



日本の参画・協働施策の展開 Development of Partnership Policies in Japan

グリーンアクセスプロジェクト研究代表／大阪大学
Green Access Project, Osaka University

大久保規子
Noriko Okubo



市民参加の原則とグリーンアクセス権 Principle of Public Participation: Green Access

- ・リオ宣言第10原則: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level." (Principle 10)
- ・オースロ条約の3つの柱:
Three Pillars of Aarhus Convention (1998)
 - (1) 情報公開: Access to information
 - (2) 政策決定参加:
Right to participate in decision-making
 - (3) 司法アクセス: Access to justice
- ・東アジア諸国はオースロ条約未加盟: East Asian countries have not ratified Aarhus Convention.
- ・UNEPバリガイドライン: Bali Guidelines in 2010.



グリーンプロジェクトの目的 Purposes of the Green Access Project

- ・日本の先駆的事例の歴史的意義や特性を踏まえつつ、グローバル・スタンダードをも充たすような日本型の協働モデルの提言
- ・To propose appropriate Green Access models for Japanese society, which could simultaneously meet global standards and preserve the historical and original achievements that have arisen as a result of the leading environmental cases in Japan



日本型協働モデル Japanese Environmental Cooperation Model

- ・地方の先駆的取組と自主的取組の有効性
In Japan, the public participation (PP) is embodied in strong local initiatives and effective voluntary approaches.
- ・協働先進国的な側面
Many good examples of collaborative activities
- ・権利保障という側面の弱さ
Guarantee of Green Access Rights: weak



Developments in Japan



リオ会議前の状況: 仕組みの未整備 Before the Rio Earth Summit: Weak legal scheme

- ・戦後の高度経済成長期: 激甚な公害被害
Serious environmental pollution after World War II
- ・公害反対運動+損害賠償訴訟: 環境政策に大きな影響
Anti-pollution movements+Lawsuits: Effective
- ・被害者、研究者、弁護士等のネットワーク形成
Networking: Japan Air Pollution Victims Association
Japan Environmental Council (JEC)
- ・参加・協働の法制度は未整備
Legal framework for Green Access: Weak



Development after the Rio Earth Summit



参加制度の整備へ: 3要因 Strengthening legal system for PP : 3 reasons

1 リオ会議(1992)と環境法の再編

Rio Summit: New development of Environmental law

2 阪神淡路大震災(1995)→NGO認知とNPO法(1998)

Hanshin-Awaji Earthquake: Important role of NGO
Act to Promote Specified Non-Profit Activities

3 地方分権改革(2000):

参加・協働条例の増加(全自治体の3割)

Decentralization: Now, approximately 30% of the local governments have basic ordinances which work as legal framework for PP.



Access to information



情報公開 Access to information

情報公開法の制定(1999)

Act on Access to Information held by
Administrative Organs



行政情報の開示請求権の保障

Right to request the disclosure of
administrative documents



環境分野の市民参加 Participation in decision- making in environmental matters



NPO活動の促進: Promotion of NPO activities

1 地球環境基金の設置(1993)

Establishment of Japan Fund for Global
Environment: Supporting environmental NGOs

2 地球環境パートナーシッププラザ

環境パートナーシップオフィスの設置(1996)
Global Environmental Outreach Centre
Environmental Partnership Office

3 環境教育・環境保全取組促進法の制定・改正 (2003, 2011)

Act for the Promotion of the Environmental Activities
through the Enhancement of Environmental Education



市民参加の新しい仕組み New legal framework for PP

- 1 環境影響評価法の制定(1997)と市民参加
EIA Law and PP
- 2 新たな参加制度: New Measures for PP
 - (1) 協定制度(自然公園の管理等)
Agreement system(ex. Scenic Landscape Preservation Agreement in Natural Parks)
 - (2) 協議会制度(自然再生等)
Council system (ex. Nature Restoration)
 - (3) 提案制度(景観法等)
Proposal system for planning (ex. Landscape Act)



インフラ整備法の改革 Reform of legal system for land use and infrastructure improvement

国土形成計画法(2005)
社会資本整備重点計画法(2003)
National Spatial Planning Act
Priority Plan Act for Social Infrastructure



環境配慮+参加
Development The Minister of Land and Infrastructure shall take necessary measures to reflect the opinions of the public, as well as confer with the Minister of Environment.



個別のインフラ関連法の秋各 Revision of some sectoral laws concerning land use and infrastructure

- ・河川法の改正(1997)
Revision of Rivers Act
- 1 環境保全を法目的に追加
Environmental conservation: Fundamental task of river administration
- 2 参加規定の導入(河川整備計画)
Introduction of PP: River Improvement Plan
River administrators shall take necessary measures, such as public hearings, to reflect the opinion of the people concerned whenever necessary.



司法アクセス Access to Justice



環境特有の訴訟制度は不存在 No specialized court

- 1 特別裁判所の不存在・行訴法の存在
 - ・No administrative / environmental court
 - ・Special rules: Administrative Case Litigation Act
- 2 環境訴訟に関する特別規定の不存在
No special procedural rule for environmental litigation
- 3 環境ADR機関の存在(1970年代～)
公害等調整委員会/公害審査会
ADR system for environmental cases:
Environmental Dispute Coordination Commission



行政訴訟改革 Reform of administrative litigation

行政事件訴訟法改正(2004)
Revision of Administrative Case Litigation Act



司法アクセスの強化
Strengthening access to justice

- ・原告適格の拡大(限定的)
Wider standing
- ・仮の救済の充実
More effective interim relief

Japanese Characteristics and Critical points

NPO活動の特徴 Characteristics

- 1 地域に根ざした草の根のNPO活動が盛ん
Local based grassroots activities: active
- 2 ネットワーク化は限定的:全国的連合体の不在
Networking: limited
No big network organization of environmental NPOs at national level
- 3 法制度・訴訟に対する関心や権利意識は一般には希薄
Interest in legal system/litigation: limited
Awareness of procedural right: relatively low

現在の参加制度への不満 Some criticisms from both the public and Administration

- ・市民:意見が政策に反映されない
Public: Our opinions have never been reflected in public policies.
- ・行政:参加の手に間に比べ効果が見えにくい
Administration: No innovative ideas are submitted, no matter how much effort and time are put into the participation procedures.

現在の制度の有効性に対する疑問

Cooperative measures to build a sustainable society is effective?

現在の参加制度の課題 Critical points of current PP system

- 1 情報参加か, 参加権の保障か
PP for collecting information?
- 2 不適切な参加時期/短すぎる期間
Inadequate stage for PP: too late, too short
- 3 意見の反映について, 幅広い裁量
Wide discretion how to consider public opinion
- 4 参加手続の瑕疵を是正する手段が不十分
訴訟による是正は困難(原告適格と裁量の壁)
Procedural defect of PP: No admission of legal standing for the public

環境行政訴訟の機能不全:原告適格問題 Ineffectiveness of administrative litigation Lack of Standing

- 1 狭い原告適格→行政訴訟改革の効果は限定的
Requirement: legal interest
Narrow interpretation of standing:
Reform effect is limited
- 2 環境に特化した公益訴訟制度の不存在
No Environmental Public Interest Litigation
→とくに, 文化財・自然保護訴訟の機能不全が顕著
Most difficult cases: Protection of cultural properties
Nature protection
- 3 環境団体訴訟の未導入
NGOs don't have standing.

今後の展望 Future Perspective



新たな日本モデルの必要性 Need for new Japanese Model

- 1 現状:法制度に頼らない協働が中心, 制度化への関心希薄
•Deep-seated skepticism against institutionalizing PP
• Even Today, many leading collaborative activities are not based on legal scheme.
- 2 複雑な利害関係が絡む問題には法的枠組みが不可欠
•Complicated environmental issues need the legal scheme for involving all concerned.
- 3 日本の先駆的事例の歴史的意義を踏まえつつ, グローバル・スタンダードをも充たすような新たな日本型の協働モデル
•Need for new PP model which could simultaneously meet global standards, and preserve the historical achievements in Japan



国際レベル:4つの選択肢 International level : Four options

- 1 オーフス条約批准
To ratify the Aarhus Convention,
- 2 アジアの地域条約を採択
To adopt a regional convention in Asia,
- 3 UNEPガイドラインの強化
To strengthen the UNEP Guidelines in 2010,
- 4 個別の環境条約の強化
To amend the existing international conventions and frameworks



National level

- 1 先駆的取組の促進は継続課題
Promotion of good practice
- 2 参加権の保障/参加の最低基準の確立
Guarantee of PP right
Clarification of minimum standard for PP
- 3 団体訴訟, 環境公益訴訟の導入
Strengthening access to justice
Open standing for NGOs
Introduction of Environmental Public Interest Litigation