Renewable Energy and Defense Power in Japan

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RENEWABLE ENERGY AND DEFENSE POWER IN JAPAN

YUICHIRO TSUJI*

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INTRODUCTION

Japan has the second-lowest energy self-sufficiency rate among member states of the Organisation for Economic Co-operation and Development.¹ Fossil fuels account for about eighty percent of Japan’s primary energy sources, almost all of which are imports,² as in the case of liquefied natural gas imported from Russia. Oil and natural gas are produced in Sakhalin, Russia, near Hokkaido, Japan.³ In addition to its

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² Id.
³ Japan Aims to Maintain Stakes in Russia’s Sakhalin 2 Energy Project, KYODO NEWS (July 16, 2022), https://english.kyodonews.net/news/2022/07/6fe773706f82-japan-aims-to
imports, Japan is a stakeholder in an oil and gas development project in Sakhalin, “Sakhalin 1.”

In order to achieve zero greenhouse gas emissions by 2050, the Japanese government has set a midterm goal of reducing emissions by forty-six percent from 2013 levels by 2030. To accomplish this, at least twenty percent of domestic power generation in 2030 must be covered by nuclear power plants. Before the Great East Japan Earthquake in 2011, the share of energy from nuclear power plants in Japan hovered just below one-third of the country’s total energy supply. After the earthquake, nuclear plants uniformly stopped operations, and strict safety assessment standards were prepared. Eleven years later, a March 2022 heatwave driven by climate change increased the demand for electricity in the Kantō and Tōhoku regions of Japan, prompting the restart of formerly shutdown thermal power plants.

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10 Tomoyuki Mizuno, Tōkyōdenryoku kān’nai to Tōhokudenryoku kān’nai ni hatsu no denryoku jyūyō-kyū hippaku keihō denryoku kiki wa naze okita no ka [First Power Supply Shortage Alert for Tokyo Electric Power Company (TEPCO) and Tohoku Electric Power Company Areas—Why Did the Power Crisis Occur?] NHK (Mar. 22, 2022), https://www.nhk.or.jp/kaisetsu-blog/100/462644.html [https://perma.cc/9DBL-5A8K].
In elections for the Sangiin, Japan’s upper legislative chamber, “the ruling Liberal Democratic Party (LDP) did not include the phrase ‘reducing dependence on nuclear power as much as possible’ in its campaign pledge” in 2022, “but instead displayed a stance of returning to nuclear power.” That August, Prime Minister Fumio Kishida’s government announced its policy to build new nuclear power plants and extend their period of availability.

I. NUCLEAR POWER PLANT REACTIVATION AND LOCAL RESIDENTS

At the second GX (“Green Transformation”) Implementation Conference in August 2022, the Kishida administration stated that in addition to ensuring the operation of the ten nuclear reactors that were already reactivated, it would restart work on seven additional nuclear power plants approved for installation, allow further extension of the reactor operation period provision—the statutory operation period of forty years, plus a one-time extension not to exceed twenty years—and develop and construct next-generation innovative reactors.

When an operator wishes to restart a nuclear power plant, it must pass a safety review by the Japanese Nuclear Regulation Authority (“NRA”), required by the Act on Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors and other related regulations. Under the act establishing the NRA, operators can restart nuclear power plants by passing safety reviews, but usually, operators have safety agreements with local governments. The consent of nearby residents is notably not a legal requirement.

11 Editorial, Has Japan Gov’t Forgotten Fukushima as It Looks to Build New Nuclear Plants?, MAINICHI JAPAN (Aug. 25, 2022), https://mainichi.jp/english/articles/20220825/p2a/00m/00p/007000c [https://perma.cc/59MV-DEBZ].
12 Id.
16 See NRA Establishment Act art. 4, paras. 1–2.
17 Id.; see also Matsui, supra note 14, at 184–87 (noting local government consent is
A. Reactivation and Nuclear Power Plant Action

Japanese legal scholars focused mainly on the decommissioning of nuclear power plants until the Kishida administration announced in August that it would build new plants and extend their operative duration. In Japan, the NRA reviews the safety of nuclear power plants, and local governments must approve their operation, but local governments are not involved in the legal review process itself. Plant operators prepare plans for restarting operations, and the NRA approves the plans.

Nonetheless, nuclear plants are subject to attack by hostile actors in the event of conflict. If defense is the basic purpose of government, the siting of nuclear power plants should be a matter of concern for all citizens. And if the impact of nuclear plants on local communities is strong, then local governments should also be involved in the substantive portion of the review process for restarting them. Affected local governments and residents are dissatisfied with a perceived insincere response by the central government and associated power companies, and if they extend the period of a plant’s use without decommissioning it or building a new plant, nearby residents may file suit.

Involvement by local governments could help prevent conflicts. Legal provisions for local government involvement can facilitate community required, whereas local residents may only react to plant operations through public comment, voting, and litigation).

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19 See id.

20 See id.


consensus-building, and the accountability of operators and the national government should be clearly stated.24

1. Local Governments See an Insincere Response

After the Great East Japan Earthquake, the safety review of nuclear power plants was tightened. The government separated the jurisdiction of the Ministry of Economy, Trade, and Industry (“METI”) over nuclear plants and created the NRA as an external bureau of the Ministry of the Environment, transferring to the NRA the authority to examine plant safety.25 Some national figures in the ruling party have argued the safety review process should be neglected and criteria for the review process relaxed.26 Others insist nuclear plants should be restarted even if anti-terrorism measures are not sufficient.27

At present, operators must submit to the NRA scientifically objective data about the safety and risks of nuclear plants.28 Operators who criticize the safety review process have often failed review by the NRA, and the process has been taking a long time. Operators are required to take adequate response measures because nuclear plants are targets of terrorism and subject to natural disasters.29 They are also obligated to install a backup control room and cooling facilities in the event that the central control room is destroyed.30 And if operators cannot install anti-terrorism facilities within the installation deadline, nuclear plants cannot be restarted.31 Some plants cannot be restarted until the operators have

25 Editorial, Independence of Japan Nuclear Watchdog Remains Vital 10 Years On, MAINICHI JAPAN (Sept. 19, 2022), https://mainichi.jp/english/articles/20220919/p2a/00m/00g/006000c [https://perma.cc/ZRM8-S8MC].
26 See id.
27 Id.
29 Jitsuyō hatsuden genshiro oyobi sono fuzoku shisetu no ichi kozo oyobi setsuki no kijun ni kansuru kisoku [Regulations Concerning Standards for the Location, Structure and Equipment of Commercial Power Reactors and Their Auxiliary Facilities] NRA Ordinance No. 5 of 2013, arts. 4, 12, 42.
30 Id. arts. 33, 57 (outlining required emergency safety equipment in the event of loss of power to the facility).
31 Id. arts. 37–43.
put together evacuation plans for residents in the event of a nuclear accident and local consent has been obtained.\footnote{Genshiryoku saigai taisaku tokubetsu sochi hô [Act on Special Measures Concerning Nuclear Emergency Preparedness], Law No. 156 of 1999, arts. 27, 28, para. 1; Saigai taisaku kihon hô [Act on Special Measures Concerning Nuclear Emergency Preparedness], Law No. 156 of 1999, arts. 27, 40, 42 (mandating prefectural and municipal governments to prepare regional disaster prevention plans based on the Basic Act on Disaster Control Measures and the national guidelines for nuclear emergency preparedness).}

2. Involvement of Local Authorities Is Procedurally Necessary

Article 92 of the Constitution of Japan establishes the main purpose of local autonomy and stipulates the autonomy of each local government.\footnote{NIHONKOKU KENPÔ [KENPÔ] [CONSTITUTION], art. 92.} In accordance with those principles, operators have a legal obligation to explain the risks of nuclear plants to local residents who have assumed those risks.\footnote{See Genshiryoku saigai taisaku tokubetsu sochi hô [Act on Special Measures Concerning Nuclear Emergency Preparedness], Law No. 156 of 1999, arts. 1, 3, 15, para. 2.}

However, under current law the operator and local government are not obligated to negotiate; they enter into a contractual agreement.\footnote{See id. art. 6.} Operators are obligated to notify local governments of any change to emergency planning for plants,\footnote{Id. art. 12, paras. 2–4.} but there is dispute as to the binding nature of this agreement. Its legal effect should be defined by law, not contract. Considering the impact of the plant on electricity demand outside of the region, the relationship between operator and resident would be recognized as a generality as a matter of law. Since the nuclear plant will also affect neighboring local governments that have not signed the agreement, it is difficult to recognize its legal force as law if the agreement is merely contractual.

B. Plant Reactivation Should Have Been an Election Issue

The statistics show why the Kishida administration has not adequately explained the need to restart nuclear power plants. In the late 1990s, according to statistics from the Ministry of Economy, Trade, and Industry’s Agency for Natural Resources and Energy (“ANRE”), Japan’s nuclear plants maintained a utilization rate above eighty percent, but in
the 2000s, with the frequent occurrence of automatic reactor shutdowns following earthquakes and the demand for inspections of the same type of reactors due to operators’ concealment of problems, the average utilization rate dropped to around sixty percent, and then below.\textsuperscript{37}

Following the Fukushima Daiichi accident, Japan’s nuclear plant capacity utilization rate dropped and reached zero in 2014.\textsuperscript{38} When plant utilization declined, thermal power plants were engaged, increasing carbon dioxide emissions (“CO\textsubscript{2}”).\textsuperscript{39} According to ARNE statistics, Japan’s electricity consumption peaked in 2007 and has since declined, returning to 1997 levels by 2020.\textsuperscript{40} If existing demand for electric power continues to decline and renewable energy becomes the main source of electricity, attendant CO\textsubscript{2} emissions will decrease. The problem is a shortage of generative capacity during peak demand periods, making it important to take measures to reduce or shift peak electricity demand.

Pumped storage power generation was used during the March 2022 power crisis.\textsuperscript{41} Pumped storage power generation is a system for storing surplus power at night, when demand for electricity is lower, for use during the day.\textsuperscript{42} The system uses two large reservoirs, one above and one below, and the surplus power at night is used to rotate a water wheel, bringing water from the lower chamber to store in the upper chamber.\textsuperscript{43}

Electric power transmission and distribution utilities can also support peak shaving and peak shifting in the energy grid by using information and communication technology to sequentially stop the use of heating and cooling equipment in buildings and other facilities for short periods.

\textsuperscript{37} Capacity Utilization Rate of Nuclear Power Plants, JAPAN ATOMIC ENERGY RELS. ORG., https://www.ene100.jp/zumen/5-3-3 [https://perma.cc/8VYX-QXZR] (June 8, 2023).
\textsuperscript{39} See id.
\textsuperscript{43} Id.
There is no comprehensive law in Japan on smart grids, but several initiatives have been implemented.\footnote{Dionysia Kolokotsa, The Role of Smart Grids in the Building Sector, 116 Energy & Bldgs. 703, 704 (2016).} If optimal electricity demand through electric power transmission and distribution utilities could be established, there would be no need to increase the generation capacity of nuclear and coal-fired power plants that carry the power base load—though we should not preclude research and development of new power generation. The next generation of innovative reactors, like the high-temperature gas-cooled reactor, has not been commercialized and will not be able to respond to the latest energy crisis.\footnote{What Is HTGR?, Japan Atomic Energy Agency, https://www.jaea.go.jp/04/o-arai/nhc/en/faq [https://perma.cc/37K8-CDDK] (last visited May 6, 2024).}

Japan’s nuclear plant use has never been stable, and CO₂ emissions have tracked the level of utilization.\footnote{Pushker A. Kharecha & Makiko Sato, Implications of Energy and CO₂ Emission Changes in Japan and Germany After the Fukushima Accident, 132 Energy Pol’y 647, 652–53 (2019).} Nuclear power is also an unreliable power source for green transformation—in some cases, local governments ask operators to withdraw their plans for nuclear power plants and power companies agree to do so to resolve long-standing and intense regional, political, and social conflicts over nuclear power.\footnote{See Take, supra note 22 (describing the political and economic issues local governments and utility companies must consider when proposing construction of new nuclear plants); cf. Matsui, supra note 14, at 152 (noting the “lucrative incentive for any local government and their residents” to accept central government subsidies for nuclear plant siting).}

The central government has proposed to establish a mechanism to assist power companies in obtaining local consent.\footnote{Takiji Koike, Genpatsu sai kadō to chihōjichitai no kadai: Hinan keikaku, anzen kisoku, zaisei sochi [Nuclear Power Plant Resumption and Challenges for Local Governments: Evacuation Plans, Safety Agreements, and Tax and Fiscal Measures], Chosatojōhō [Issue Brief No. 911], at 6 (2016). The agreement will include the following: (1) contact during normal times, including environmental monitoring (measurement and publication of environmental radiation levels and thermal effluent); (2) establishment of a reporting and communication system and disclosure of information in the event of trouble; (3) on-site investigation by the local government and request for}
nuclear power plants that have passed safety reviews. However, there are seven nuclear power plants that have passed review but not resumed operations due to a lack of local consent.

Japan’s energy independence remains extremely low. The Russian invasion of Ukraine will increase demand for electricity, raising energy prices and intersecting with existing climate-driven pressures on demand amid government calls for the public to conserve power. If energy is of common concern, the government is obligated to explain its energy policy to the public. Yet Japan’s political class did not make natural gas an election issue. In the 2022 Sangiin elections, legislators should have fully articulated whether they would shift to renewable energy or improve the technology of coal-fired power plants. Now, amid rising prices for electric utilities, government proposals to lower them include subsidies for gasoline sellers and for households and businesses that purchase electricity.

The central government is accountable for creating a medium-to-long-term energy policy and to the public if the government makes them bear the burden. The needed shift to renewable energy cannot be achieved in a short enough time period.

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51 Id.
52 See METI & ANRE, supra note 1.
53 See Japan Aims to Maintain Stakes in Russia’s Sakhalin 2 Energy Project, supra note 3.
54 Kota Takamoto, Kishida Administration Can’t Win Voters’ Confidence in Japan Without Clear Explanations, MAINICHIJAPAN (June 23, 2022), https://mainichi.jp/english/articles/20220623/p2a/00m/0op/013000c [https://perma.cc/C4BN-N8ZT].
55 See Japan Approves up to 42% Increase in Household Electricity Prices, JAPAN TIMES (May 16, 2023), https://www.japantimes.co.jp/news/2023/05/16/business/economy-business/power-price-hike [https://perma.cc/GLC9-GHFK].
58 Id.
II. SAFETY REVIEW OF THE NUCLEAR POWER PLANT

A. Expediting the Safety Review

The Nuclear Regulation Authority was launched in 2012 as a third-party committee,\(^5^9\) it was later converted to an external bureau under Ministry of the Environment,\(^6^0\) which supports the NRA budgetarily and does not scrutinize the NRA’s review. The review period is longer for the same type of nuclear power plant that caused the accident in the Great East Japan Earthquake (boiling-water reactor). Units 6 and 7 at Kashiwazaki Kariwa [Tokyo Electric Power Company], Tokai No. 2 Power Station [Japan Atomic Power Company], and Onagawa [Tohoku Electric Power Company] plants, which are the same model as the Fukushima reactor, have passed safety inspections.\(^6^1\)

Critics in the LDP of the rigorous safety review process argue the safety review period is too long and unpredictable and should be expedited.\(^6^2\) They claim they want more opportunities for review; issues and tasks in the review to be documented and sent to operators in advance, if necessary; and review meetings available without NRA members present.\(^6^3\) Furthermore, some in both the ruling and opposition parties argue plants should be allowed to resume operations even if anti-terrorism major accident response facilities aren’t complete.\(^6^4\) However, their agenda has not been realized, and the former chairman of the NRA, Toyoshi Fuketa,

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\(^{59}\) NRA Establishment Act, art. 1.

\(^{60}\) Id. art. 2.


\(^{63}\) Id.

insists that to complete the safety review in a short period of time, the operators should train personnel to conduct risk assessments. 65

B. Safety Review and Extension of Operation Period of Nuclear Plants

The NRA was created by law, 66 which may be amended by the National Diet through its authority under article 41 of the Constitution of Japan. 67 The chairman of the NRA is politically neutral and appointed by the prime minister with the consent of both houses of the Diet for a five-year term. 68 The prime minister cannot remove the chairman without the consent of the Diet unless just cause exists. 69

On September 26, 2022, the NRA chairman changed from Toyoshi Fuketa to Shinsuke Yamanaka. 70 The new chairman will be tested to see if he will follow his predecessor’s stubborn stance. 71 Former Chairman Fuketa believed an increase in the number of review meetings would not speed up the process 72 and review meetings should be open to the public to prevent collusion between plant operators and regulators. 73 Fuketa also felt the Nuclear Reactor Regulation Act’s (“NRRA”) forty-year

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66 Id. art. 1.
67 NIHON-KOKU KENPÔ [KENPÔ] [CONSTITUTION], art. 41.
68 NRA Establishment Act, arts. 5, 7, para. 1, 8, para. 1.
69 Id. art. 9.
lifespan for plant operations, with a one-time maximum extension of twenty years, was codified after a broad parliamentary policy debate, not just scientific and technical considerations.74 He viewed technical aspects as debatable and that it was not bad thing to debate them.75

Fuketa stressed that operators should prepare experts who can discuss earthquakes, tsunamis, and volcanic risks with the regulating government.76 To his eye, significant review time is spent by operators preparing earthquake, tsunami, and volcanic risk assessments.77 He argued safety reviews should be based on the assumption that nuclear accidents are inevitable, which clashes with that of some legislators who want speedier review.

Upon taking office, Chairman Yamanaka instructed the NRA to urgently study how to examine the deterioration associated with aging nuclear power plants beyond sixty years and the safety of their design, as the phrase “operation period” may be removed from the NRRA in the future depending on METI’s deliberations.78

Under Yamanaka, the NRA has not yielded to political pressure to relax its regulatory standards. The law stipulates that nuclear plants can operate for forty years in principle,79 with a maximum of sixty years.80 Starting in September 2022, a METI advisory committee on natural resources and energy is considering amending the NRRA to extend the period of operation.81 The NRA has maintained its perspective that it not express an opinion, considering the extension of operation to be a policy decision.82

74 Meeting Minutes, infra note 82.
75 NRA, infra note 82.
76 Id.
77 Id.
79 Nuclear Reactor Regulation Act, art. 43-3-32.
80 Id. art. 43-3-32, para. 2.
82 NRA, UNTEN KIKAN ENCHÔ NINKA NO SHINSA TO CHÔKI TEISHI KIKAN-CHU NO HATSUDEN-YÔ GENSHIRO SHISETSU NO KEINEN HENKA TO NO KANKEI NI KANSURU KENKAI [OPINION ON THE RELATIONSHIP BETWEEN THE REVIEW OF APPROVAL FOR EXTENSION OF OPERATION PERIOD AND THE AGING OF POWER REACTOR FACILITIES DURING LONG SHUTDOWN PERIODS]
Even if the prime minister orders METI to restart a reactor, only those reactors that have already been approved by the NRA’s safety review will be restarted. The NRA is required to ensure that safety reviews are not relaxed by policy decisions.

C. Communication and Political Agenda

Neither the ruling party nor their opposition have made nuclear energy an economic or energy policy issue in campaigns before the public.83 The government has not taken seriously the situation of declining trust in the government and business involvement in energy since the Fukushima Daiichi Accident.84

Over the years, local governments and residents where nuclear plants exist have made tremendous contributions to Japan’s stable supply of electricity and economic development.85 The fact that this contribution was not made a major issue in the 2022 election demonstrates insufficient understanding of the situation nationwide, including in areas of major power consumption.

It is not correct that the government has done nothing. The government has regularly posted information on the METI website about decommissioning of the Fukushima plant and measures to deal with...
contaminated water, and it holds regular briefings. However, these are not enough.

Information is paramount. The Diet should establish an agency with the capacity to compile expert views on the science and technology of nuclear power, conduct swift risk assessments based on scientific evidence, and provide objective information to the public. Alternatively, further provision of information to the public should be legally mandated, centered on the NRA, across ministries and agencies. Otherwise, if the energy source is related to national security, the ANRE, currently under the METI, should be housed with the Ministry of Energy, similar to the Office of Nuclear Energy under the U.S. Department of Energy.

Political leaders could also call for a referendum to ask the public about the restart or extension of nuclear power plants. Because the enactment of laws is the exclusive responsibility of the Diet, the result of the referendum would only be advisory, but it would give citizens the opportunity to weigh in and legislators the public support needed to enact reforms.

Lawmakers should also make clear in law the obligation of the central and local governments to propose multiple options, draft plans for communities where plants are located, and facilitate that discussion over time. Current risk communication councils in communities where plants are located offer a model for what should be legally required. In communities where nuclear plants are sited, some residents support the reactivation of nuclear power plants due to their economic benefits. Nuclear power has been said to stimulate local economies because local governments where

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plants are located are subsidized. If we take the option of shifting to renewable energy sources other than nuclear, the government must propose measures to promote local economies to make up for the subsidies lost by closing nuclear plants.

Soon the support measures taken under the Act on Promotion of Utilization of Local Resources will be encompassed by the Act on Promotion of Investment in the Future of Local Communities (“APIFLC”) and taken through plan approval and support under the APIFLC. Although this law does not target communities near nuclear plants, it will greatly help those communities that are.

D. Litigation

If the central government’s explanation of its energy policy is inadequate, one cannot expect an effective political process since local authorities are not legally involved in the review of nuclear power plants. Instead, nearby residents file lawsuits in court.

There are two types of lawsuits: civil lawsuits and administrative lawsuits. In a civil suit, the state is not a party to the lawsuit.

1. Civil Litigation

In civil suits, residents near a nuclear power plant may file suit against the operator, seeking an injunction against the construction and operation of the plant. In seeking an injunction, residents can claim

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91 Chūshōki gō ni yoru chiiki sangyō shigen o katsuyō shita jigyō katsudō no sokushin ni kansuru hō, Law No. 48 of 1991, art. 9 (abolished).
92 Chiiki mirai tōshī sokushin-hō, Law No. 40 of 2007 (revised 2022), arts. 3–4.
93 Id. art. 1 (explaining the purpose of the law is to promote “Regional Economy Advancement Project,” which takes advantage of regional characteristics to create high added value and generate substantial economic benefits for local businesses).
94 Minpō [MINPO] [CIV. CT.] art. 709.
that their constitutionally guaranteed personal rights will be violated by
the operation and construction of the plant. In one such case, the court
ruled that if there is a concrete threat of infringement of the funda-
mental personal rights to protect life and maintain livelihood, the plaintiffs
can request an injunction against the infringing acts. Courts usually
respect the expertise of administrative agencies, even in civil litigation.
However, the Fukui district court explained that there have been cases
in which the court can examine the determination of whether there is a
concrete risk of human rights violation and respect for expertise as sep-
arate issues.

The court reasoned it was difficult to imagine any situation other
than a nuclear plant accident, major natural disaster or war could result
in the extremely widespread deprivation of this fundamental right. Even
if it is too extreme to say the very existence of a nuclear plant is constitu-
tionally unacceptable, an injunction against economic activities that even
abstractly involves such a danger is permissible if there is at least a
concrete risk of such a situation occurring.

The Japan Federation of Bar Associations (“JFBA”) commended
the Fukui district court for granting the injunction, emphasizing the fact
that five earthquakes exceeding the basic earthquake ground motion
have occurred in the past ten years. The JFBA also agreed with the
court’s recognition of uncertainty in science. The court stated that since
earthquakes are phenomena occurring deep underground, analysis of
their occurrence must rely on hypotheses and speculation, and since ex-
perimental methods cannot be used to establish or verify hypotheses, we
must rely on past data.

The Fukui district court also stated that the safety of nuclear
power plants should be evaluated based on the limits of human capabili-
ties in nature, namely earthquakes. The JFBA argued that the court

95 See NIHON-KOKU KENPÔ [KENPÔ] [CONSTITUTION], art. 13; id. art. 25.
97 Id.
98 Id.
99 Genpatsu soshô ni okeru shihô no arikata, shiyôzumi nenryô no shori gensoku oyobi
genshiryouku shietsu shozaichi jichitai no keizai saiken-saku ni kansuru sengen
[Declaration on the Judicial Decisions in Nuclear Power Plant Litigation, Principles for
Disposal of Spent Fuel, and Measures for Economic Reconstruction of Municipalities with
ties/year/2014/2014_2.html [https://perma.cc/MBS7-G8N9].
should be highly evaluated for its return to the original role of the judicial branch: to prevent human rights violations.\textsuperscript{101}

Although the court requires residents to prove the violation of their personal rights, it may first ask the electric power company to prove a prima facie case of safety, since the company possesses data on safety. The Ohtsu district court denied a request for a preliminary injunction by holding that in order to establish a concrete risk of violation of personal rights, it is not enough to show the evacuation plan is inadequate; rather, it is necessary to allege a concrete risk of an accident that releases radioactive materials outside the plant, which would require the residents to evacuate, and to make a prima facie case on an individual and specific basis.\textsuperscript{102} Alternatively, since it is impossible for an operator to ensure the absolute safety of a nuclear power plant, the court may use socially accepted norms to determine whether to tolerate the risks of nuclear power plants and, if so, to what extent.\textsuperscript{103}

2. Administrative Litigation

In an administrative lawsuit, a suit is filed to revoke the license for the establishment of a nuclear power plant.\textsuperscript{104} In administrative litigation, courts allow administrative agencies a certain amount of discretion in specialized and technical fields.\textsuperscript{105} When an agency grants permission for the establishment of a nuclear plant, the court may uphold the agency’s decision if there is nothing particularly unreasonable about it, provided the agency investigated the specialized technical matters and made its own decision. There, the court may either review the procedures leading to the administrative agency’s decision or review it independently.

CONCLUSION

Every year since the Great East Japan Earthquake, Japan’s political leaders have failed to adequately discuss energy demand, and
government accountability has been inadequate. Despite the fact that the burden will be relieved in the long run, legislators have not conveyed the burdensome information to voters in elections, aiming for short-term electoral victories.

Japan’s challenge will be how quickly it can shift its energy supply to renewable energy sources. To increase energy self-sufficiency and defense power, Japan should promote policies that encourage renewable energy use. However, under the current legal system, local governments are not involved in the legal review process for establishing nuclear power plants. Through agreements, local consent is required to restart a plant. However, this is merely a contract, and permission is granted even if the agreement is violated, as long as the plant passes a safety review. The central government is trying to facilitate communication between local governments and operators, but it is not enough. Legally requiring the establishment and funding of councils would stimulate local discussion and support local actors who file civil or administrative lawsuits if the power company’s explanation is insufficient.

Nuclear accidents may be inevitable. The question is how Japanese courts, having experienced the Fukushima Daiichi accident, will treat respect for scientific expertise.