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Compensating the Victims of Japan's 3-11 Fukushima Disaster

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Compensating the Victims of Japan’s 3-11 Fukushima Disaster

*Eric A. Feldman**

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I. INTRODUCTION

Japan’s March 2011 triple disaster—first a large earthquake, followed by a massive tsunami and a nuclear meltdown—caused a devastating loss of life, damaged and destroyed property, and left hundreds of thousands of people homeless, hurt, and in need.¹ This article looks at the effort to address the financial needs of the victims of the 3/11 disaster by examining the role of public and private actors in providing compensation, describing the types of groups and individuals for whom compensation is available, and analyzing the range of institutions through which compensation has been allocated. The story is in some ways cause for optimism—billions of dollars have been spent compensating millions of individuals and businesses, in most cases through extra-judicial channels that have minimized the need for protracted, expensive litigation. But this article also reveals a compensation structure that excludes large numbers of potential claims by privileging the losses of nuclear accident victims over those of earthquake and tsunami victims; describes a system in which those potentially eligible for compensation must navigate an overly complex

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¹ NATURAL DISASTER AND NUCLEAR CRISIS IN JAPAN: RESPONSE AND RECOVERY AFTER JAPAN’S 3/11 (Jeff Kingston, ed., 2012).

institutional matrix for pursuing their claims; and discusses an increasing amount of litigation by individuals and groups within and beyond Japan that has clouded the compensation landscape. In short, post-Fukushima compensation is both laudable and lamentable, relying upon arbitrary distinctions between deserving and undeserving victims and leaving many victims unpaid and discontent; but also succeeding in managing a large number of claims.

II. CLASSIFYING DISASTERS AND DISASTER VICTIMS

Mass disasters are a risk for citizens everywhere, and in the wake of such disasters many people suffer significant losses of property and physical harm.² As a result, almost every country in the world, and many transnational organizations, have confronted the question of how they should manage the personal injuries and property losses suffered by the victims of mass disasters. That question invites at least three important distinctions. First, we need to be clear about what we mean by a disaster and how disasters differ from accidents. It is easy to illustrate the latter: two cars colliding constitute an accident; a bridge full of cars that collapses due to an earthquake is a disaster. However, beyond the idea that one knows a disaster when confronted with a disaster, there is no widely accepted definition of the term. Indeed, a manual compiled for use by FEMA in a class entitled *Hazards, Disasters and U.S. Emergency Management: An Introduction*, includes sixty-six definitions of disaster, but does not settle on any of them.³ Despite the lack of a clear definition, most people working in the disaster field agree that for something to constitute a disaster it needs to affect a ‘large’ number of people and cause a ‘substantial’ amount of harm.⁴ That definition, despite its vagueness, is widely utilized by those in the disaster field, and is the one used in this article.

The second important distinction is that although disasters may be similar in terms of their impact (they affect many people and cause substantial harm), disasters differ with regard to their causes and characteristics. Some disasters arise from distinctly natural causes, such as heat waves or floods; others are caused by human agency, such as the

² It should be noted that those losses, though not predictable, are often not random; they fall disproportionately on those who were already economically disadvantaged. See e.g. Bob Bolin, *Race, Class, Ethnicity, and Disaster Vulnerability*, in HANDBOOK OF DISASTER RESEARCH (H. Rodriguez et al. eds., 2006); Paul Mohai et al, *Environmental Justice*, 34 ANN. REV. ENVT. & RESOURCES 405 (2009).

³ Wayne Blanchard, Appendix: Select Emergency Management-Related Terms & Definitions (July 28, 2006), available at <https://training.fema.gov/hiedu/docs/hazdem/appendix%20-%20select%20em-related%20terms%20and%20definitions.doc> (compiled for use in the FEMA Emergency Management Higher Education Project working draft course *Hazards, Disasters and U.S. Emergency Management: An Introduction*)

⁴ DISASTER LAW AND POLICY (Daniel Farber et al., eds., 2nd ed. 2009).

Chernobyl nuclear accident. Of course, the line distinguishing the two is often thin, since many natural disasters are at least in part the result of human agency. A tsunami may be a natural event, for example, but the harm it causes to human communities results at least in part from the decision to build communities near the sea. Likewise, it can be difficult to differentiate natural disasters from technological disasters.⁵ To the extent that sorting disasters by type is possible, it raises the question of whether that sorting should be relevant to compensation. Should victims of floods, for example, be compensated but not victims of fires? Should compensation be provided to victims of earthquakes but not tsunamis, or perhaps to victims of nuclear disasters but not to victims of natural disasters?

The third key distinction focuses not on the nature of disasters but on the nature of victims. There are, of course, a wide range of people who suffer physical harm and property loss as the result of some misfortune, including the terminally ill, victims of automobile crashes, those who catch dangerous infectious diseases, and patients who have adverse reactions to medications or medical procedures. Disaster victims are thus only a subset of a larger class. Should they be treated differently from victims of other types of misfortunes and accidents? Should countries be distinguishing between deserving and undeserving victims? How should countries deal with victims of bad luck, or victims who in some sense caused their own harm? In short, do disaster victims have a special claim to society's resources, or should they be compensated if, and only if, the usual rules of tort law, like fault-based liability, can be satisfied?

These are not new questions or new distinctions. In fact, they have been debated for centuries. But that debate has rarely led to a decisive policy approach to disaster management. As a result, when the inevitable disaster strikes, nations are left scrambling for ad hoc solutions to extraordinarily complex problems with huge moral and financial implications. That is precisely the position Japan found itself in on March 11, 2011, when it was jolted by a huge earthquake, inundated by a massive tsunami, and showered with radiation from a nuclear accident.

III. FUKUSHIMA: BACKGROUND

Japan's experience with the Fukushima disaster is a prime example of what happens when government regulators fail to carefully plan for the inevitable occurrence of a disaster. It is also a poignant illustration of the distinctions discussed in the preceding paragraphs. For example, while Fukushima was clearly a disaster, was it a triple-disaster, as so many have called it, or a single disaster?⁶ That may seem like a purely academic

⁵ The 3/11 Fukushima nuclear meltdown, for example, was the product of an earthquake and a tsunami, which makes it difficult to think of the nuclear accident as a purely technological disaster.

⁶ Elizabeth Ferris and Mireya Solís, *Lessons from Japan's Triple Disaster: Three Years On*, BROOKINGS UP-FRONT (March 10, 2014, 11:53 AM),

question, but it has important consequences. If 3/11 was a triple disaster—earthquake + tsunami + nuclear meltdown—then there were three groups of victims, and that invites drawing distinctions between them. Perhaps the victims of the earthquake should be treated differently than the victims of the tsunami, or the victims of the tsunami should be treated differently than those of the nuclear meltdown. On the other hand, if Fukushima was a single disaster—perhaps because one does not think the causes or consequences of the three events can be successfully disentangled—then there is only one group of victims and distinguishing between individual victims will require criteria that engage the qualities of the victims rather than the qualities of the disaster.

The Japanese government confronted the question of whether to treat the disaster singularly or jointly early on, and it quickly decided that Fukushima was a triple disaster, not a singular disaster. The reason for doing so had little to do with its investigation of the geological or technological causes of the accident. Indeed, conceptually, it is a bit difficult to appreciate the scientific reasoning behind such a decision—the earthquakes and tsunamis are inherently intertwined, and the meltdown was their direct result—but economically the decision made perfect sense.

Treating Fukushima as a single disaster meant that an enormous pool of victims might potentially confront the Japanese Government, demanding compensation. Victims could organize, lobby, politic, and demand recompense in huge numbers—almost 20,000 people killed and over 200,000 displaced—with the potential to exert enormous pressure on the government.⁷ By considering Fukushima a triple disaster, the government created three groups of victims—those harmed by the earthquake, tsunami, and nuclear accident—making it more difficult for the victims to organize as a single group. The triple disaster designation additionally enabled the state to split victims into those ‘deserving’ and ‘undeserving’ of compensation. There was nothing sinister about the government’s approach. It was, in essence, a business decision that took into account the high volume of potential claimants and determined that it was probably not financially possible for the government to provide them all with a meaningful amount of compensation from the general fisc.

<http://www.brookings.edu/blogs/up-front/posts/2014/03/11-japan-triple-disaster-ferris-solis>.

⁷ As of April 10, 2015, 15,891 people were killed and 2,579 were missing. 127,833 properties suffered total collapse, while 275,791 suffered half collapse. DAMAGE SITUATION AND POLICE COUNTERMEASURES ASSOCIATED WITH 2011 TOHOKU DISTRICT – OFF THE PACIFIC OCEAN EARTHQUAKE, National Police Agency of Japan (April 10, 2015), http://www.npa.go.jp/archive/keibi/biki/higaijokyo_e.pdf. Nearly 290,000 people were still living in shelters two and a half years after the disaster. Preston Phro, *Nearly 290,000 People Still Living in Shelters 2 ½ Years After Tohoku Disaster*, JAPAN TODAY (Sep. 18, 2013, 6:51 AM), <http://www.japantoday.com/category/national/view/nearly-290000-people-still-living-in-shelters-2-12-years-after-tohoku-disaster>.

There were other equally difficult questions confronting the Japanese government in the aftermath of the 3/11 disasters. One was whether Fukushima was exclusively a disaster, or a disaster in addition to an accident, a question which raises the issue of the foreseeability of the nuclear meltdown and the possibility of culpable parties. A second question was the nature of the disaster and whether it was a 'normal' disaster or a 'grave natural disaster,' a determination with serious implications for the liability of the owner/operator of the nuclear facility. Both of those questions will be addressed later in this article.

IV. JAPAN'S NUCLEAR LIABILITY SYSTEM

When Japan began its move toward nuclear energy in the 1950s and 1960s, it mimicked the international liability standards for nuclear incidents evolving in other nations. Those standards were articulated in discussions preceding the ratification of the first international treaty addressing nuclear accidents: the OECD's Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention), adopted in 1960 by various nations in Western Europe.⁸ The Convention focused on cross-border harms and was triggered when a nuclear incident occurred in a nation that ratified the agreement and caused damage in another ratifying nation.⁹ Soon after it was adopted, the Paris Convention was supplemented by the Brussels (Supplementary) Convention of 1963, which established a system whereby all signatories of the Paris Convention would use public money to contribute to a compensation fund if the funds set aside under the Paris Convention were inadequate.¹⁰ The key principles of the Paris and Brussels Conventions are:

⁸ See *Paris Convention on Nuclear Third Party Liability*, July 29, 1960, available at <https://www.oecd-nea.org/law/paris-convention.html> (last reviewed November 7, 2014) (providing background information and status of ratifications and accessions) [Hereinafter *Paris Convention*].

⁹ See Christophe Bernasconi, *Civil Liability Resulting from Transfrontier Environmental Damage: A Case for Hague Conference?*, Hague Conference on Private International Law, Preliminary Document No. 8, at 5 (April 2000), http://www.hcch.net/upload/wop/gen_pd8e.pdf (providing an overview of the Paris and Vienna Conventions); INTERNATIONAL ATOMIC ENERGY AGENCY, *THE 1997 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE AND THE 1997 CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE: EXPLANATORY TEXTS* (2004), <http://www.iaea.org/About/Policy/GC/GC48/Documents/gc48inf-5expltext.pdf> (providing background to the Paris and Vienna Conventions and the motivation driving their implementation).

¹⁰ See Anthony Adisianya, *Different Compensation Systems Under Nuclear Liability Conventions*, *The Centre for Energy, Petroleum and Mineral Law and Policy* (May 16, 2011), <http://www.dundee.ac.uk/cepmlp/gateway/?news=31321> (comparing different nuclear liability regimes on issues of coverage, liability limitations, and the relevance of national law).

- nations are obligated to provide compensation in the event of death, personal injury, or property loss caused by a nuclear accident occurring in a nuclear facility or during the transport of nuclear substances to or from a nuclear facility;
- operators of nuclear facilities are strictly liable for the harms that result from nuclear accidents, and victims do not have to demonstrate that the owners/operators were at fault (victims are not relieved of the need to prove causation);
- the liability of operators is capped, so that their obligation to pay compensation regardless of fault has a clear financial ceiling;
- claims are governed by a statute of limitations that expires after ten years;
- operators must maintain insurance or other financial security to cover their mandated liability limits;
- governments can make up the difference if operators experience a shortfall;
- compensation is paid regardless of a victim's nationality, domicile, or residence.

In 2004, both the Paris and Brussels Conventions were amended and liability limits were increased. Under the amendments (not yet in force as of May 2015), victims of nuclear accidents are guaranteed a €1.5 billion compensation fund, with €700 million paid by the owner/operator of the facility, €500 million paid by the state where the accident occurred, and €300 million paid from the pool of funds contributed by members of the Convention.¹¹

Although Japan is not a signatory to the Paris or Brussels Conventions, the Japanese government appreciated the need for a structured compensation fund for victims of nuclear accidents. Such funds, in Japan and elsewhere, were part of a broad policy bargain between governments, power companies, and the public: governments needed cleaner, cheaper energy; companies were keen to enter a new, profitable energy sector; and the public wanted cheaper energy but was concerned about the risks of nuclear reactors, particularly after the use of atomic bombs in WWII. To calm public concerns, governments crafted compensation policies in the event of a nuclear accident.¹² Risk was privatized by imposing strict, no-

¹¹ See NUCLEAR ENERGY AGENCY, *2004 Protocol to Amend the Paris Convention*, <https://www.oecd-nea.org/law/paris-convention-protocol.html> (last updated Mar. 18, 2014) (providing background information on the Protocol).

¹² See, e.g., S. REP. NO. 85-296, at 8 (1957) (describing the “basic approach” of the Joint Committee responsible for the 1957 Price-Anderson Act as “[determining] the amount of financial protection which the licensee for reactors must have to protect the public against nuclear incidents.”); *Paris Convention supra* note 8 (“Desirous of ensuring adequate and equitable compensation for persons who suffer damage caused by nuclear

fault liability on the owners/operators of nuclear power plants, but also socialized by using public funds to ‘fill the gap’ between the mandated private insurance of the industry and the actual cost of an accident.¹³

Japan’s legal framework for nuclear compensation, the Nuclear Damage Compensation Act of 1961 (NDCA), owes much to the Paris and Brussels Conventions.¹⁴ The NDCA makes nuclear power plant operators strictly liable for nuclear accidents and requires that they financially secure their liability with JPY 120 billion (JPY 5 billion in 1961, later increased to JPY 120 billion) of private insurance as well as through an indemnity agreement with the government.¹⁵ Because the law releases insurers from liability in the event that an earthquake or other natural disaster causes a nuclear accident, the victims of the 3/11 nuclear disaster were compensated by the Tokyo Electric Power Company (TEPCO) through funds raised by the indemnity contract with the state. The law also releases nuclear facility operators from liability if a nuclear accident is caused by a ‘grave natural disaster.’ Although TEPCO, the owner/operator of the troubled Fukushima reactors, argued that the 3/11 earthquake-tsunami-nuclear meltdown constituted a ‘grave natural disaster,’ the Japanese government was clearly not interested in releasing the company from liability. It rejected the view that a ‘grave natural disaster’ had occurred, and instead proceeded under the provisions of the NDCA.¹⁶

As odd as it may sound, those in the Fukushima area whose losses are legally considered to have been caused by the nuclear accident are perhaps the most ‘fortunate’ of the large pool of people who suffered, and continue to suffer, in the aftermath of the 3/11 disaster. The great majority

incidents whilst taking the necessary steps to ensure that the development of the production and uses of nuclear energy for peaceful purposes is not thereby hindered.”).

¹³ For a discussion on how the use of public funds has diverged over time, see Michael G. Faure & Tom Vanden Borre, *Compensating Nuclear Damage: A Comparative Economic Analysis of the U.S. and International Liability Schemes*, 33 WILLIAM & MARY ENV’T L.L. & POL’Y REV. 219 (2008).

¹⁴ [Nuclear Damage Compensation Act], Act No. 147 of 1961.

¹⁵ Eric Feldman, *Fukushima: Catastrophe, Compensation, and Justice in Japan*, 62 DEPAUL L. REV. 335, 341 (2013) (citing [Nuclear Damage Compensation Act], Act No. 147 of 1961, §§3, 7 (Japan), available at <http://www.oecd-nea.org/law/legislation/japan-docs/Japan-Nuclear-Damage-Compensation-Act.pdf>). See also NUCLEAR ENERGY AGENCY, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, PUB. NO. 7089, JAPAN’S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE: AS RELATED TO THE TEPCO FUKUSHIMA DAIICHI NUCLEAR ACCIDENT 11 (2012), available at <http://www.oecd-nea.org/law/fukushima/7089-fukushima-compensation-system-pp.pdf> [Hereinafter “JAPAN’S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE (OECD)”].

¹⁶ Feldman, *supra* note 15, at 343 (citing Masayuki Murayama, *There are Few Cases Around Here: Lawyers’ Response to Nuclear Compensation and Structural Problems of the Japanese Legal Profession* (unpublished manuscript) (on file with author)).

of the damage caused by the Fukushima disaster was due to the earthquake and/or tsunami—the almost 20,000 deaths, the hundreds of thousands of destroyed buildings, the massive loss of crops and other businesses.¹⁷ Yet those whose lives were taken or shattered by the events of 3/11 have few options when it comes to compensation. There is no structured compensation program for disaster victims generally in Japan, no specific program or legislation provides more than token compensation to victims of earthquakes or tsunamis, and there is no mandatory insurance (and often no available insurance) for those who live in disaster-prone areas.¹⁸ It is therefore crucial to remember that compensation is available only for a relatively small subset of Fukushima victims—those whose harms can be causally linked to the nuclear accident. Of course that group includes a large number of people, but it is a relatively small percentage of those who experienced significant loss from the disaster of March 11, 2011.

Structured, no-fault systems are not the only way for disaster victims to deal with their harms. The cost of treating most personal injuries is covered in whole or in part by Japan's generous social insurance system, which provides high quality medical care for a relatively modest fee. For care not covered by that system, and for other costs like damaged or destroyed property, individuals can sue one or all of the potentially responsible parties—TEPCO, the government, the manufacturers of the nuclear power plant equipment, and any other solvent party who might be found to have been the cause of their harms.¹⁹ Although such remedies are available, litigation is generally a long, expensive, and emotionally draining experience. This means that the absence of a compensation system for so many Fukushima victims is a loss that is not easily remedied.

¹⁷ More than 90% of the deaths were caused by the tsunami, and almost all of the remaining deaths were caused by the earthquake.

¹⁸ The Act for the Payment of Solatia for Disasters provides JPY 5 million to families that lose their main wage earner to a disaster, and JPY 2.5 million in the event of the loss of the non-primary breadwinner. See <http://www.mhlw.go.jp/bunya/seikatsuhogo/saigaikyujou4.html>. Disaster victims can receive JPY 3 million under the Act Concerning Support for Reconstructing Livelihoods of Disaster Victims. See <http://www.bousai.go.jp/taisaku/seikatsusaiken/shiensya.html>.

¹⁹ Articles 4(1) and 4(3) of the NDCA suggest that only nuclear operators are liable for the harm caused by nuclear accidents (“...no person other than the nuclear operator who is liable for the damage pursuant to the preceding section shall be liable for the damage.”). Opinions vary as to whether or not that eliminates the possibility of suing equipment manufactures or the government over Fukushima-related nuclear harms, but most commentators believe that manufacturers cannot be sued whereas the government can be a defendant (personal communication with Professor Eri Osaka). So far, no court decisions have addressed these questions. Of course, lawsuits that might fail in Japanese courts may meet greater success outside of Japan. See the discussion of *Cooper et al v. Tokyo Electric Power Company, Inc.*, Docket No. 3:12-cv-03032 (S.D. Cal., filed Dec 21, 2012), in Section V.C below.

V. COMPENSATING FUKUSHIMA'S NUCLEAR MELTDOWN VICTIMS

Individuals whose harms were caused by the nuclear meltdown can seek compensation in three ways.²⁰ The first, called the 'direct' route to compensation, is shaped by guidelines issued by the Dispute Reconciliation Committee for Nuclear Damage Compensation and is meant to address the bulk of losses caused by the nuclear accident.²¹ The second, alternative dispute resolution ("ADR"), was set up under the auspices of the Ministry of Education, Culture, Sports, Science, and Technology (MEXT), and focuses on compensating categories of people not included in the guidelines, including children, the disabled, and pregnant women.²² The third is litigation.

A. TEPCO'S 'Direct' Compensation

The complexity of the direct route to compensation, provided for in the NDCA, is well illustrated by Chart 1 (created by the OECD to explain the funding and operation of the system). Since 2011, TEPCO has issued more than 70 press releases addressing claimant eligibility, institutional architecture, financing, and other aspects of the system, which makes it extremely difficult to provide a crisp, accurate summary of how the compensation system operates.²³ What follows is therefore a general description and overview of the direct compensation system.

²⁰ The provisions of the NDCA were applied to Fukushima through the Act on Emergency Measures Related to Damage Caused by the 2011 Nuclear Accident (Law No. 91 of 2011) which focused on enabling provisional payments in light of the uncertainties in assessing long-term damages. Financing was enabled through the Nuclear Damage Compensation Facilitation Corporation Act (Law No.94 of 2011), which covers any nuclear operator unable to bear the financial burden of compensation.

²¹ For a collection of the Guidelines issued by the Dispute Reconciliation Committee, *see* JAPAN'S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE (OECD), *supra* note 15, at 89-184.

²² Feldman, *supra* note 15, at 351-52.

²³ *Latest Press Release*, [WWW.TEPCO.CO.JP](http://www.tepco.co.jp), <http://www.tepco.co.jp/en/comp/index-e.html> (last visited May 7, 2015).

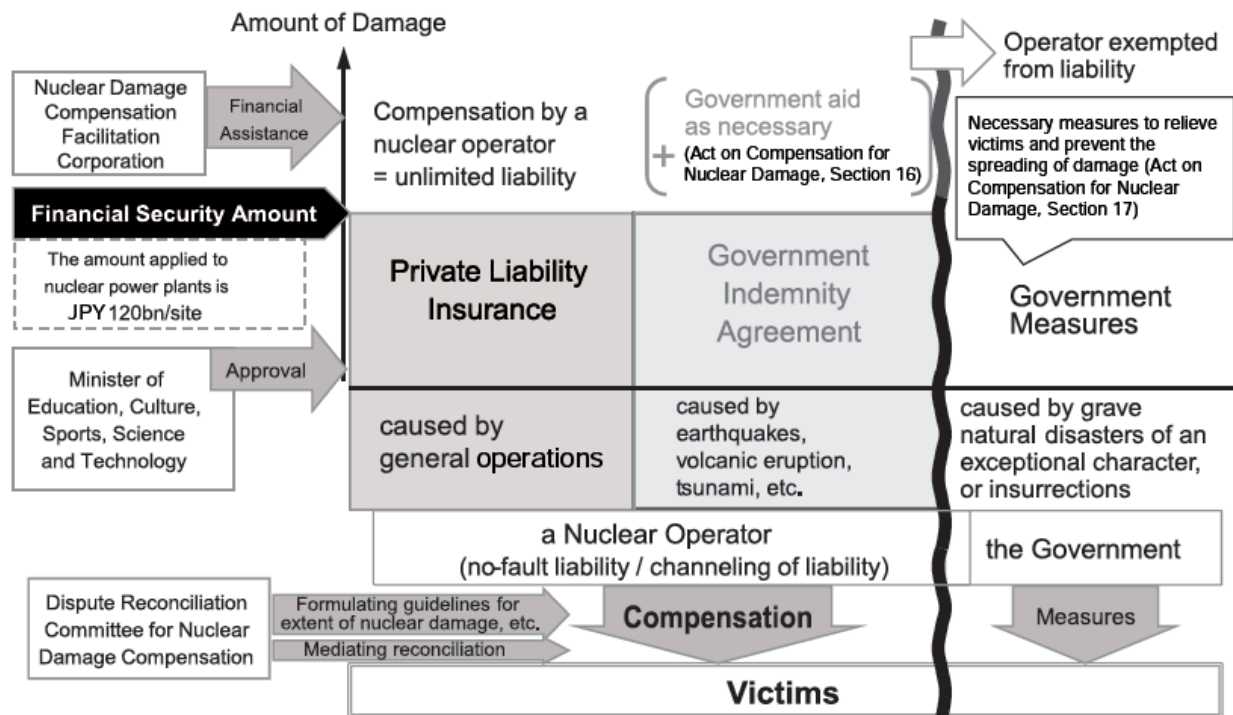


Chart 1: Overview of the Nuclear Damage Compensation System²⁴

Because the NDCA does not distinguish between compensable and non-compensable harms and lacks specifics on how much compensation should be provided to victims of nuclear accidents, the government convened a blue-ribbon committee of elite jurists, medical experts, and others, in the immediate aftermath of the Fukushima disaster and charged it with developing compensation guidelines.²⁵ After five months of meetings, the committee announced Interim Guidelines in August 2011, and over the next thirty months made more specific compensation recommendations for victims whose damages were caused by voluntary evacuation and prolonged evacuation, victims whose financial losses were caused by reputational harm (e.g., people who were fearful of food and agricultural product contamination), and for other categories of victims.²⁶ The committee's guidelines are not binding on TEPCO, but the fact that the committee included a number of highly regarded jurists with experience

²⁴ JAPAN'S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE (OECD), *supra* note 15, at 88.

²⁵ Joel Rhueben, *Government Liability for Regulatory Failure in the Fukushima Disaster: A Common Law Comparison*, 23 PACIFIC RIM L. & POL'Y J. 113, 121 (2014). For a complete list of members, see http://www.mext.go.jp/b_menu/shingi/chousa/kaihatu/016/meibo/1353534.htm.

²⁶ See *supra* note 19.

working on issues related to nuclear energy, including Waseda University President (and former Law School Dean) Kaoru Kamata and Gakushuin University legal scholars Yoshihisa Noumi (committee chair) and Toyohiro Nomura, gave the committee's recommendations a significant degree of heft. Additionally, as the recommendations hewed closely to principles and distinctions based on Japanese tort law, they benefited from having face validity as a way of handling personal injury claims resulting from the Fukushima disaster.

The committee's guidelines, operationalized by a ten-thousand-person bureaucracy created by TEPCO to manage the claims process, take as their primary goal the provision of compensation for harms suffered by those required to evacuate the area contaminated by the Fukushima meltdown.²⁷ Compensable harms include evacuation expenses and relocation costs; physical harm; pain and suffering; emotional distress; lost or decreased property value; damage to business; lost income; decontamination costs; and other related harms.²⁸ Those whose homes were outside of the mandatory evacuation zone established by the government were initially left out of the compensation scheme, but they were eventually made eligible for less generous compensation than that provided to those who faced mandatory evacuation.²⁹ Due to the profound uncertainty about the severity of nuclear contamination, and the length of time evacuees would be prohibited from returning to their homes, administrators struggled to calculate the full extent of damages experienced by claimants. As a result, many awards were considered provisional, interim payments, and claimants were told that they would have to seek compensation again at some time in the future.³⁰ Ultimately, however, guidelines were established for determining whether and when people would be able to return to their homes, and a set of criteria was created to govern the valuation of temporary and permanent property loss.³¹

²⁷ TEPCO's specific compensation guidelines for individuals and businesses can be found at http://www.tepco.co.jp/en/press/corp-com/release/betu11_e/images/110830e19.pdf; and http://www.tepco.co.jp/en/press/corp-com/release/betu11_e/images/110921e13.pdf.

²⁸ Eri Osaka, *Corporate Liability, Government Liability, and the Fukushima Nuclear Disaster*, 21 PACIFIC RIM LAW & POLICY JOURNAL 433, 439 (2012).

²⁹ Feldman, *supra* note 15, at 354 (citing *Gov't Panel Sets N-Payment Scope, Amounts*, DAILY YOMIURI ONLINE (Dec. 8, 2011), <http://www.yomiuri.co.jp/dy/nationalIT11207005778.htm>).

³⁰ Rheuben, *supra* note 25, at 120 (citing Nikkei Shimbun, *Keikaku hinan mo kari-barai Kin Baishō1-settai 100-man en (KeisanshōtoTōden chōsei)* [Provisional Compensation of JPY 1 million per Household for Designated Evacuees (METI and TEPCO's agreement)], Apr. 12, 2011 (on file with author)).

³¹ See Feldman, *supra* note 15, at 347-48.

Not surprisingly, both the administrative features of TEPCO's compensation system and the substantive guidelines that animate its compensation decisions generated a significant amount of controversy. Some of the earliest conflicts focused on the procedures created for claimants to seek recompense. For example, victims, many of whom had been evacuated from their homes and were living in temporary shelters, were required to fill out and submit (in person or by mail, not online) a complex, 60-page claim form.³² The form, seen as either a conscious effort to disincentivize claims or a sign that those in charge of the compensation scheme failed to appreciate the burden such a form imposed on potential claimants, generated a great deal of unhappiness, and it was quickly shortened to a more manageable length. Other objections quickly followed. For example, some potentially eligible claimants opposed TEPCO's involvement in the compensation process. They pointed out that there was a 'fox guarding the henhouse' problem in entrusting the compensation process to the party they believed to be responsible for their harms, and they refused to seek compensation so as to not put themselves at the mercy of TEPCO.³³

Debate also erupted over the types of injuries that can be compensated under the guidelines, as well as over the amount of compensation offered.³⁴ Determining the 'right' amount of compensation for property damage, for example, generated considerable controversy. In some cases victims were able to return home relatively quickly, whereas in certain heavily contaminated areas people may never be able to reoccupy their homes. To some, it was clear that the value of such a loss should be calculated based upon the market value of the property, while others believed that replacement cost was the better measure of value.³⁵ Compensation for emotional distress has also been contentious.³⁶ Under the guidelines, payments for emotional distress depend upon whether one's

³² Osaka, *supra* note 28, at 441.

³³ Daniel A. Dorfmana, *The Changing Perspectives of U.S. And Japanese Nuclear Energy Policies in the Aftermath of the Fukushima Daiichi Disaster*, 30 PACE ENVTL. L. REV. 255, 260 (2012).

³⁴ Rheuben, *supra* note 25, at 123.

³⁵ This question has been the subject of debate between the Dispute Reconciliation Committee for Nuclear Damage Compensation and the Agency for Natural Resources and Energy of the Ministry of Economy, Trade, and Industry. I thank Professor Eri Osaka for bringing this debate to my attention.

³⁶ See, e.g., *TEPCO Rushes to Terminate Compensation for Fukushima Victims*, JAPAN PRESS WEEKLY (Feb. 18, 2013), <http://www.japan-press.co.jp/modules/news/index.php?id=5117>; Press Release, Tokyo Electric Power Company, Compensation for Mental Damage Due to Evacuation etc. (Increase of Compensation Amounts for People in Situations Such as Requiring Long-Term Care) (January 17, 2014), available at http://www.tepco.co.jp/en/press/corp-com/release/2014/1233808_5892.html.

evacuation was mandatory or voluntary and when one will be able to return to one's home. Most payments for emotional distress are made on a monthly basis and are set at 100,000-120,000 yen per month, though some payments are considerably lower.³⁷ In some cases, payments are made for a specified number of months, while in others payments are made in a lump sum.³⁸

From the perspective of tort law in the United States, such stand-alone, regularized emotional distress claims are notable. In most U.S. jurisdictions, emotional distress claims are individualized, and emotional distress awards require that claimants experience or reasonably fear a physical injury or witness tortious, serious injury to a family member. Under the Japanese Civil Code, however, stand-alone payments for emotional distress are generally permissible.³⁹ In the aftermath of the Fukushima disaster, it became clear to those involved in the compensation process that emotional distress payments would be critical to those suffering from the nuclear meltdown, since they did not experience immediate physical harm but instead had their lives destabilized because they lost their jobs, their homes, and their communities.⁴⁰

It is no surprise that the most devastating nuclear accident in Japan's history has led to criticism of the government, of TEPCO, and of the seemingly too-cozy relationship between them. Surely some of the criticism is deserved, given the failure to anticipate the need to compensate voluntary evacuees, the reluctance to offer lump sum payments to those unable to return home for multiple years, and the large population of individuals and families (over 100,000 people) who continue to live in temporary housing. When one steps back from those criticisms, however, and looks more broadly at the how the compensation system has functioned, there is also some good news. Chart 2 shows the number of compensation claims submitted to TEPCO as of April, 2015, and how they have been handled.

³⁷ The category of 'emotional distress' used in the Interim Guidelines was borrowed from Japan's system of automobile accident compensation. It is a somewhat lumpy category, and the Interim Guidelines note that the money paid under this category is meant to cover the increased living expenses of evacuees.

³⁸ See JAPAN'S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE (OECD), *supra* note 15, at 56 (chart describing determination of damage in areas subject to government instruction).

³⁹ Minpō [Minpō] [Civ. C.] art. 710 (Japan).

⁴⁰ The Preliminary and Interim Guidelines issued by the Dispute Reconciliation Committee discuss why such destabilization could lead to mental anguish. See *e.g.*, JAPAN'S COMPENSATION SYSTEM FOR NUCLEAR DAMAGE (OECD), *supra* note 15, at 95, 107, 117 & 133.

As of 04/10/15

	Individuals	Individuals (Losses due to voluntary evacuation)	Corporations and Sole Proprietors
Applications			
Applications received (cumulative)	Approx 749,000 cases	Approx 1,303,000 cases	Approx 321,000 cases
Permanent Indemnification			
Number of permanent indemnification cases(cululative)	Approx 660,000 cases	Approx 1,290,000 cases	Approx 278,000 cases
Amount of permanent indemnification ²	Approx 2,144.6 Bil Yen	Approx 353.2 Bil Yen	Approx 2,178.4 Bil Yen
Cumulative Payouts			
Permanent indemnification ²			Approx 4,676.3 Bil Yen ①
Provisional compensation			Approx 151.5 Bil Yen ②
Total amounts paid			Approx 4,827.8 Bil Yen ①+②

Chart 2: Applications and Payouts under TEPCO's Direct Compensation Scheme⁴¹

There are several things that are particularly notable about these figures. First, the number of cases that have so far been processed through the direct route to compensation is extraordinary—almost 2.4 million claims. Such a result is not just a matter of stamping a paper and putting it in a drawer. The process, at least in theory, means that the identity of the claimant is verified, the evidence submitted is reviewed, the nature of the losses is evaluated, a decision is made about how much compensation is appropriate, and a check is cut. Creating an administrative structure that can accomplish such a task is an impressive feat. When dealing with a volume of claims of this magnitude, some degree of criticism is inevitable. Indeed, what is perhaps surprising is not that there is so much criticism, but that there is so little.

The second notable feature of the table is that there is a significant gap between the number of claims submitted and the total number of permanent (as opposed to short term) payouts. Looking only at individual claims, there appears to be 89,000 claims that were submitted but not yet compensated (749,000 compared to 660,000). It is not clear how many of those claims are waiting to be processed, how many have been withdrawn or rejected, or how many involve financial offers refused by claimants. However, there are surely some that have not been deemed eligible for compensation and which may have led claimants to seek compensation through ADR or litigation, as discussed below.

⁴¹ TOKYO ELECTRIC POWER COMPANY, CHART: RECORDS OF APPLICATIONS AND PAYOUTS FOR INDEMNIFICATION OF NUCLEAR DAMAGE (Jan. 5, 2015), <http://www.tepco.co.jp/en/comp/images/jisseki-e.pdf>.

Third, the table provides the gross amount paid as compensation but does not tell us how well or how fairly particular claimants have been compensated. Inevitably, there are people who believe that they have received less than they deserve, which may be one factor leading to what appears to be an increase in litigation (*infra* Section V.C.).

Finally, and perhaps most significantly, one cannot help but notice the amount in the bottom line. So far, TEPCO has paid out close to five trillion yen in compensation. That is a staggering figure, made more so by the fact that the NDCA stipulates that TEPCO, like other nuclear energy plant owners/operators, must have resources available to pay only 120 billion yen in compensation. There is quite a gap between the mandated insurance coverage/indemnity contract and the payouts; so far, total payouts are more than forty times greater than TEPCO's liability limit, and much more will likely be paid in future months and years. The obvious consequence of owing far more than insurance will cover (and far more than the company can afford) is insolvency, but TEPCO has not declared bankruptcy.⁴² Instead, thanks to a provision of the NDCA that invites the government to cover the cost of excess payments in the event of a nuclear accident, the Japanese government has decided that providing TEPCO with financial support is consistent with and necessary to achieve the NDCA's objectives. The government has issued a series of bonds to raise funds for TEPCO, in return for which TEPCO is responsible both for repayment and for administering the compensation fund.⁴³ Opinions vary as to why the government has saved TEPCO from insolvency, but perhaps the most compelling explanation is that without TEPCO the government would be left with the task of running the compensation system by itself, a task that is not only unappealing and expensive but also one that puts the government in the position of directly paying the Fukushima disaster victims and implicitly (at least to some) taking responsibility for the accident.

TEPCO's direct compensation system is handling a massive volume of claims, and it has made and will continue to make significant payouts. That said, it is not the only way for nuclear accident victims to receive compensation. Those who are dissatisfied with TEPCO's compensation system, who do not want to be supplicants to TEPCO, who think TEPCO's compensation categories are too narrow, or who think that the amount of compensation is too low, can seek compensation through two other systems. They can bring their claims to the alternative dispute resolution system, or they can sue.

⁴² Hatsu Morita, *Rescuing Victims and Rescuing TEPCO: A Legal and Political Analysis of the TEPCO Bailout* (Mar. 21, 2012), <http://ssrn.com/abstract=2026868>.

⁴³ *Id.*

B. *Alternative Dispute Resolution*

In addition to the ‘direct’ route to compensation, the NDCA also provides for a second compensation mechanism known as alternative dispute resolution. Whereas the ‘direct’ route is thought of as the dominant, conventional approach to Fukushima compensation and the ADR program as the designated alternative, both approaches to compensation are alternatives to bringing one’s claims to the courts. The NDCA makes clear that in the aftermath of a nuclear accident the government can set up and operate a dispute resolution center that provides claimants with an alternative to seeking compensation from the owners/operators of nuclear power plants. Fukushima’s ADR system was created in May 2011 under the auspices of MEXT, the Japanese Ministry of Education, Culture, Sports, Science and Technology.⁴⁴ It began to operate in September 2011, with a head office in Tokyo and a number of branch offices in the Fukushima area. The ADR system was designed to handle cases that did not fit neatly under TEPCO’s compensation criteria and instead required particular attention. It has also been used by those not happy with TEPCO’s payments and by those who do not want to engage with TEPCO in any way. The system relies on a group of approximately 200 attorneys who serve part-time as mediators, and on junior lawyers who serve as investigators. Although the initial design called for mediators to work in panels of three, as caseloads increased mediators ended up working individually.⁴⁵

The ADR process begins when claimants—both individuals and groups—submit a relatively short and simple claim form. An investigator then reviews and researches the claim and invites claimants to a mediation session.⁴⁶ In the early days of the ADR process most claimants were not represented by attorneys, but increasingly claimants have had legal representation at mediation sessions.⁴⁷ Mediators generally make a proposal at the initial mediation session, and if a claimant rejects it a second round of mediation follows. The substantive rules that govern mediators’ determinations of eligibility and compensation come in part from the Interim Guidelines followed by TEPCO in providing ‘direct’ compensation. Mediators additionally follow fourteen ‘General Standards’ created specifically by the ADR administrators to guide decision-making.⁴⁸ The

⁴⁴ Eric A. Feldman, “No Alternative: Resolving Disputes Japanese Style,” in Joachim Zekoll, Moritz Balz, and Iwo Amelung, eds, *Formalisation and Flexibilisation in Dispute Resolution*, Boston: Brill, 2014, p. 144.

⁴⁵ *Id.*

⁴⁶ These sessions can be done in person, by phone, or via teleconference.

⁴⁷ In 2014, almost 40% of ADR claimants had legal counsel. *Business Overview of Nuclear Damages Dispute Resolution Center*, MEXT.GO.JP, http://www.mext.go.jp/a_menu/genshi_baisho/jiko_baisho/detail/1347876.htm.

⁴⁸ For a detailed, nuanced discussion of the General Standards, and Fukushima ADR generally, see Daniel H. Foote, “Japan’s ADR System for Resolving Nuclear Power-

General Standards are interpretations of the TEPCO guidelines that provide mediators with more flexibility than afforded by the guidelines themselves.⁴⁹ As a result, mediators have, for example: extended emotional distress payments beyond the time period stipulated by the guidelines; suggested some individualization in emotional distress payments (for example, to pregnant women); provided damages to those who voluntarily evacuated even when such damages were not provided for under the guidelines; and dealt with financial loss suffered by various types of businesses, such as those catering to foreign tourists.⁵⁰

Compared to TEPCO's direct compensation system, the ADR scheme has heard relatively few cases. As of April 10, 2015, 15,831 ADR applications had been filed and 12,809 had been closed, leaving 3,022 cases pending.⁵¹ Of the closed cases, 10,636 were settled, 1,094 were withdrawn, 1,078 were closed without settlement, and 1 was rejected.⁵² Of the pending cases, 372 had settlement proposals under consideration and 2,650 settlement discussions were ongoing.⁵³

Predictably, not everyone is satisfied with the ADR system. Complaints come from those who find it difficult to locate the documentation and records requested by mediators, who are unhappy about the location of mediation sites (particularly those living in temporary housing who lack private transportation), and who are critical of the slow pace of mediation, which was originally expected to take a maximum of three months but often takes longer.⁵⁴ Some also complain that ADR mediators too rigidly follow the substantive standards developed for direct compensation, which they believe are too low and overly restrictive. They express additional concern about whether mediators are being consistent in their judgments and treating like cases alike.⁵⁵

In July 2014, a more acute criticism arose. Evidence surfaced that ADR system administrators had instructed mediators to discount their awards by 50%, first determining claimants' losses and then compensating only half of that determination.⁵⁶ That revelation infuriated some ADR

Related Damage Disputes," unpublished manuscript on file with author, 2012.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Nuclear Damages Dispute Resolution Center*, MEXT.GO.JP, http://www.mext.go.jp/a_menu/genshi_baisho/jiko_baisho/detail/1329118.htm.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Feldman, *supra* note 15, at 352.

⁵⁵ *See generally*, Foote, *supra* note 48.

⁵⁶ *ADR center cheating on victims*, WWW.FUKUSHIMA-IS-STILL-NEWS.COM (July 21, 2014) <http://www.fukushima-is-still-news.com/article-adr-center-cheating-on-victims-124201522.html>; *Nuclear disaster evacuee compensation halved across board: internal*

claimants, particularly because it followed statements by ADR officials denying the existence of an internal document that established a “50% rule.” It has been reported that the ADR administrators justified the 50% rule internally by pointing to the need to decide cases quickly, without witnesses, rather than conducting a full investigation into the cause and extent of claimants’ harms.⁵⁷ Indeed, the ADR Center has made clear that it is unable to solicit or even fully take into account expert medical opinion because it would slow down the process of evaluating claims, which means that damages are determined in most cases without any input from medical experts.⁵⁸

In at least some cases, compensation paid via ADR is thought to be lower than compensation that would be paid by courts. In addition, relatively little total compensation has been paid through ADR—JPY 175.3 billion as of February 2015, which amounts to less than 4% of that paid by TEPCO.⁵⁹ As a result, some claimants who believe that they have suffered significant loss as a result of the nuclear accident have decided that their best option may be to bring their claims to court, which may help to explain the increase in litigation against TEPCO since 2012.

C. *Litigation*

Of the millions of people affected by the 3/11 disaster, only those whose harms were caused by the nuclear accident, not the tsunami or earthquake, are eligible to apply for compensation from TEPCO or via the government’s ADR system. The courts, however, are open to all: those who are dissatisfied with how their compensation claims have been resolved by TEPCO; those who believe that their ADR awards are too low; those whose harms were caused by the nuclear accident but do not want to submit their claims to TEPCO or to ADR; those who believe that they have suffered compensable harms that were not caused by the nuclear accident; those who want to use litigation as an opportunity to express their anger and publicize

document, FUKUSHIMAEmergencyWhatCanWeDo.COM (Aug. 31, 2014), <https://citizenperth.wordpress.com/2014/09/01/nuclear-disaster-evacuee-compensation-halved-across-board-internal-document/>.

⁵⁷ See *What is the Alternate Dispute Resolution (ADR) and what does it mean to the victims of Fukushima*, EVACUATE-FUKUSHIMA.COM (July 28, 2014), <http://www.evacuate-fukushima.com/2014/07/what-is-the-alternative-dispute-resolution-adr/>.

⁵⁸ *Gov’t dispute resolution proposed smaller compensation by ignoring the opinions of victim’s doctors*, FUKUSHIMAONTHEGLOBE.COM (July 21, 2014), http://fukushimaonthe globe.com/citizens_movement/litigation-movement/3814.html; *“Hibakusha” cheated on compensation & experts opinions skipped by ADR*, EVACUATE-FUKUSHIMA.COM (July 24, 2014), <http://www.evacuate-fukushima.com/2014/07/confirmed-hibakusha-adr-opinion-experts-skipped/>.

⁵⁹ *New Comprehensive Special Business Plan*, NDF.GO.JP (January 14, 2014), <http://www.ndf.go.jp/gyomu/tokujikei/kaitei20150415.pdf>.

what they see as government and/or corporate malfeasance; and, others. The result is that various claims have been filed on behalf of individuals and groups seeking compensation for harms allegedly caused by the events of 3/11.⁶⁰

So far, plaintiffs have brought a number of different types of cases to the courts. Some involve individual Japanese plaintiffs and are filed in Japanese courts. Others involve groups of plaintiffs aggregated into a single claim.⁶¹ Still others have been filed as class actions with courts in the United States. The substance of the claims also varies. Some plaintiffs who believe that they were harmed by the nuclear accident have sought to sidestep the 1961 NDCA Act, which imposes strict liability on nuclear operators, and have instead brought negligence claims against TEPCO under Section 709 of Japan's Civil Code. Such plaintiffs have demanded full compensation from TEPCO as calculated under the court's civil liability rules, which plaintiffs believe will exceed the payouts under either ADR or TEPCO's 'direct' compensation system. In addition, plaintiffs in some cases have insisted that TEPCO adopt preventative measures to ensure that future nuclear accidents do not occur and that the company apologize for the accident;⁶² have argued that the courts should reject the distinction between mandatory and voluntary evacuees when determining victim compensation; and have based civil tort claims on the argument that TEPCO interfered with the right to "wholesome and cultured living" (Article 25 of the Constitution of Japan) and to develop their personalities (Article 13 of the Constitution of Japan).

The barriers to succeeding in these types of cases are considerable. As with negligence claims more generally, many of the key legal issues involve questions of foreseeability (e.g., was a disaster of the magnitude of 3/11 foreseeable?) and causation (e.g., was the plaintiff's depression caused by the disaster, or was the plaintiff previously depressed?). Assessing damages is also extremely difficult, particularly in cases that involve exposure to radiation that poses long-term risks or cases concerning those who are unable to return to their contaminated homes for a long period of time. Other novel legal questions are also raised by these claims. One of TEPCO's arguments, for example, is that by imposing strict liability on

⁶⁰ It is difficult to know how many claims have been filed, since they can be brought to courts any place in Japan and there is no centralized database of filed cases.

⁶¹ Although recently legislation has created a class action mechanism in Japan, it will not come into force until 2016. Until then, no class action procedure is available to Japanese plaintiffs.

⁶² Eri Osaka, *Toden no Sekinin: Sekinin Konkyo ni Kansuru Rironteki Kento* [*Theoretical Analysis of the Legal Basis of TEPCO's Liability*] in FUKUSHIMA GENPATSU JIKO BAISHO NO KENKYU [RESEARCH ON FUKUSHIMA NUCLEAR ACCIDENT COMPENSATION] (Takehisa Awaji et al. eds., 2015).

nuclear power plant owners/operators, the NDCA precludes fault-based claims, an assertion that has not previously been considered by the Japanese courts. The constitutional claims are also challenging, since Articles 13 and 25 of the Constitution are generally seen as hortatory provisions that do not provide plaintiffs with specific remedies.

One highly publicized lawsuit was brought to the Fukushima District Court by the survivors of a 58-year old female evacuee, Hamako Watanabe, who had to leave her house a month after the nuclear meltdown, returned to visit her contaminated home in July 2011, and soon after self-immolated.⁶³ Prior to the Fukushima accident Mrs. Watanabe had been a chicken farmer, but after the accident she could no longer work and was separated from her children as well as from her neighbors. It also appears that before the nuclear meltdown she suffered from insomnia and was being treated for what the court described as ‘psychosomatic disorders’.

In August 2014, the court issued a ruling in a lawsuit brought by Mrs. Watanabe’s surviving husband and three children, finding a causal link between the stress of evacuation and her suicide.⁶⁴ The court attributed 80% of her suicide to Fukushima-related stress and ordered TEPCO to pay the family 49 million yen.⁶⁵ According to the court, TEPCO should have foreseen that in the event of a nuclear accident people would be forced to evacuate, and that some evacuees would become depressed and possibility suicidal. TEPCO sought to challenge the causal link between the nuclear meltdown and the plaintiff’s suicide by pointing to her history of psychological issues and arguing that her past psychological problems bespoke emotional fragility. The court, however, found that people’s reactions to stress exist on a broad spectrum and argued that the legal claims of those particularly prone to react strongly to stressful situations deserved a sympathetic hearing.

As a simple matter of logic and legal doctrine, TEPCO was clearly correct to argue that if the plaintiff was emotionally unstable before the nuclear meltdown then the meltdown could not be considered the cause of her emotional instability. Whether she was suicidal prior to the accident is unclear, but if she was, that fact would clearly be relevant to TEPCO’s liability for her death. Nonetheless, TEPCO was strongly criticized by the press for investigating Mrs. Watanabe’s emotional state. An editorial published soon after the court issued its judgment, stated:

⁶³ *Fukushima Suicide Victim’s Family Wins Damages*, THE GUARDIAN (Aug. 26, 2014), <http://www.theguardian.com/environment/2014/aug/26/fukushima-suicide-victim-family-damages-tepcO-hamako-watanabe>.

⁶⁴ *Id.*

⁶⁵ This was the first case in which TEPCO was ordered to pay a claimant. *Editorial: Ruling on Nuclear Evacuee Suicide Holds TEPCO Accountable*, MAINICHI.JP (August 27, 2014), <http://mainichi.jp/english/english/perspectives/news/20140827p2a00m0na017000c.html>.

In Watanabe's lawsuit, TEPCO effectively hinted at the weakness of her character as the cause of her suicide. The utility ought to be thoroughly ashamed of itself for making such an allegation. Whether she was strong or weak is irrelevant. There is no excuse for causing Watanabe so much stress as to drive her to suicide. Since every suicide involves a range of factors, such as problems with health or family relations, it is never easy to determine the exact cause. Still, since Watanabe's case occurred while she and her family were living as evacuees, there is no question that the nuclear disaster had either a direct or indirect effect on her decision.⁶⁶

Because TEPCO decided not to appeal the District Court decision, the legal theory underlying the case has not been fully ventilated.⁶⁷ As a result, the long-term impact of the case is not yet clear. If other courts are similarly sympathetic to claims brought on behalf of evacuees who have committed suicide, however, TEPCO will be facing a considerable financial burden. So far, aside from a suicide case TEPCO settled with the family of a farmer, no other cases involving suicide have been resolved. But other cases may be in the pipeline. Estimates from the central government's Cabinet Office indicate that there were fifty-six earthquake-related suicides in Fukushima Prefecture between June 2011 and July 2014, thirty in Iwate Prefecture, and thirty-seven in Miyagi Prefecture.⁶⁸ The press has suggested that the figure could be much higher, noting that 1,670 people in Fukushima have died from suicide since the 3/11 disaster.⁶⁹ Given that there are still over 100,000 people living as evacuees, it is possible that those figures may unfortunately continue to rise. If courts remain sympathetic to the view that evacuation is a presumptive cause of suicide, TEPCO is likely to face additional liability.⁷⁰

⁶⁶ *Editorial: Society must find ways to reduce stress of Fukushima survivors*, THE ASAHI SHIMBUN (Aug. 27, 2014), <http://ajw.asahi.com/article/views/editorial/AJ201408270026>.

⁶⁷ *Tepco won't appeal civil ruling on evacuee's suicide*, JAPAN TIMES (September 6, 2014), http://www.japantimes.co.jp/news/2014/09/06/national/tepco-wont-appeal-civil-ruling-on-evacuees-suicide/#.VX43_vlVhBc.

⁶⁸ Suicides are considered earthquake related if they take place in temporary housing and involve evacuees. *See generally Fukushima suicides on the rise*, FUKUSHIMA-IS-STILL-NEWS.COM, (March 13, 2014), <http://www.fukushima-is-still-news.com/article-fukushima-suicides-on-the-rise-122952125.html>; *Suicides on the rise in disaster-struck Fukushima*, SPUTNIKNEWS.COM (March 13, 2014), 6281/http://sputniknews.com/voiceofrussia/news/2014_03_13/Suicides-tied-to-Fukushima-disaster-are-on-rise-6281/.

⁶⁹ *Editorial: Ruling on Nuclear Evacuee Suicide Holds TEPCO Accountable*, *supra* note 65.

⁷⁰ Indeed, it may be that TEPCO has already been privately settling such cases in

At least fifteen individual claims against employers and schools have also been filed on behalf of those killed by the tsunami, two of which have resulted in favorable judgments for plaintiffs. The first decision was issued in September 2013 in a negligence case brought by four families against a private kindergarten. The school was located on a hill and was undamaged by the tsunami. In the aftermath of the earthquake, it boarded a group of children on a bus that drove from the school down toward the sea, leading to the deaths of the children.⁷¹ The Sendai District Court found that the school staff should have foreseen that a tsunami would follow the earthquake, and therefore breached its duty to safely evacuate the children. It ordered the school to pay 177 million yen to the families.⁷² The school appealed the ruling to the Sendai High Court, which oversaw a settlement under which the school acknowledged its legal responsibility, apologized, and paid 60 million yen in damages to the families in December 2014.

A second judgment in favor of tsunami victims was reached in January 2015, when the Sendai District Court awarded 1.9 billion yen in damages to the surviving relatives of twenty-five students and one part-time employee of a private driving school.⁷³ As in the case involving the private kindergarten, the court focused on the question of whether the defendants could have foreseen that a tsunami would occur after the 3/11 earthquake and again answered in the affirmative. According to the judge, the school “had a duty to foresee the tsunami and transport the students to safety.”⁷⁴ Instead, despite evacuation announcements by fire fighters, the school kept the plaintiff students at the school for an hour after the earthquake before deciding to evacuate, resulting in the deaths of the students.⁷⁵

In another case brought by two families whose children were killed by the tsunami, the same court reached a different conclusion. The case involved a group of students at a public daycare center who were kept at the center for over an hour after the earthquake and then evacuated in a car that

an effort to keep them out of court.

⁷¹ Peter Shadbolt, *Japanese Kindergarten Ordered to Pay \$1.8 million over Tsunami Deaths*, CNN.COM (Sep. 18, 2013, 12:55AM), <http://www.cnn.com/2013/09/18/world/asia/japan-tsunami-damages/>.

⁷² *Court Rules Kindergarten Liable for Sending Children Home Who Died in Tsunami*, THE ASAHI SHIMBUN (Sep. 17, 2013), http://ajw.asahi.com/article/0311disaster/quake_tsunami/AJ201309170084.

⁷³ *Miyagi Driving School Ordered to Pay Damages Over 3/11 Tsunami Deaths*, JAPAN TIMES (Jan. 13, 2015), <http://www.japantimes.co.jp/news/2015/01/13/national/crime-legal/miyagi-driving-school-ordered-to-pay-damages-over-311-tsunami-deaths/>.

⁷⁴ *Id.*

⁷⁵ *Court Rules Driving School Responsible for 26 Tsunami-Related Deaths*, THE ASAHI SHIMBUN (JAN. 14, 2015), http://ajw.asahi.com/article/0311disaster/quake_tsunami/AJ201501140038.

was caught up in the tsunami, leading to their death. The school claims that a local government official ordered them to remain at the school, but the official denied the accusation. Two families sued the town that operated the school and demanded 88 million yen in compensation. The Sendai District Court rejected their claim, finding that local officials could not have predicted the tsunami.⁷⁶ The parents appealed to the Sendai High Court, which recommended a 3 million yen settlement. One family accepted the offer, along with a statement from the town that it “will view with seriousness the fact that children died and make efforts for safe daycare services in the future.”⁷⁷ The other family rejected the settlement and lost its appeal to the High Court. The case was appealed to the Supreme Court in April 2015.

The Sendai District Court was also not swayed by the arguments of three families whose relatives worked for a local bank and were killed by the tsunami. The families demanded compensation of 235 million yen, arguing that the bank’s evacuation plan, which was to tell employees to climb up to the roof of their ten meter high building, was inadequate, since there was a designated evacuation site less than 300 meters from the bank.⁷⁸ The court found that the bank’s evacuation plan was reasonable and that the bank could not have foreseen the tsunami. After the Sendai High Court rejected their appeal, the families appealed to the Supreme Court in May 2015.

The first of what could become a flood of claims brought by workers exposed to radiation at the Fukushima Daiichi reactor was filed in March 2014 in the Fukushima District Court.⁷⁹ In that case, a worker employed by TEPCO accused the company of negligently exposing him to high levels of radiation and demanded 11 million yen in compensation. So far, the worker has experienced no ill health consequences due to the alleged exposure, and the case has not yet been decided.

Of even greater significance than individual claims brought in the aftermath of 3/11 are aggregated claims filed on behalf of groups of plaintiffs. As of March 2015, there were over twenty such cases, none of

⁷⁶ *Miyagi Town Settles over Toddler’s Tsunami Death*, JAPAN TIMES (Dec. 24, 2014), <http://www.japantimes.co.jp/news/2014/12/24/national/crime-legal/miyagi-town-settles-toddlers-tsunami-death/#.VSwYNaPD8uU>.

⁷⁷ *Judicial Process Wears out Parents Seeking Truth about Tsunami Deaths*, THE ASAHI SHIMBUN (Dec. 24, 2014), http://ajw.asahi.com/article/0311disaster/quake_tsunami/AJ201412240043.

⁷⁸ *Sendai Court Upholds Ruling Bank Not Responsible for Employees’ Tsunami Deaths*, JAPAN TODAY (Apr. 24, 2015), <http://www.japantoday.com/category/national/view/sendai-court-upholds-ruling-bank-not-responsible-for-employees-tsunami-deaths>.

⁷⁹ *Fukushima Worker Files Historic Lawsuit Over Radiation Exposure*, RT.COM (May 8, 2014), <http://rt.com/news/157668-fukushima-worker-lawsuit-radiation/>.

which had yet reached a judgment or settlement. The map in Chart 3 provides an overview of some of the key cases filed as of January 31, 2015, and the number of plaintiffs in each case.⁸⁰ A more detailed (but less current) list of cases is included in Appendix 1.

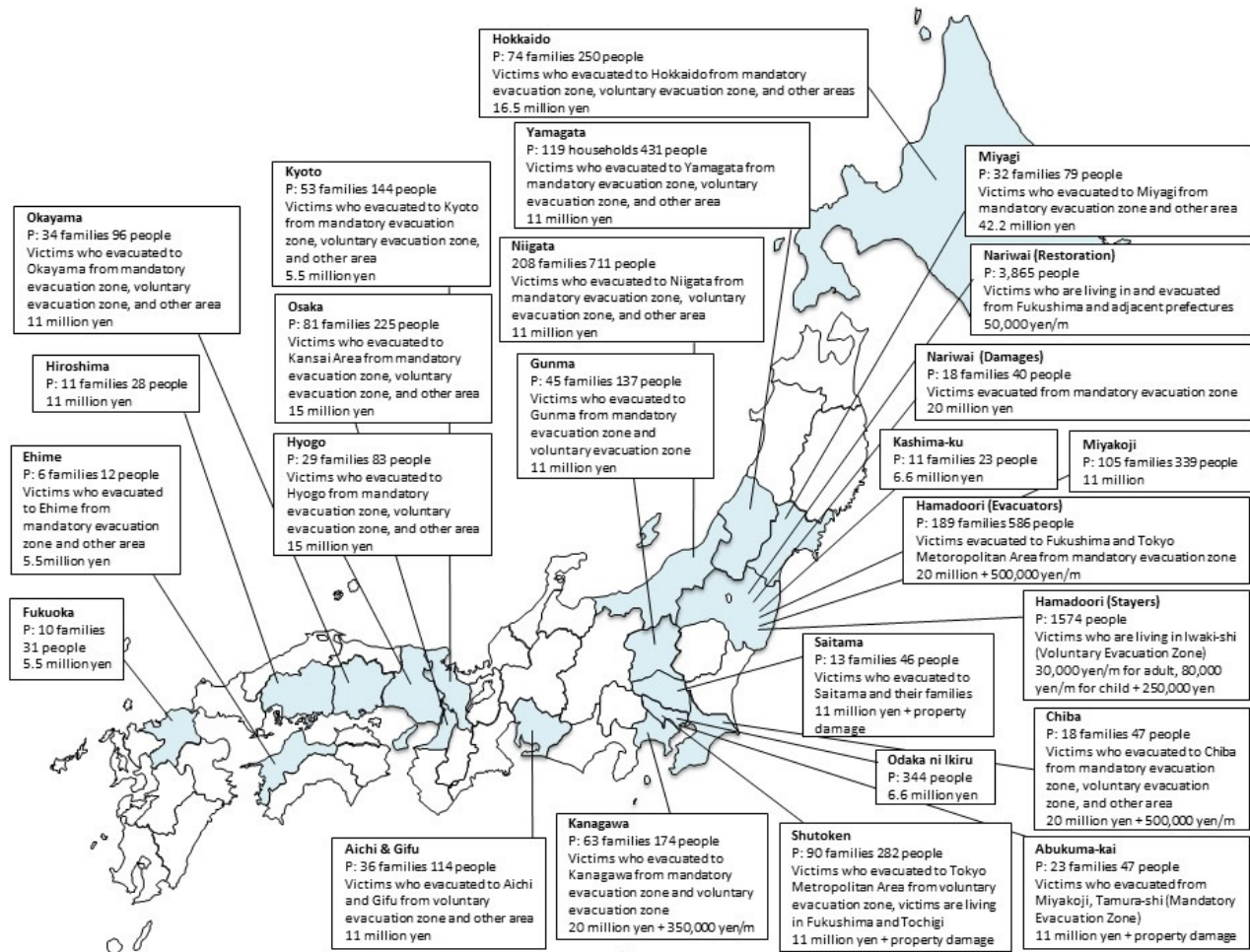


Chart 3: Map of Key Cases

Most of the aggregated cases were filed in 2013 and 2014, and they share a number of key features. In almost every case, claims are brought against two defendants—the Japanese government and TEPCO. Plaintiffs are generally families or individuals who evacuated after the nuclear accident and are living in temporary housing. Some lived in mandatory evacuation zones and others evacuated voluntarily. The majority of

⁸⁰ Kenji Oota, *Genpatsu Jiko Songai Baisho Seikyu Soshu no Genjou to Kadai*, [Current Situation and Challenges of Nuclear Damage Compensation Litigation], 66 JIYU TO SEIGI 16, 2015 (based on a map originally created by Hiroyuki Kakizaki and Maiko Kudo).

claimants are seeking compensation for several types of harms, including physical injury, property loss, and emotional distress, with demands that greatly exceed payments offered by TEPCO's 'direct' payments or ADR procedures (in one case the demand is for 30 million yen per person for emotional distress, in contrast to the typical award of 100,000 yen/month from TEPCO or through ADR). In some cases, those unable to return to their homes are asking courts to impose liability on defendants for new domiciles—including the cost of land, construction, and home furnishing—which plaintiffs in one case set at 36 million yen. In cases involving multiple defendants, the total requested damages quickly add up, exceeding 20 billion yen in one case.

In addition to lawsuits filed within Japan, three class action lawsuits have been brought to courts in the United States. Two similar claims, both filed by a New York firm on March 10, 2014 (one day before the statute of limitations expired), asserted that General Electric, GE-Hitachi Nuclear Energy International LLC, and their subsidiaries/affiliates, were liable under negligence and product liability law for recklessly building and supplying the nuclear reactors used by TEPCO.⁸¹ In one of the suits, evacuated Japanese plaintiffs sought compensatory damages, punitive damages, medical monitoring, and attorneys' fees for harms including personal injury, emotional distress, property damage, business interruption, and economic loss.⁸² With a claimed \$3 million in injuries for each plaintiff, and a plaintiff's group that could have potentially included tens of thousands of claimants, the total value of the claims amounted to billions of dollars. In July 2014, however, the case was discontinued without prejudice, and its future remains uncertain.⁸³ The other case was brought on behalf of two businesses that were allegedly harmed by the nuclear accident, demanding \$5 million for each plaintiff to compensate them for property damage and a variety of economic harms resulting from loss of business.⁸⁴ It too was discontinued without prejudice in July 2014.⁸⁵

The third case, filed in December 2012, is *Cooper et al v. Tokyo Electric Power Company, Inc.* The case is a class action brought on behalf of those who took part in Operation Tomodachi, during which the crew of the U.S.S. Ronald Reagan provided support off the coast of Fukushima after

⁸¹ Okura Mitsuru v. General Electric Co., Docket No. 152082/2014 (N.Y. Sup Ct., filed Mar. 10, 2014); Sasaki Body Ltd v. General Electric Co., Docket No. 152107/2014 (N.Y. Sup Ct., filed Mar. 10, 2014).

⁸² Okura Mitsuru v. General Electric Co., *supra* note 81.

⁸³ Notice of Voluntary Discontinuance Without Prejudice, Okura Mitsuru v. General Electric Co., Docket No. 152082/2014 (N.Y. Sup. July 2, 2014).

⁸⁴ Sasaki Body Ltd. V. General Electric Co., *supra* note 81.

⁸⁵ Notice of Voluntary Discontinuance Without Prejudice, Sasaki Body Ltd. V. General Electric Co., Docket No. 152107/2014 (N.Y. Sup. July 2, 2014).

the nuclear accident.⁸⁶ The plaintiffs are demanding \$10 million USD in compensatory damages and \$30 million USD in punitive damages for each claimant, as well as a fund of at least \$100 million USD to cover the cost of medical exams and medical monitoring. Because the original claim alleged in part that TEPCO had conspired with the Japanese Government to minimize the severity of the nuclear meltdown, the court found that the claim raised non-justiciable political questions and dismissed it without prejudice.⁸⁷ As a result, plaintiffs filed an amended complaint in February, 2014, arguing that they were exposed to high levels of radiation during the relief mission as a result of TEPCO's negligence in siting, designing, constructing, and operating the Fukushima Daiichi plant.⁸⁸ The amended complaint avoided reference to the actions of the Japanese government, but included strict liability and intentional infliction of emotional distress causes of action. TEPCO's motion to dismiss the amended complaint persuaded the court to reject the plaintiffs' strict liability and emotional distress arguments, but the court allowed the primary negligence claim to go forward.⁸⁹ The court also permitted the plaintiffs to add four additional defendants to the claim—General Electric, EBASCO, Toshiba, and Hitachi—as well as additional plaintiffs. As of mid-2015, the *Cooper* case continues to work its way through the Southern District of California, threatening TEPCO and other defendants with significant liability. The requested relief includes a minimum of \$1 billion USD for medical monitoring, as well as economic, noneconomic, and punitive damages for all plaintiffs.⁹⁰

VI. CONCLUSION

With the catastrophic events at Fukushima almost five years removed, it is time to look back and take stock of Japan's approach to disaster compensation. How well has Japan's approach to post-Fukushima

⁸⁶ Cooper et al v. Tokyo Electric Power Company, Inc., Docket No. 3:12-cv-03032 (S.D. Cal., filed Dec 21, 2012).

⁸⁷ Order Granting 26 Motion to Dismiss, Cooper v. TEPCO, 3:12-cv-03023 (S.D. Cal., Nov 26, 2013). ("The Court grants TEPCO's motion to dismiss. The dismissal is without prejudice to Plaintiffs filing an amended pleading..." Signed by Judge Janis L. Sammartino on 11/26/2013).

⁸⁸ Second Amended Complaint for Damages, Cooper v. TEPCO, 3:12-cv-03023 (S.D. Cal., Feb. 2014).

⁸⁹ Order (1) Granting in Part and Denying in Part Defendant's Motion to Dismiss, (2) Denying Defendant's Motion to Dismiss Under *Forum Non Conveniens* and International Comity, and (3) Granting Leave to Amend, Cooper v. TEPCO, 3:12-cv-03023 (S.D. Cal., Oct. 28, 2014). Third Amended Complaint for Damages, Cooper v. TEPCO, 3:12-cv-03023 (S.D. Cal., Nov. 18, 2014).

⁹⁰ Cooper et al v. Tokyo Electric Power Company, Inc., Docket No. 3:12-cv-03032 (S.D. Cal., filed Dec 21, 2012).

compensation worked? How might it be improved? What can other nations learn from Japan's experience with 3/11 about compensating disaster victims?

From one perspective, the Japanese approach has been remarkably successful. Although the magnitude of the disaster ensures that there will be some dissatisfaction with whatever approach to compensation is utilized, the data from Japan indicates that TEPCO has been able to process an extraordinary volume of compensation claims and has provided funds to most claimants. With over 5 trillion yen paid to more than 2.4 million claimants, one would be hard pressed to find a post disaster compensation program that has dispersed so much money to such a large group of people. Moreover, Fukushima victims have access not just to TEPCO's compensation program but also to the ADR system, which has processed another fifteen thousand cases. Litigation also remains a viable and increasingly utilized option, both for individuals and for groups with claims not covered by either of the extrajudicial programs, or by those who are unhappy with what those programs have yielded.

But there is an alternative evaluation that is far less optimistic. From that perspective, the post-Fukushima compensation process is rooted in an unjust distinction between deserving victims (of the nuclear meltdown) and undeserving ones (of the earthquake and tsunami). Compensation awards are based upon suspect and opaque criteria, and are allocated through an overlapping set of cumbersome procedures that have cost far more than TEPCO can afford and have burdened public funds. Too few victims have been adequately compensated despite supplicating themselves before TEPCO, which exacerbates their anger at the company for its role in the nuclear accident. The alternative process of ADR created to supplement TEPCO's compensation program is too slow and stingy to fill the gaps left by TEPCO. Increasing amounts of litigation signal growing dissatisfaction with these compensation mechanisms, but offers no real alternative for the great majority of Fukushima victims.

Although Japan's approach to post-Fukushima compensation warrants criticism, few if any other nations would have done much better. In the absence of robust transnational institutions that assist with disaster compensation, countries must go it alone, and for the most part they have failed to be proactive in developing compensation strategies.⁹¹ When it comes to compensation for natural disasters, the closest any nation comes to having an inclusive strategy is France, which has de facto mandatory

⁹¹ See, e.g., Roger Van den Bergh & Michael Faure, *Compulsory Insurance of Loss to Property Caused by Natural Disasters: Competition or Solidarity*, 29 *WORLD COMPETITION* 25, 28-31 (2006) (describing three different schemes employed by different countries in Europe for compensation of property damage caused by natural disasters); *FINANCIAL COMPENSATION FOR VICTIMS OF CATASTROPHES: A COMPARATIVE LEGAL APPROACH* (Michael Faure & Ton Hartlief, eds., 2006) (describing disaster compensation in several European countries and the US).

disaster insurance.⁹² The French system has much to applaud, but it could not have withstood the financial strain imposed by a disaster of the magnitude experienced in Japan. The US has a variety of federal and state policies aimed at specific types of disasters, but no comprehensive disaster compensation program.⁹³ Like Japan, the US does not routinely compensate natural disaster victims, and if a Fukushima-like event were to occur in the US it is unlikely that the government would do much more than in Japan, and possibly less. Large-scale disasters create large pools of victims, and the cost of compensating those victims exceeds what nations are willing or able to pay.

Developing a policy for the compensation of victims of nuclear disasters is somewhat easier. As discussed above, there are a number of multilateral agreements that establish compensation guidelines, as well as national legislation like Japan's NDCA and the US Price-Anderson Act that echo the international agreements.⁹⁴ Unfortunately, the mandated insurance liability limits in all of them are egregiously low. In the event of a serious accident all would fall as far short of covering the real cost of the accident as did the NDCA—which mandated a 120 billion yen fund but has been faced with more than forty times that amount (and growing) in compensation costs.

For all its faults, Japan's approach to compensating the victims of the 3/11 disaster appears to be no worse than what would have occurred in many other nations, and perhaps better than what one would find in more resource-constrained nations. That is, perhaps, damning with faint praise. Japan, one might hope, could do a better job of taking care of the victims of mass disaster. So too could the rest of the world.

⁹² Van den Bergh, *supra* note 91, at 30-31.

⁹³ See generally, Robert L. Rabin & Suzanne A. Bratis, *United States*, in FINANCIAL COMPENSATION FOR VICTIMS OF CATASTROPHES: A COMPARATIVE LEGAL APPROACH (Michael Faure & Ton Hartlief, eds., 2006).

⁹⁴ See *supra* SECTION IV: JAPAN'S NUCLEAR LIABILITY SYSTEM.

APPENDIX I. GROUP LITIGATION AGAINST TEPCO AND THE JAPANESE GOVERNMENT⁹⁵

	Fukushima		Gunma	
Lawyers Group	http://www.kanzen-baisho.com/		http://gunmagenpatsu.bengodan.jp/	
Court	Fukushima District Court Iwaki Branch		Maebashi District Court	
Defendant	TEPCO	Government and TEPCO	Government and TEPCO	
Date of filing	First-1: 2012.12.3 First -2: 2013.7.17 First-3: 2013.12.26 Second: 2014.5.21	First: 2013.3.11 Second: 2013.11.26	First: 2013.7.23 Second: 2014.3.10	
Number of Plaintiffs (at the time of the filing)	First-1: 18 families 40 people First -2: 64 families 181 people First-3: 35 families 142 people Second: 35families 119 people Total: 151 families 473 people	First: 822 people Second: 571 people Total: 1393 people	First: 31 families 94 people Second: 10 families 35 people Total: 40 families 125people (current number)	
Who are the plaintiffs?	Victims who evacuated to other areas of Fukushima and Tokyo area	Victims who are living in Iwaki-shi	Victims who evacuated to Gunma and their families	
Main Claims	Restoration to original state	N/A	N/A	
	Damages for mental suffering	- 20,000,000 yen / person for losing his/her hometown - 500,000 yen / person per month for the evacuating life	- 250,000 yen / person (500,000 / person for pregnant women) - 30,000 (80,000 for under 18) yen / person per month until the Air dose rate goes below 0.04 μ Sv/h and decommissioning is completed	10,000,000 yen / person
	Actual damages	Cost to re-acquire a house (13,688,000 for land and 22,380,000 for building) (national average cost), furniture and others	N/A	N/A
	Total claimed amount	First-1: 1,943,673,194 yen First -2: 8,151,168,361 yen First-3: 6,370,044,264 yen Second: 5,707,642,104 yen Total: 22,172,527,923 yen		First: 990,000,000 yen Second: 385,000,000 yen Total: 1,375,000,000 yen

⁹⁵ Assembled by Yoko Okado (on file with author).

	Hokkaido	Miyagi	Yamagata	Fukushima		
Lawyers Group	http://hokkaido-genpatsu-bengodan.jp/	http://mgs-bengodan.net/	http://mlaw.cocolog-nifty.com/	http://www.nariwaisoshou.jp/		
Court	Sapporo District Court	Sendai District Court	Yamagata District Court	Fukushima District Court		
Defendant	Government and TEPCO	Government and TEPCO	Government and TEPCO	Government and TEPCO		
Date of filing	First: 2013.6.21 Second: 2013.9.27 Third: 2014.3.4	2014.3.3	First: 2013.7.23 Second: 2014.3.10	First: 2013.3.11 Second: 2014.9.10 Third: 2014.2.10	2013.5.30	
Number of Plaintiffs (at the time of the filing)	First: 13 families 43 people Second: 20 families 70 people Third: 33 families 110 people Total: 66 families 223 people	22 families 58 people	First: 62 families 227 people Second: 58 families 207 people Total: 120 families 434 people	First: 800 people Second: 1159 people Third: 620 Total: 2579 people	12 families 26 people	
Who are the plaintiffs?	Victims who evacuated to Hokkaido and their families	Victims who evacuated to Miyagi and their families	Victims who evacuated to Yamagata and their families	Victims who continue to live in, or evacuated from, Fukushima and near prefectures	Victims who evacuated from Fukushima to other areas of Fukushima	
Main Claims	Restoration to original state	N/A	N/A	Air dose rate 0.04 μ Sv/h	N/A	
	Damages for mental suffering	10,000,000 yen / person	- 30,000,000 yen / person for losing his/her hometown - 8,400,000 yen / person for the evacuating life (for two years)	10,000,000 yen / person	50,000 yen per person per month until the Air dose rate goes below 0.04 μ Sv/h	20,000,000 yen / person for losing his/her hometown
	Actual damages	5,000,000 yen / person (excluding real estate damages)	N/A	N/A	N/A	Cost to re-acquire a house (13,688,000 for land and 22,380,000 for building) (national average cost)
	Total claimed amount	First: 709,500,000 yen Second: 1,864,500,000 yen Third: 1,815,000,000 yen Total: 3,679,500,000 yen	2,447,600,000 yen	First: 2,497,000,000 yen Second: 2,277,000,000 yen Total: 4,774,000,000 yen		770,340,000 yen

	Saitama	Chiba	Tokyo	
Lawyers Group	http://genpatsu.bengodan.jp/	http://gbengo-chiba.com/	http://genpatsu-shutoken.com/blog/	
Court	Urawa District Court	Chiba District Court	Tokyo District Court	
Defendant	Government and TEPCO	Government and TEPCO	Government and TEPCO	
Date of filing	2014.3.10	First: 2013.3.11 Second: 2013.7.12	First: 2013.3.11 Second: 2013.7.26 Third: 2014.3.10	
Number of Plaintiffs (at the time of the filing)	5 families 14 people	First: 8 families 20 people Second: 10 families 27 people Total: 18 families 47 people	First: 3 families 8 people Second: 14 families 40 people Third: 73 families 234 people Total: 90 families 282 people	
Who are the plaintiffs?	Victims who evacuated to Saitama and their families	Victims who evacuated to Chiba and their families	First and Second: Victims who evacuated from Iwaki area to Tokyo area Third: Victims who evacuated to Tokyo area and who continue to live in Fukushima and Tochigi area	
Main Claims	Restoration to original state	N/A		
	Damages for mental suffering	10,000,000 yen / person	- 20,000,000 yen / person for losing his/her hometown - 500,000 yen / person per month for the evacuating life	First and Second: 500,000 yen / person per month for evacuating life Third: 18,000,000 yen / person
	Actual damages	N/A	Cost to re-acquire a house (13,688,000 for land and 22,380,000 for building) (national average cost), furniture and others	Evacuation costs, damages for not being able to work, property damages
	Total claimed amount	154,000,000 yen	First: 1,029,291,324 yen Second: 1,364,448,442 yen Total: 2,393,739,766 yen	4,663,941,824 yen

	Tokyo		Kanagawa	Niigata	Aichi	
Lawyers Group	http://gbb-law.net/	N/A	http://kanagawagenpatsu.bengodan.jp/	http://genpatubengodan.cocolog-nifty.com/blog/	http://genpatsu-aichi.org/	
Court	Tokyo District Court	Tokyo District Court	Yokohama District Court	Niigata District Court		
Defendant	Government and TEPCO	TEPCO	Government and TEPCO	Government and TEPCO	Government and TEPCO	
Date of filing	2014.3.10	2013.3	First: 2013.9.11 Second: 2013.12.12 Third: 2014.3.10	First: 2013.7.23 Second: 2014.3.10	First: 2013.6.24 Second: 2013.12.20 Third: 2014.3.5	
Number of Plaintiffs (at the time of the filing)	21 families 44 people 1 corporation which owed real estate	About 30 people	First: 17 families 44 people Second: 6 families 22 people Third: 12 families 27 people Total: 35 families 93 people	First: 101 families 354 people Second: 30 families 99 people Total: 131 families 453 people	First: 8 families 29 people Second: 15 families 44 people Third: 13 families 41 people Total: 36 families 114 people	
Who are the plaintiffs?	Victims who evacuated to Tokyo area and their families	Victims who evacuated to Tokyo area and their families	Victims who evacuated to Kanagawa and their families	Victims who evacuated to Niigata	Victims who evacuated to Aichi and Gifu and their families	
Main Claims	Restoration to original state	N/A	N/A	N/A	N/A	
	Damages for mental suffering	10,000,000 yen / person	30,000,000 yen / person	- 20,000,000 yen / person for losing his/her hometown - 350,000 yen / person per month for the evacuating life	10,000,000 yen / person	10,000,000 yen / person
	Actual damages	Property damages	N/A	Cost to re-acquire a house (13,688,000 for land and 22,380,000 for building) (national average cost), furniture and others	N/A	N/A
	Total claimed amount	1,322,046,162 yen		First: approx. 600,000,000 yen Second: approx. 1,100,000,000 yen Third: approx. 800,000,000 yen Total: approx. 2,500,000,000 yen	First: approx. 3,894,000,000 yen Second: 1,089,000,000 Total: 4,983,000,000 yen	First: 80,300,000 yen Second: 451,000,000 yen Third: ?? yen

	Kyoto	Osaka	Hyogo	Okayama	Ehime	
Lawyers Group	http://hisaishashien-kyoto.org/	http://hinansha-shien.sakura.ne.jp/kansai_bengodan/index.html	http://hinansha-hyogo.sakura.ne.jp/index.html	http://okayamabengodan.blog.fc2.com/	N/A	
Court	Kyoto District Court	Osaka District Court	Kobe District Court	Okayama District Court	Matsuyama District Court	
Defendant	Government and TEPCO	Government and TEPCO	Government and TEPCO	Government and TEPCO	Government and TEPCO	
Date of filing	First: 2013.9.17 Second: 2014.3.7	First: 2013.9.17 Second: 2013.12.18 Third: 2014.3.7	First: 2013.9.17 Second: 2014.3.7	2014.3.10	2014.3.10	
Number of Plaintiffs (at the time of the filing)	First: 33 families 91 people Second: 20 families 53 people Total: 53 families 144 people	First: 27 families 80 people Second: 14 families 40 people Third: 40 families 105 people Total: 81 families 225 people	First: 18 families 54 people Second: 11 families 29 people Total: 29 families 83 people	34 families 96 people	6 families 12 people	
Who are the plaintiffs?	Victims who evacuated to Kyoto and their families	Victims who evacuated to Kansai area and their families	Victims who evacuated to Hyogo and their families	Victims who evacuated to Okayama and their families	Victims who evacuated to Ehime and their families	
Main Claims	Restoration to original state	N/A	N/A	N/A	N/A	
	Damages for mental suffering	1,000,000 yen ~ 5,000,000 yen / person	1,000,000 yen ~ 15,000,000 yen / person	15,000,000 yen / family ~ 15,000,000 / person	10,000,000 yen / person	5,000,000 yen / person
	Actual damages			N/A	N/A	
	Total claimed amount	First: 427,500,000 yen Second: 248,600,000 yen Total: 676,100,000 yen	First: 1,196,100,000 yen Second: 444,400,000 yen Third: 1,379,400,000 yen Total: 3,020,600,000 yen	First: 810,000,000 yen Second: 435,000,000 yen Total: 1,245,000,000 yen	1,056,000,000 yen	66,000,000 yen