

## ATOMEXPO 2014

# TEPCO FUKUSHIMA DAIICHI ACCIDENT

## *NUCLEAR LIABILITY RELATED ISSUES*

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## THE FACTS

### Earthquake magnitude 9 + tsunami + nuclear accident

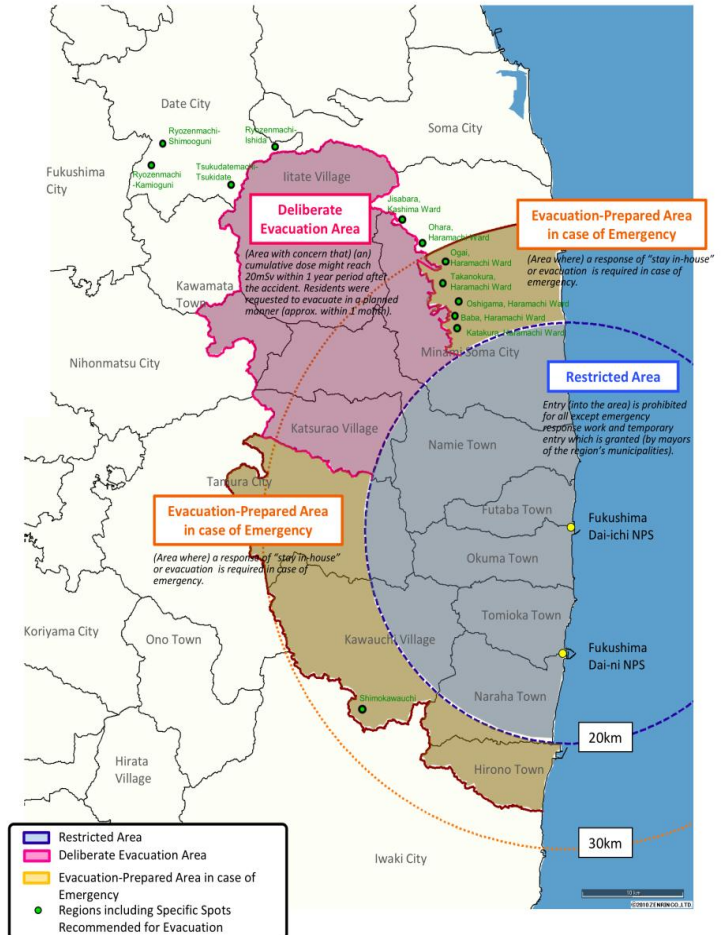
No direct casualties but approx. 146 000 evacuees (81 000 from evacuation orders areas)

Evacuation affected the local and national economy: mainly agriculture, tourism, fisheries and industry

To date, no transboundary damages

*Victims = evacuees + enterprises affected by evacuation instructions & restrictions*

Restricted Area, Deliberate Evacuation Area, Evacuation-Prepared Area in case of Emergency And Regions including Specific Spots Recommended for Evacuation (As of August 3, 2011)



## - NUCLEAR LIABILITY REGIMES –

- **Internationally accepted nuclear liability principles**
  - 1960 **Paris Convention** on Nuclear Third Party Liability (under OECD auspices)
  - 1963 **Vienna Convention** on Civil Liability for Nuclear Damage (under IAEA auspices)
  - 1997 Convention on Supplementary Compensation for Nuclear Damage (**CSC**) (not yet in force)
  
- **Japan NOT YET a party to an international nuclear liability convention but has officially declared its intention to ratify the CSC**
  
- **Its national nuclear liability regime provides for the above principles**
  - Civil Code
  - 1961 Act on Compensation for Nuclear Damage (**Compensation Act**)
  - 1961 Act on Indemnity Agreements for Compensation of Nuclear Damage (**Indemnity Act**)

## - MAIN NUCLEAR LIABILITY PRINCIPLES – As transposed in the Japanese legislation

- Operator's Strict Liability:* Operator held liable **regardless of fault**
- Operator's Exclusive Liability:* Operator is the **only person liable** for nuclear damage
- Liability Amount:* **Unlimited liability**
- Financial Security:* Operator must
- have **financial security (usually insurance)**
  - sign a **Governmental Indemnity Agreement** for non-insurable risks (e.g. earthquakes, tsunami)
- each for up to **¥ 120 billion** per site for NPPs  
**(approx. € 858 million / USD 1 billion)**
- Limited Liability in Time:*
- Actions must be brought within **3 years** from the date the victim has knowledge of both the person liable and the damage
  - Right of action fully extinguished **20 years** following the date of the tort

## PRATICAL CONSEQUENCES FOR TEPCO

- **Exoneration in case of Grave Natural Disaster of an Exceptional Character provided under national law is NOT APPLICABLE**
  - Intensity at the site = 6+  
not a « huge natural disaster beyond all expectations of humankind »
  - Event not covered by private insurance  
¥ 120 billion Governmental Indemnity fully drawn
- **TEPCO solely liable for handling over 2 million applications:**  
approx. 28% from individuals / 72% from corporations and sole proprietors

⇒ Total of amounts paid as of 23 May 2014  
Approx. ¥ 3 837 billion (€ 28 billion / USD 38 billion)

Source: <http://www.tepco.co.jp/en/comp/images/jisseki-e.pdf> (updated every month)

## - TYPES OF “NUCLEAR DAMAGE” -

### The necessity of further defining the damages

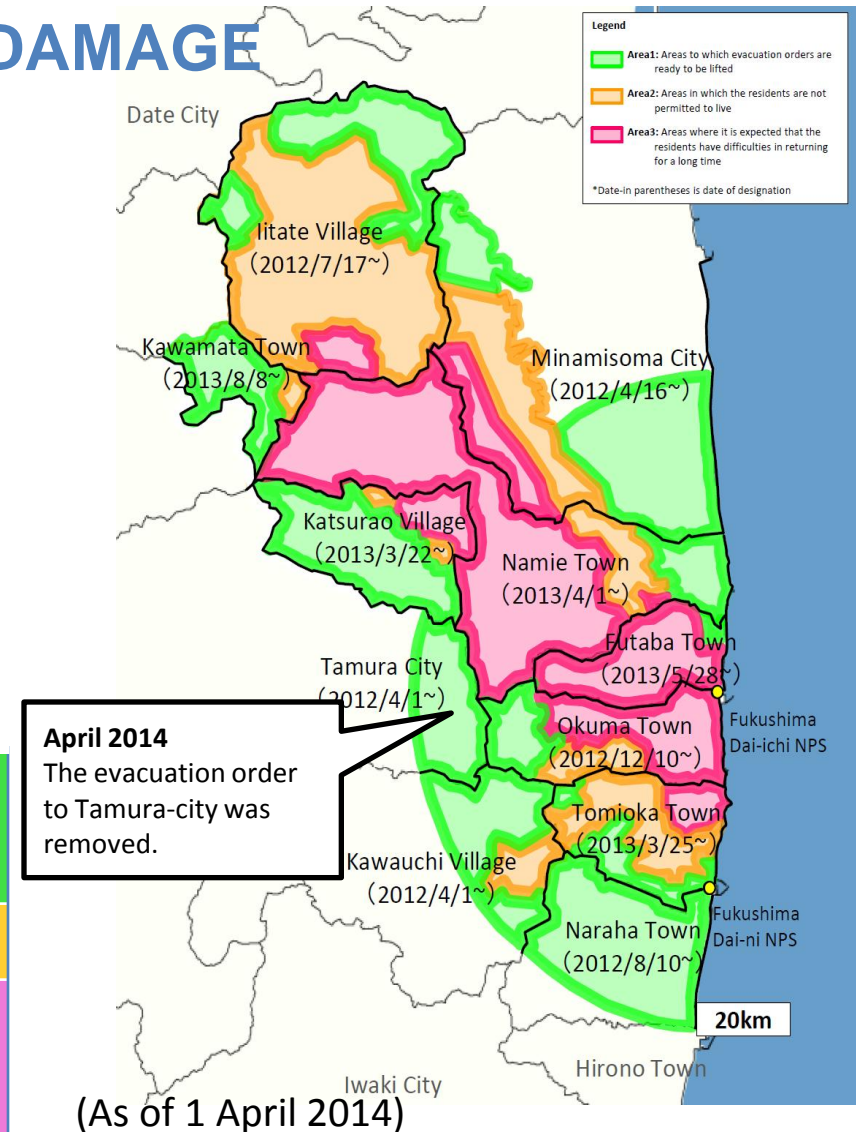
- **Definition under national law requires “reasonable causation”**
  - Operator shall be liable if nuclear damage is caused as a result of the operation of its nuclear installation
- **Problem to distinguish from damages due to the earthquake/tsunami**
  - Partially relied on experience gained from the 1999 Tokaimura nuclear accident
- **Guidelines to determine the scope and the compensation amounts**
  - **Dispute Reconciliation Committee for Nuclear Damage Compensation** issued several non-binding guidelines as from April 2011 (latest guideline was issued in December 2013)
  - Guidelines considered as authoritative opinions expressed by experts and may be referred to in court (*less than 1% of disputes are settled in court*)
  - Guidelines have not been challenged
  - TEPCO has compensated the victims in accordance with these guidelines

## OVERVIEW OF THE HEADS OF DAMAGE

### Damages caused by:

- Evacuation instructions
- Voluntary evacuation
- Navigation danger zones
- Shipping restriction orders
- Planting restriction orders
- Rumour

|               |  |
|---------------|--|
| <b>AREA 1</b> | Definitely confirmed $\leq 20$ mSv – Areas preparing for the removal of the evacuation order           |
| <b>AREA 2</b> | Could $> 20$ mSv (living restrictions)   |
| <b>AREA 3</b> | Currently $> 50$ mSv and may not fall below 20mSv even over a long period (specifically after 5 years) |



Source: METI [www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/20130807\\_01.pdf](http://www.meti.go.jp/english/earthquake/nuclear/roadmap/pdf/20130807_01.pdf)



## CALCULATION METHOD TAKES INTO ACCOUNT

- **The geographical situation of the victims**
  - those forced to leave the affected area (evacuees)
  - those who were outside the area at the time of the accident and who had their main home within the affected area
  - those forced to take shelter indoors in the affected are
- **Difficulties of providing proof**
  - Usually lump sum based on an estimate using objective criteria, e.g. statistical data

- **The period**

|          |                                     |  |
|----------|-------------------------------------|--|
| Period 1 | Accident + 6 months                 | 11 March – 11 Sept 2011                |
| Period 2 | End of Period 1 + 6 months          | 11 Sept 2011 – 11 March 2012           |
| Period 3 | From end of Period 2 to termination | until returning home may be considered |



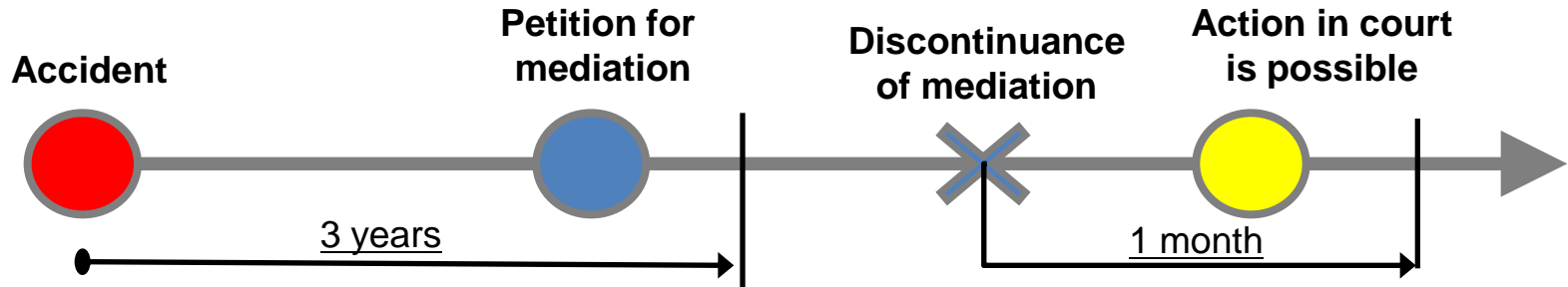
## TIME EXTENSION TO BRING ACTIONS BEFORE COURTS

### ○ Under Civil Code

- Actions must be brought within **3 years** from the date the victim has knowledge of the person liable + the damage => **until 11 March 2014**

### ○ Time extension provided by

- “Act on the Interruption of Statute of Limitations for Settlement Mediation Procedure in the Dispute Resolution Center” of 29 May 2013



Source: Japanese experts presentation at NEA Nuclear Liability workshop (Dec 2013)

- “Act on Sure and Prompt Compensation and the Special Exception on the Statute of Limitations for the Damage Caused by Nuclear Accident in 2011” of 29 November 2013  
=> the 3-years prescription period is extended to **10 years**

## - GOVERNMENTAL AID -

- Required by law when compensations exceed financial security to ensure compensation of damages to victims, subject to the National Diet's authorisation
- **FIRST PHASE: State Provisional Payments**
  - an emergency measure that benefited tourism-related SMEs in 4 prefectures which sustained rumour-related damage
  - approx. **¥ 2 billion (approx. € 14.4 million / USD 19.6 million) paid**
  - Government acquired the rights of claims of indemnified victims against TEPCO
- **SECOND PHASE: establishment of the Nuclear Damage Compensation Facilitation Corporation (NDCFC) (Sept 2011)**
  - ¥14 billion (approx. € 101 million / USD 137 million) equity owned 50% by Government and 50% by Japanese nuclear operators
  - provides necessary financial support if actual amount to be compensated exceeds financial security
- **THIRD PHASE: TEPCO's nationalisation (July 2012)**
  - NDCFC paid **¥ 1 trillion (approx € 7.2 billion / USD 9.8 billion)** for preferred shares and became the controlling shareholder with a little over 50% voting rights

## NDCFC's FINANCIAL SUPPORT TO TEPCO

- **THROUGH THE “RESERVES” which are funded by operators’ annual contributions based on fixed criteria**
  - Grants funds directly or provides financial assistance (e.g. by way of loan of funds, share subscriptions, acquisition of bonds)
  - **Financial support does not need to be reimbursed**
- **THROUGH “SPECIAL SUPPORT” funded by Government Bonds**
  - Pre-conditions
    - Special Business Plan, which must include business rationalization and management accountability
    - Pre-agreements of other interested parties who may have benefited from a liquidation
  - **Operator must reimburse by paying a Special Contribution to NDCFC + NDCFC must reimburse Treasury**

⇒ approx. ¥ 3 900 billion paid to TEPCO as of 22 May 2014  
(approx. € 28 billion / USD 38 billion)

Source: [http://www.tepco.co.jp/en/press/corp-com/release/2014/1236589\\_5892.html](http://www.tepco.co.jp/en/press/corp-com/release/2014/1236589_5892.html)

## MORE AVAILABLE INFORMATION

### NEA REPORT

Prepared in close cooperation with the Japanese authorities

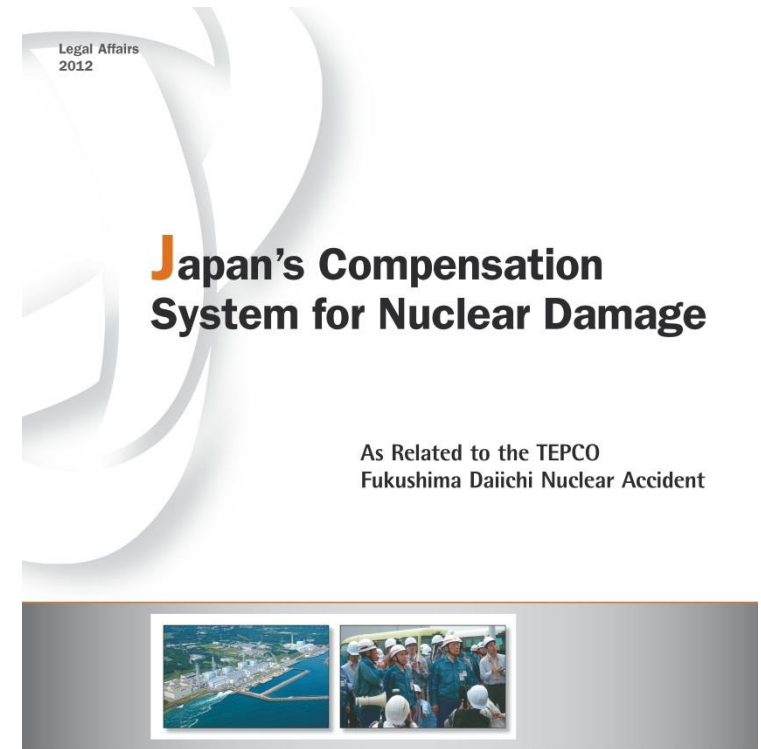
Contains major Japanese statutes, guidelines and ordinances + commentaries by Japanese experts

Available at [www.oecd-nea.org/law/fukushima/7089-fukushima-compensation-system-pp.pdf](http://www.oecd-nea.org/law/fukushima/7089-fukushima-compensation-system-pp.pdf)

### NEA WORKSHOP ON NUCLEAR LIABILITY HELD DEC. 2013

Presentation by Japanese experts with informative data

Available at [www.oecd-nea.org/ndd/workshops/nuclearcomp/](http://www.oecd-nea.org/ndd/workshops/nuclearcomp/)



**THANK YOU FOR YOUR ATTENTION !**