International Human Rights Law and Nuclear Disasters

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Key Sources

• Disasters and human rights, CIDCE 2010
• Ethical principles on disaster risk reduction and people’s resilience, Council of Europe 2012
• Protection of persons in the event of disasters, International Law Commission, 2014
• Waseda-Sendai, CIDCE recommendation on human rights and medical management in nuclear disasters 2014-2015
Nuclear Law and Human Rights Law

• *Convention on Early Notification of a Nuclear Accident* (IAEA-1986): information received “may be used without restriction, except when such information is provided in confidence by the notifying State Party” (art.5-3); further information/consultations “as far as is reasonably practicable“ (art. 6).

• *Convention on Assistance in the Case of a Nuclear Accident Or Radiological Emergency* (IAEA-1986): “protect life, property and the environment from the effects of radioactive releases.” (art 1-1)

• BUT “requesting State and the assisting party shall protect the confidentiality of any confidential information that becomes available to either of them in connection with the assistance in the event of a nuclear accident or radiological emergency. Such information shall be used exclusively for the purpose of the assistance agreed upon.(art.6)
Human Rights Treaties Ignore Nuclear Disasters

• 35 universal and 4 regional treaties
• *General Principle: Universal application everywhere and always to any situation*

In all HR treaties, disasters are mentioned only twice:


- **African Charter on the Rights and Welfare of the Child** (1990), art.23: “natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused.”
No Exemption of Human Rights in the case of Disasters

• The Right to life is non-exemptible
• If there is an Exemption Clause, it should apply only to:

- An officially proclaimed state of public emergency that threatens the life of the nation (International Covenant on Civil and Political Rights (1966), art. 4)
- “war or other public emergency threatening the life of the nation” (European Convention on Human Rights (1950), art. 15)
No regression on human rights motivated by nuclear disasters

- General principle: there should be no regression of human rights. They should progress continuously.
- Reduction or abolishment of Human Rights is prohibited.
- Applied to the Human Right to the Environment: no retrogressive measures are permitted
- Since Rio+20: no backtracking in environmental issues as in Human Rights
Fukushima Nuclear Disaster and the Right to Health

• Anand Grover report (2013): Japan violates the right to health: Human Rights Council makes 29 recommendations and critics
  – Disaster Management, information, displacement of populations, little or no iodine distribution, health control gaps, return of population in 20 msv exposed areas instead of 1 msv; bad management of radioactive land and waste.
Main Human Rights to be strengthened for nuclear disaster risk management

Specific human rights provisions must be introduced in the event of a nuclear disaster:

• Right to health for future generations;
• Right to information and the freedom of expression on nuclear risks, (EHRC 2006, Mamère / France);
• Right to compensation, EHRC on Tchernobyl;
• Rights of displaced persons: international law and human rights law gap – nothing exists for nuclear disasters
• Right to damages resulting from a nuclear disaster shall not be subject to any statute of limitation instead of the 10-year statute of limitations of the 1960 Paris Convention

• Radioactive contamination resulting from nuclear industry activities or a nuclear disaster should be recognized as a Crime against Humanity under the Rome Statute of the International Criminal Court, as inhumane act.
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