-related laws and policies closer to international standards.

This article is based on a manuscript in Japanese which appeared in the June 2011 issue of the monthly legal journal Horitsu Jiho published by Nippon Hyoronsha.

⁵ In this sense, see the *Report of the Representative of the Secretary-General on the human rights of internally displaced persons*, Walter Kälin, A/HRC/13/21, 5 January 2010, para. 44.

⁶ 'Evacuees' Dignity Should Be Secured: Yukio Takasu, a special adviser on human security to U.N. Secretary-General', *Jiji Press*, 15 April 2011 (in Japanese).

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