



Law and Emergencies: A Comparative Overview

The Minerva Center for the Rule of Law under Extreme Conditions

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Emergency Laws and Regulations in Japan: Executive Summary

Legislative Framework

Japan has established a comprehensive legal framework for disaster management with over fifty legislative acts to manage all stages of emergencies: prevention, preparedness, response, recovery (including financial measures) and reconstruction. The **Disasters Countermeasures Basic Act of 1961 (Hereinafter DCBA)** is the major focus of this report but it will also briefly discuss Japan's nuclear disaster management system as well. The **DCBA** defines the protection of national land, citizens' lives and property from natural disasters as a national priority. It creates a comprehensive three layers disaster management system (national, prefectural and municipal) for disaster prevention, preparedness and recovery, by defining responsibilities for multiple agencies and systems that will work in tandem during a state of emergency. The **DCBA** provides the definition of a state of emergency, whereas the **Constitution of Japan** does not contain emergency clauses and addresses a state of "national emergency", without defining it, only in one article¹. A draft constitution endorsed by the Liberal Democratic Party in 2012 contains a whole chapter on emergency, but this document remains for the time being only a draft.

Entrance into a State of Emergency

Article 2 of the DCBA broadly defines an emergency as an extraordinary disaster whose repercussions on the national economy and public welfare are serious and far-reaching. As such, a multitude of contingencies can fall under a state of emergency. The Prime Minister has the right to declare a state of emergency provided consent is received by the Japan's bicameral legislature, the Diet,

¹ The article concerns the Cabinet's power to convoke an emergency session of the House of Councillors in "time of national emergency" when the House of Representatives is dissolved.

within 20 days. A state of emergency ends when it is revoked by the Prime Minister, or by a resolution passed by the Diet to refuse consent or by repeal of previously issued consent. There is a slight variation in protocol for nuclear emergencies. In this case the Prime Minister can declare a nuclear emergency without the approval of the Diet following a Cabinet Order or a report submitted by the competent minister. Likewise, only the Prime Minister can end a nuclear emergency after hearing the findings of the Nuclear Safety Commission.

In addition, Under Article 71 of the Police Law, the Prime Minister can declare a state of "national emergency", in respect to the country as a whole or any part thereof and assume direct control over Japan's police. Such declaration can be made only upon recommendation of the National Public Safety Commission. "National emergency" would include such events as a foreign invasion, a large-scale natural disaster, or a major internal disturbance.²

Legal Powers

Prior to a disaster, the Central Disaster Prevention Council is responsible for the basic disaster prevention plan. The chief officers of designated administrative organs or public corporations are responsible for an operational disaster prevention plan as well. City, town or village disaster prevention councils are responsible for area planning. During a natural or nuclear disaster the executive branch will establish headquarters for emergency disaster control with jurisdiction over the area covered by the state of emergency. Emergency response, rescue and recovery measures shall be implemented by the heads of the designated administrative organs. In the event of a nuclear emergency, in addition to these measures, a Joint Council for Nuclear Emergency Response and an on-site nuclear emergency manager will also be established. The Cabinet may enact ordinances during an emergency to accept assistance from other countries, ration necessary materials, as well as fix prices in the interest of emergency measures. Responsibility for

² L.W. Beer, Peace in Theory and Practice under Article 9 of Japan's Constitution, *81 Marquette Law Review* 815, 826 (1998)

rehabilitation after a disaster shall be implemented by the chief officer of a designated, national or local, administrative organ, government agency, or public corporation. Upon fixing the amount of rehabilitation, the Minister shall submit reports to the Central Disaster Prevention Council.

In addition to the **DCBA**, the **Disaster Relief Act**, 1947 aims to provide emergency relief in the event of a disaster with the cooperation of local governments and non-governmental organizations as well as the general public, in order to protect victims and maintain order.

No references to emergencies relating to war, terrorism and other security-oriented threats, were found in Japan's legal system.

Rights in State of Emergency

According to the **Constitution of Japan**, human rights granted by the Constitution are inviolate; furthermore, as the Constitution is the supreme law of the land, it cannot be circumvented. Yet, human rights during emergencies are neither directly addressed by the Constitution nor by any other piece of legislation reviewed in the research. Japanese legislation's relation to human rights under states of emergency might be inferred from: **DCBA Article 82** (compensation for requisitioning property for emergency official use); **DCBA Article 84** (compensation for persons engaged in the work of emergency measures); **DCBA Article 109 (1)** (Ordinances regarding rationing of materials in critical shortage, restriction on delivery and fixing a ceiling on prices.); **DCBA Article 109 (2)** (violation of any provision of said ordinances); and **DCBA Article 63** (When deemed necessary to prevent danger to life or limb, the mayor of the city or town may declare areas prohibited).

Emergency Laws and Regulations in Japan: Synopsis

Introduction

Japan is a constitutional monarchy with a parliamentary government³. The Chief of State is the Emperor, who is a ceremonial figurehead and has very limited power⁴. The Head of the Government is the Prime Minister, appointed by Japan's bicameral legislature, the Diet⁵. Japan is divided into 47 prefectures, which are subnational jurisdictions on a state or provincial level, larger than cities, towns and villages⁶. Each prefecture is headed by a directly elected Governor⁷. With a population of 127 Million⁸ and unique climate and topography⁹, Japan is particularly vulnerable to natural disasters, and has managed to place itself in the international arena as a fine example of a country effectively coping with disasters, with a three layers disaster management system (national, prefectural and municipal)¹⁰.

The Ise Bay Typhoon in September 1959, with approximately 5,000 deaths and more than 35,000 injured, prompted the establishment of a disaster prevention system and in 1961 the Disaster Countermeasures Basic Act was enacted. A Central Disaster Prevention Council¹¹, chaired by the Prime Minister, and comprised of the entire Cabinet, as well as heads of designated public institutions and experts, was formed under the Act, aiming to create and promote the implementation of disaster management plans, deliberate matters related to disaster preparedness and provide reports on disaster management to the Prime Minister and relevant

³ Japan, *The World Fact Book* <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>

⁴ The Constitution of Japan, Article 1 [The Emperor is "the symbol of the state and of the unity of the people."]

⁵ Id. Article 6. See also FN 1.

⁶ Prefectures of Japan, *Wikipedia*. http://en.wikipedia.org/wiki/Prefectures_of_Japan (last visited 12/24/2015)

⁷ Id.

⁸ See FN 1.

⁹ For further read on Japan's disaster profile see the Asian Disaster Reduction Center (ADRC), Emergency Response Management in Japan: Final Research Report, 5-6. 2011. http://www.adrc.asia/aboutus/vrdata/finalreport/2011A_AZE_Emin_FRR.pdf (last visited 12/24/2015)

¹⁰ Japan's Disaster Prevention and Relief as a Foreign Policy, in its Ministry of Foreign Affairs' website: <http://www.mofa.go.jp/policy/emergency/index.html> (last visited 12/24/2015), and emergency disaster relief offered by JICA (Japan international cooperation agency)

http://www.jica.go.jp/english/our_work/types_of_assistance/emergency.html (last visited 12/24/2015) Japan is also a member of The Asian Disaster Reduction Center (ADRC) Network <http://www.adrc.asia/aboutus/index.php> (last visited 12/24/2015).

¹¹ The Central Disaster Management/Prevention Council in the Prime Minister of Japan official website. http://www.kantei.go.jp/foreign/policy/index/bousai/index_e.html (last visited 12/24/2015).

Ministers¹².

The Fukushima Daiichi nuclear disaster in March 2011, triggered by the Tōhoku earthquake¹³, resulted in one of the largest nuclear events in history with approximately 20,000 deaths and over 300,000 evacuated people. It was the first time a nuclear emergency had been declared in Japan. It also revealed inadequate safety guidelines regarding crisis management.¹⁴

¹² The Minister of State for Disaster Management and Minister of State for the Nuclear Emergency Preparedness at the Cabinet Office
<http://www.cao.go.jp/en/minister/index.html>

¹³ The Great East Japan earthquake, one of the most powerful earthquakes in history to hit Japan with a 9.0 Richter magnitude scale. See Damage Situation and Police Countermeasures by National Police Agency of Japan http://www.npa.go.jp/archive/keibi/biki/higaijokyo_e.pdf (last visited 12/24/2015); Anxiety in Japan grows as death toll steadily climbs, March 14, 2011, *CNN*. <http://edition.cnn.com/2011/WORLD/asiapcf/03/13/japan.quake/index.html?iref=NS1> (last visited 12/24/2015)

¹⁴ The official report of The Fukushima Nuclear Accident Independent Investigation Commission, executive summary. http://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naic.go.jp/wp-content/uploads/2012/09/NAIIC_report_lo_res10.pdf (last visited 12/24/2015) and the main report in Japanese at http://warp.da.ndl.go.jp/info:ndljp/pid/3856371/naic.go.jp/pdf/naic_honpen.pdf (last visited 12/24/2015)

1. The Legislative Framework

Throughout the years Japan has established a comprehensive legal framework for disaster management¹⁵, including laws covering all phases of disaster management. These laws include seven basic acts¹⁶, eighteen disaster prevention and preparedness acts¹⁷, three disaster emergency response acts¹⁸ and twenty three disaster recovery¹⁹ and financial measures acts²⁰. This report will focus on the

¹⁵ For timeline and a chronological evaluation see The Japanese Disaster Prevention, Recovery and Relief Measures: Current Status and International Cooperation, 11-12. http://www.preventionweb.net/files/30468_japandisasterpreventionrecoveryreli.pdf (last visited 12/24/2015); The Disaster Management in Japan Report of 2011 by the Cabinet Office <http://www.cao.go.jp/en/disaster.html> (for the report: <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p.5)

¹⁶ Basic acts include the Disaster Countermeasures Basic Act (1961); Act on Prevention of Marine Pollution and Maritime Disaster (1970); Act on Disaster Prevention in Petroleum Industrial Complexes and other Petroleum Facilities (1975); Act on Special Measures for Large-scale Earthquakes (1978); Act on Special Measures for Nuclear Disasters (1999); Act on Special Measures for Promotion of Tonankai and Nankai Earthquake Disaster Management (2002); Act on Special Measures for Promotion of Disaster Management for Trench-type Earthquakes in the Vicinity of the Japan and Chishima Trenches (2004). These acts are addressed as "Basic" in the Japanese Government report, at <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p.6

¹⁷ Disaster prevention and preparedness acts include the Erosion Control Act (1897); Building Standard Law (1950); Forest Act (1951); Act on Temporary Measures for Disaster Prevention and Development of Special Land Areas (1952); Meteorological Services Act (1952); Seashore Act (1956); Landslide Prevention Act (1958); Act on Special Measures for Disaster Prevention in Typhoon-prone Areas (1958); Act on Special Measures for Heavy Snowfall Areas (1962); River Act (1964); Act on Prevention of Steep Slope Collapse Disaster (1969); Act on Special Measures for Active Volcanoes (1973); Act on Special Financial Measures for Urgent Earthquake Countermeasure Improvement Projects in Areas for Intensified Measures (1980); Act on Special Measures for Earthquake Disaster Countermeasures (1995); Act on Promotion of the Earthquake-proof Retrofit of Buildings (1995); Act on Promotion of Disaster Resilience Improvement in Densely Inhabited Areas (1997); Act on Promotion of Sediment Disaster Countermeasures for Sediment Disaster Prone Areas (2000); Specified Urban River Inundation Countermeasures Act (2003).

¹⁸ Disaster emergency response acts include The Disaster Relief Act (1947); Fire Services Act (1948); Flood Control Act (1949).

¹⁹ Disaster recovery and reconstruction, and financial measures include Forest National Insurance Act (1937); Agriculture Disaster Compensation Act (1947); Housing Loan Corporation Act (1950); Act on Interim Measures for Subsidizing Recovery Projects for Agriculture, Forestry and Fisheries Facilities Damaged Due to Disasters (1950); Small-Medium Business Credit Insurance Act (1950); Act on National Treasury Share of Expenses for Recovery Projects for Public Civil Engineering Facilities Damaged Due to Disasters (1951); Public Housing Act (1951); Fishing Boat Damage Compensation Act (1952); Agriculture, Forestry and Fisheries Finance Corporation Act (1952); Railway Improvement Act (1953); Act on National Treasury Share of Expenses for Recovery of Public School Facilities Damaged Due to Disasters (1953); Act on Interim Measures for Financing Farmers, Woodsmen and Fishermen Suffering from Natural Disasters (1955); Airport Improvement Act (1956); Small-scale Business Equipment Installation Financial Support Act (1956); Act on Special Financial Support to Deal with Extremely Severe Disasters (1962); Fisheries Disaster Compensation Act (1964); Act on Earthquake Insurance (1966); Act on Special Financial Measures for Group Relocation Promotion Projects for Disaster Mitigation (1972); Act on Payment of Solatia for Disasters (1973); Act on Special Measures for Reconstruction of Disaster-stricken Urban Areas (1995); Act on Special Measures for Reconstruction of Jointly Owned Buildings in Disaster-stricken Areas (1995); Act on Special Measures for Preservation of Rights and Profits of the Victims of Specified Disasters (1996); Act on Support for

Disasters Countermeasures Basic Act of 1961 (“DCBA”) and will also briefly elaborate on Japan’s nuclear disaster management system. The DCBA is considered a landmark in Japan’s disaster management history, as it defined protection of national land and citizen lives and property from natural disasters as a national priority²¹. The DCBA lays out the national level framework for disaster management prevention, preparedness, response and recovery, by defining responsibilities for disaster management, disaster management organizations, a disaster management planning system, financial measures and the definition of a state of emergency. Under the DCBA, private, public and all other persons with responsibilities regarding disaster risk reduction must fulfill their responsibilities faithfully and make efforts to contribute to disaster risk reduction. Another important piece of legislation is the Fire Services Act of 1948, which established the Fire and Disaster Management Agency (FDMA)²² under the Ministry of Internal Affairs and Communications, a leading agency responsible for disaster prevention and response. The Constitution of Japan does not contain emergency clauses and addresses a state of “national emergency”, without defining it, only in one article, concerning the Cabinet’s power to convoke an emergency session of the House of Councillors in “time of national emergency” when the House of Representatives is dissolved.²³ It should be noted, however, that the Liberal Democratic Party (LDP) of Japan announced²⁴ a draft

Livelihood Recovery of Disaster Victims (1998).

²⁰ The list of laws and their category is taken from the report “Disaster Management in Japan”, by the Cabinet Office at <http://www.bousai.go.jp/1info/pdf/saigaipanf.pdf>, p. 6-7

²¹ The Disasters Countermeasures Basic Act of 1961 (Hereinafter DCBA), Article 1 [“For the purpose of protecting the national territory, the life and limb of the citizens and their property, this Act shall have for its aim the establishment of a machinery working through the State and local governments and public corporations and the clarification of where responsibilities lie, and provide for the formulation of disaster prevention plans and basic policies relating to preventive and emergency measures and rehabilitation programs to deal with disaster, and other necessary measures as well as financial action, thus ensuring an effective and organized administration of comprehensive and systematic disaster prevention with a view toward the preservation of social order and the security of the public welfare” (provisional translation at <http://www.adrc.asia/documents/law/DisasterCountermeasuresBasicAct.pdf>)

²² FDMA’s official website at <http://www.fdma.go.jp/en/>

²³ FN 4, The Constitution, Articles 53 and 54 [Article 53: “The Cabinet may determine to convoke extraordinary sessions of the Diet. When a quarter or more of the total members of either House makes the demand, the Cabinet must determine on such convocation”; Article 54. When the House of Representatives is dissolved, there must be a general election of members of the House of Representatives within forty (40) days from the date of dissolution, and the Diet must be convoked within thirty (30) days from the date of the election.
When the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the Cabinet may in time of national emergency convoke the House of Councillors in emergency session. Measures taken at such session as mentioned in the proviso of the preceding paragraph shall be provisional and shall become null and void unless agreed to by the House of Representatives within a period of ten (10) days after the opening of the next session of the Diet.]

²⁴ The announcement of May 7,2012 at the Liberal Democratic Party official website. <https://www.jimin.jp/english/news/117099.html> (last visited

constitution in 2012²⁵. It proposes to incorporate a new chapter in the Constitution, according to which, in case of national emergency, including armed attacks by foreign countries and large-scale natural disasters, the Prime Minister will declare a state of emergency and take appropriate measures in response (Art. 98) whereas the Cabinet will be granted legislative powers to enact orders similar to laws passed by the National Diet, Japan’s bicameral legislature²⁶ (Art. 99).

Below is a non-comprehensive list of laws dealing with emergencies and extreme conditions in Japan:

Natural disasters	National security	Socio-economic meltdowns
Main laws ²⁷ : The Disaster Countermeasures Basic Act, 1961; Disaster Relief Act, 1947; Fire Services Act, 1948 The Act on Special Measures Concerning Nuclear Emergency, 1999	Not found in the course of the research ²⁸	The Disaster Countermeasures Basic Act 1961 ²⁹ (regarding meltdowns caused by “extraordinary disasters”)

12/24/2015)

²⁵ Nihon-koku Kenpou Kaisei Souan, LDP-Draft-Constitution. 2012 [Japanese]. <http://rijs.fas.harvard.edu/crrp/papers/pdf/LDP-Draft-Constitution-2012.pdf> (last visited 12/24/2015)

²⁶ The National Diet, Japan’s bicameral legislature, is comprised of the House of Representatives and House of Councillors.

²⁷ For a comprehensive list of laws related to Natural disasters see footnotes 16-19.

²⁸ FN25 , LDP draft constitution of 2012.

²⁹ FN 21, DCBA, Article 105 [grants the Prime Minister the power to declare a state of emergency “In time of an extraordinary disaster whose repercussions on the national economy and public welfare are serious...” Our interpretation is that this article will be applicable in cases of socio-economic meltdowns, caused by “extraordinary disasters”.]

2. Declaration of a State of Emergency: A Table of Analysis

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Generic emergency	In time of an extraordinary disaster ³⁰ whose repercussions on the national economy and public welfare are serious and far-reaching.	<p><i>The Prime Minister who needs to receive the consent of the Diet within 20 days.</i></p> <p>“The Prime Minister may, when he deems it particularly necessary in the interest of enforcing emergency measures, declare a state of emergency involving the whole or part of the affected area, upon referring the matter to a Cabinet Conference and shall put the matter before the Diet for its consent not later than twenty days from the date of declaration³¹. When the Diet is in adjournment or the House of Representatives has been dissolved, the Prime Minister shall seek parliamentary consent at the earliest session of the Diet thereafter”.</p> <p>The declaration shall specify the area concerned, give a brief account of the situation warranting such action and set the date and time when the declaration takes effect.</p>		When there has been a resolution to refuse consent to a declaration of state of emergency, or when the Diet has voted to repeal the declaration of a state of emergency, or when there is no longer the necessity for the declaration, the Prime Minister shall promptly revoke said declaration ³² .	The Disaster Countermeasures Basic Act 1961, Articles 105 and 106

³⁰ Id. Article 2 [“Disaster means a storm, heavy rain, heavy snow, flood, high tide, earthquake, tsunami, or other unusual natural event, or a conflagration or explosion, or any other damage of similar extent from a cause to be prescribed by ordinance.”]

³¹ Id. DCBA, Article 106.

³² Id. Article 106 (2)

Situation	Definition of an "emergency"	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Earthquake	See Generic emergency and footnotes 28 and 29				
Fire					
Epidemic ³³					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				
Socio-economic meltdowns	See Generic emergency and footnote 27				
Cyber	Have not been found in the course of the research				

³³ Though epidemic is not explicitly stated in the definition of "Disaster" in Article 2, it may fall under "unusual natural event". It should be noted that this word is mentioned in the Act, in Article 50(6), when referring to epidemic control and public health and sanitation as matters related to emergency measures.

Situation	Definition of an “emergency”	Who may declare the state of emergency and under what conditions?	Statutes that come into force during emergency	How does a state of emergency end?	Reference (statute and article)
Other - Nuclear Emergency	A nuclear emergency situation means “a situation in which radioactive materials or radiation at an abnormal level has been released outside the nuclear site of a nuclear operator (in the case of the transport of radioactive materials outside the nuclear site, by the operation of the reactor... the same shall apply.)” ³⁴	Prime Minister shall declare a nuclear emergency situation when there has been a report submitted to him by the competent minister, according to which an “abnormal level of radiation” as specified by a Cabinet Order has occurred or “when an event specified by a Cabinet Order as an event that indicates the occurrence of a nuclear emergency situation has occurred”.	Evacuation orders according to Article 60 of the Basic Act on Disaster Control Measures.	Once the Prime Minister finds the declaration of a nuclear emergency to be no longer necessary and after hearing the opinions of the Nuclear Safety Commission.	The Act on Special Measures Concerning Nuclear Emergency 1999, Article 15.

³⁴ The Act on Special Measures Concerning Nuclear Emergency, 1999, Article 2

3. Legal Powers

(Legal powers during emergency)

Japan has a comprehensive legal framework concerning emergency management. The tables below focuses on the powers provided in the Disasters Countermeasures Basic Act, 1961 and the Act on Special Measures Concerning Nuclear Emergency 1999, and **should not be viewed as comprehensive**.

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	<ul style="list-style-type: none"> • Executive (Prime Minister) • Executive/Legislative (Cabinet) 	<ul style="list-style-type: none"> • The Prime Minister shall establish headquarters for emergency disaster control with jurisdiction over the area covered by the declaration of a state of emergency; the chairman of the headquarters may give necessary instructions to the chief officer of an appropriate designated local administrative organ, local government or any other executive agency, designated national or local public corporation. • The Cabinet may enact an ordinance in order to take necessary steps to accept assistance from other countries for the relief of disaster victims. 		<ul style="list-style-type: none"> • Declaration of a state of emergency • When unable, during times of disaster, to quickly and smoothly accept assistance from other countries for the relief of disaster victims and the Diet is in adjournment and when the situation does not allow time to call the Diet 	<ul style="list-style-type: none"> • The Disaster Countermeasures Basic Act of 1961 (DCBA), Article 107 • DCBA, Article 109

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency (cont.)	<ul style="list-style-type: none"> Legislative (Cabinet/ Diet) 	<ul style="list-style-type: none"> Ordinances rationing materials of daily necessity in critical shortage; restriction or ban on their transfer or delivery; fixing a ceiling on prices of commodities, consideration for labor, fees for services in the interest of emergency measures, rehabilitation and a stable life for the citizens; deferment of monetary debts. 		<ul style="list-style-type: none"> In case of an urgent need to preserve the economic order of the nation and to ensure the public welfare; situation of emergency ; the Diet is in adjournment and when the situation does not allow time to call the Diet³⁵ “Upon enactment of such ordinance the Cabinet shall decide on the convocation of the Diet in extraordinary session or to seek an emergency session of the House of Counselors; it shall take further steps to enact an Act to replace such ordinance...” 	<ul style="list-style-type: none"> DCBA, Article 109

³⁵ FN 21, DCBA. Article 109 [When an ordinance of such is enacted and is no longer required, the Cabinet shall immediately revoke it; unless it has expired pre-hand, shall become null and void twenty days.]

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Earthquake	See Generic emergency				
Fire					
Epidemic					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				
Socio-economic meltdowns	See Generic emergency				
Cyber	Have not been found in the course of the research				
Other - Nuclear Emergency	<ul style="list-style-type: none"> • Executive (national level) • Executive (local level) 	<ul style="list-style-type: none"> • Prime Minister shall give public notice of the occurrence of a nuclear emergency; • Prime Minister shall instruct mayors of municipalities and prefectural governors who have jurisdiction over the area to make recommendation and give instructions of evacuation; • The Prime Minister shall give other relevant instructions concerning emergency measures • The Prime Minister shall establish nuclear emergency response headquarters within the 		<ul style="list-style-type: none"> • Nuclear emergency declaration 	The Act on Special Measures Concerning Nuclear Emergency 1999, Articles 15 – 26

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
		<p>Cabinet Office in order to promote emergency response;</p> <ul style="list-style-type: none"> • The director of the nuclear emergency response headquarters shall manage the affairs of the nuclear emergency response headquarters and direct and supervise relevant officials; • Local nuclear emergency response headquarters and municipal headquarters for disaster control shall organize a Joint Council for Nuclear Emergency Response in order to exchange information and cooperate with one another for the emergency response measures; • The nuclear emergency preparedness manager shall have on-site organization for nuclear emergency preparedness for preventing the occurrence or expansion of a nuclear disaster; • Emergency response measures such as securing food and medicine, rescue of disaster victims, matters relating to emergency recovery and maintenance of the social order - shall be implemented by the heads of designated administrative organs; 			

(Legal powers before emergency)

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	Executive	<ul style="list-style-type: none"> • The Central Disaster Prevention Council is responsible for a <i>basic</i> disaster prevention plan, reviewed each year in light of research findings, conditions of disasters that have occurred, and the effect of emergency measures taken • The chief officer of a designated administrative organ³⁶ and a designated public corporation³⁷ is responsible for an <i>operational</i> disaster prevention plan • A city, town or village disaster prevention council (for a city without a council, the mayor of the city) are responsible for an area disaster prevention plan • The chief officer of a designated administrative organ is responsible for maintaining organizations for disaster prevention 		<ul style="list-style-type: none"> • The plan shall be reported to the Prime Minister, and relevant administrative organs and the public 	<ul style="list-style-type: none"> • Chapter III of The Disaster Countermeasures Basic Act 1961 (art. 34-45) deals with disaster prevention plans • Chapter IV of The Disaster Countermeasures Basic Act 1961

³⁶ Id. DCBA, Article 36.

³⁷ Id. Article 39.

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
		<ul style="list-style-type: none"> Those responsible for disaster prevention as prescribed by law or disaster prevention plan are responsible to perform disaster prevention drills. 			regarding Prevention of Disasters Article 46-49
Earthquake	See Generic emergency				
Fire					
Epidemic					
Flood					
Tsunami					
Storms (tornado, hurricane)					
War	Have not been found in the course of the research				
Terror events	Have not been found in the course of the research				
Socio-economic meltdowns	See Generic emergency				
Cyber	Have not been found in the course of the research				
Other - Nuclear Emergency	Persons and organizations as specified in the Act	<p>A nuclear operator shall prepare a nuclear operator emergency action plan</p> <p>A nuclear operator shall establish an on-site organization for nuclear emergency preparedness as well as appoint a nuclear emergency preparedness manager</p>		<ul style="list-style-type: none"> Plan shall not conflict with any regional disaster prevention plan 	<ul style="list-style-type: none"> Art 7-13 of The Act on Special Measures Concerning Nuclear Emergency 1999

Situation	Powers	Who is the power conferred to	Power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
		<p>A nuclear operator shall establish in its nuclear site a radiation measurement facility</p> <p>The competent Minister shall designate a facility that serves as the center for emergency response</p> <p>National Plan concerning disaster prevention drills shall be carried out based on a plan prepared by the competent Minister</p>		<ul style="list-style-type: none"> • In accordance with the requirements specified by an ordinance of the competent ministry 	

(Legal powers after emergency)

Situation	Powers	Who is the power conferred to power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Generic emergency	Executive	<ul style="list-style-type: none"> • Responsibility for rehabilitation after a disaster shall be implemented by the chief officer of a designated national or local administrative organ, the chief officer of a local government, any other executive agency, a designated national or local public corporation; • Upon fixing the amount of rehabilitation expenses or established standards for the implementation of a rehabilitation program, the Minister shall report a summary of his action to the Central Disaster Prevention Council; • General compensation clause for persons engaged in the work of emergency measures³⁸; • The Government (national and local) may allow reduction, exemption or deferment of national taxes and other assessments or take other necessary action for the benefit of disaster victims. • Disaster Relief Act, 1947 aims to provide essential emergency relief in the event of a disaster through the cooperation of local governments and non-governmental organizations as well as the general public, so as to protect the disaster victims and maintain social order. 	<ul style="list-style-type: none"> • Should be implemented by ordinance or under an appropriate disaster prevention plan; • Shall be done appropriately and expeditiously on the basis of a report from the Governor of the prefecture, data presented by other local governments, and results of on-site investigations • By an Act or ordinance 	<ul style="list-style-type: none"> • DCBA, Article 87 • DCBA, Article 88 • DCBA, Article 89 • 84 (DCBA) • 85 (DCBA) • Disaster Relief Act, 1947

³⁸ FN 21, DCBA. Article 84 [stipulates that when the mayor of a city or town or the head of a village, or a police official or a maritime safety official or a self defense force member dispatched for disaster relief has caused residents of the area of the city to work in operations related to emergency measures, and when a person has died, been injured or has become ill, or has been crippled as a result of the work, the city, town or village shall, by its ordinance and according to standards set by its ordinance, compensate the person, his surviving family, or his dependents, for the loss sustained.]

Situation	Powers	Who is the power conferred to power exercised vis-a-vis	Conditions to be met when exercising the power	Statute and Article
Earthquake	See Generic emergency			
Fire				
Epidemic				
Flood				
Tsunami				
Storms (tornado, hurricane)				
War	Have not been found in the course of the research			
Terror events	Have not been found in the course of the research			
Socio-economic meltdowns	See generic emergency			
Cyber	Have not been found in the course of the research			
Other - Nuclear Emergency	Administrative	<ul style="list-style-type: none"> Measures for restoration from nuclear emergency shall be implemented by the heads of designated administrative organs <p>The Act on Compensation for Nuclear Damage, 1961 aims "to protect persons suffering from nuclear damage and to contribute to the sound development of the nuclear industry by establishing the basic system regarding compensation in case of a nuclear damage caused by reactor operation etc."³⁹</p>		<ul style="list-style-type: none"> Art 27 of The Act on Special Measures Concerning Nuclear Emergency 1999 The Act on Compensation for Nuclear Damage, 1961

³⁹ The Act on Compensation for Nuclear Damage, 1961, Article 1.

4. Rights in a State of Emergency

According to the Japanese Constitution, "fundamental human rights by this Constitution guaranteed to the people of Japan are fruits of the age-old struggle of man to be free" and are to be "held for all time inviolate"⁴⁰. Furthermore, whereas the Constitution is "the supreme law of the nation, no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity"⁴¹. Having said that, neither the constitution nor any other piece of legislation covered by this research *directly* relates to the matter of human rights during an emergency. It appears that the matter may be covered in the future in the LDP draft constitution of 2012, once "state of emergency" will be defined under a constitutional framework.⁴²

Japanese legislature relation towards human rights under state of emergency might be inferred from the following provisions that indirectly deal with rights, however, it should be noted that our research in this regard is still preliminary:

- Compensation for loss per requisitioning property for emergency official use (DCBA, Article 82) as well as a general compensation clause for persons engaged in the work of emergency measures (DCBA, Article 84)
- An ordinance enacted regarding rationing of materials in critical shortage, restriction or ban on their transfer or delivery, fixing a ceiling on prices of commodities, and other measures specified in Article 109 (1) of the DCBA⁴³ may provide that any person in violation of any provision of said ordinance shall be liable to imprisonment at hard labor for not more than two years or imprisonment of the same length without hard labor, or a fine of not more than one hundred thousand yen, detention, a police fine, or confiscation, or a combination of any two penalties (DCBA, Article 109 (2));
- When deemed necessary to prevent danger to life or limb, the mayor of the city or town may declare area to which access shall be restricted or prohibited (DCBA, Article 63).

⁴⁰ FN 4, The Constitution, Article 97.

⁴¹ Id. Article 98.

⁴² FN 25, LDP draft constitution.

⁴³ FN 21, DCBA, Article 109 [(1) rationing of materials of daily necessity in critical shortage; restriction or ban on their transfer or delivery; (2) fixing a ceiling on prices of commodities, consideration for labor, fees for services in the interest of emergency measures, rehabilitation and a stable life for the citizens; (3) deferment of monetary debts.]