



# The Bali Guidelines and Asia

**Osaka University**  
**Noriko Okubo**



# What is Green Access Project



## Aarhus Convention and “Green Access Rights”

- “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.”(Principle 10)
- “Green access rights” based on Aarhus Convention (1998)
  - (1) Access to information
  - (2) Right to participate in decision-making
  - (3) Access to justice



## What is the aim?

To build a system of public participation and cooperation in which collective environmental activities generate synergistic effects

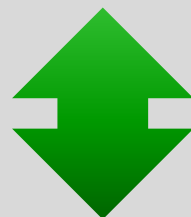


Guarantee of Green Access Rights  
Creation of a sustainable society



## Japan's Strengths and Weaknesses

- Environmental litigation has played significant roles for the progress of environmental policies.
- Grassroots activities
- New developments (1990s～)  
consulting committee, proposal systems



- Complaints: “Our opinions have never been reflected in public policies, no matter how much efforts we make to participate in discussions”.



## Needs for innovation

- People feel tired of cooperating.
- Many difficult cases to resolve, US-base-related environmental issue in Henoko (Okinawa), and nuclear power plant issues in many regions.



- To propose appropriate PP models for Japanese society that also meet global standards
- To preserve originality of Japan's leading cases outcomes



## Green Access Project I (2010-2013)

- Comparative studies of green access, focusing on the Parties of the Aarhus Convention
- Questionnaire surveys on actual situation of PP
- Making the database of the PP ordinances in Japan (local level)
- Making the database of the legal provisions concerning the new types of PP (national level)
- Reviews of consultation models in the field of transportation and proposals for innovation



## Green Access Project II (1) Making legal Indicators for P10

- Variation of measures to implement P10  
social/cultural conditions of each country/region
- Important: to make comparative study  
to share their good practices.



- Elaborating international legal performance  
indicators on P10



- Promotion of environmental democracy
- Protection of human rights



## Green Access Project II (2)

### Possibilities for an Asian version of Aarhus

- Aarhus Convention is open to any state. /
- However, all 47 Parties from UNECE region.
- UNEP Bali Guidelines (2010)
- Latin-American and Caribbean countries are now planning to have their own regional instrument.
- No such movement in Asia

Why not?



## Today's topic

- To discuss **common characteristics and issues** of each region and to share those good practices
- **Focusing on**
  - Right to participate in decision-making
  - Access to justice



# Developments in the reform of environmental law and public participation after 1992



# Constitutional provision of the environmental right and participation principle



## Constitution and environmental right

- The environmental right to live in a healthy environment is guaranteed nowadays by constitutions, case law, and the specific environmental laws of many countries.
- Provisions are normally very **simple**.
- ‘All citizens shall have the right to a healthy and pleasant environment’, and the substance of the environmental right is determined by Act (Korea).
- In **South Asian** countries, environmental rights may be guaranteed as a part of the right to life by **case law** (India).



## 2007 Constitution of Thailand

- Various and detailed provisions
- Article 67

Right of PP, right of a community to sue government

Any project or activity which may seriously affect a community's environmental quality is not permitted without EIA/ HIA with a public hearing, and a hearing of an independent organization, including representatives from environmental NGOs.



# Reform of environmental law after the Rio Summit and PP



## Provisions for P10 principle (Indonesia, China etc.)

‘Everybody shall be entitled to environmental education, information access, participation access and justice access in fulfilling the right to a proper and healthy environment’.

### Remark

#### Right to lodge a complaint

Recently, the number of SLAPPs has increased in some Asian countries. A SLAPP is a civil complaint or counterclaim filed against NGO/individuals because of their communication to a government or the electorate on an issue of some public interest or concern.



**Important:** to specify the right to lodge a complaint



## Provisions for role of eNGOs

### Registration system for ENGOs (Thailand)

- NGOs may request of government the **various supports** for a public relations campaign, environmental research, and providing legal aid to victims of pollution, etc.
- NGOs may **nominate** private sector representatives for the National Environment Board.



## Community rights (e.g. Indonesia)

- Communities have the equal and broad right and opportunity to participate actively in environmental protection in the form of social control, providing suggestions, opinions, or recommendations, making objections or complaints, or providing reports.
- Involvement of communities should be based on the principle of provision of information transparently and completely.
- Right of communities to file class

### Remark

Community-based approach in Asian countries



## How to improve the formality of PP in EIA

- **India** (reform in 2006)

Key stakeholders, including *gram panchayat* (village councils), women, marginal groups, and community-based organizations are identified.

The entire process is video recorded to ensure a fair process.

- **Taiwan**

Developer prepares a draft EIA report based on the opinions of the competent authority, experts, groups, and local residents.

The EIA Act also includes a provision for a citizen lawsuit that is similar to the US scheme.



# Access to justice and the establishment of the environmental courts



## Southeast Asia

### 1 Expansion of standing by case law

- Oposa case in the Philippines

The Supreme Court ruled that children might sue to enforce that right on behalf of both their generation and future generations.

### 2 Introduction of public interest litigation by legislation

- Indonesia: NGO has a right to file lawsuits in the interest of environment.
- Requirements: similar to many European countries organizations are incorporated, purpose of environmental conservation, two years of substantive activities



## South Asia

- Initiatives to use environmental public interest lawsuits

India, Pakistan, Bangladesh etc.

- Public interest lawsuits based on the constitution

M. C. Mehta filed a lawsuit to get administrative authorities to take action against people living along the Ganga River for disposing of municipal and human waste in the river. The court ordered the government to have all educational institutions provide environmental education.



## East Asia

- Introduction of EPIL has been slow relative to the rest of Asia: **No EPIL in Japan or in Korea**

- Taiwan:

Introduction of citizen lawsuit system in almost all main environmental laws which allow for administrative lawsuits seeking injunctions to be filed compelling administrative agencies to enact the necessary measures against polluters.

- China

2012 revised Civil Procedure Act/ Environmental Protection Law of 2014 allow civil PIL.



# Establishment of environmental court/division

## How to improve judicial review process?

### 1 Environmental court in India

- National Green Tribunal in 2010

New case law: Purpose of public hearings was to involve members of the public in order to have their full participation, and the procedure was intended to render the decision fair and participative and not to thrust such a decision on people who may be unaware of the implications thereof (*National Green Tribunal*, on 16 April).

- 117 ordinary courts are designated as environmental courts.

### 2 Environmental division

- Thailand

Court of Justice and Administrative Court

- China



## Special procedures for environmental cases Example in the Philippines

- **'Rules of Procedure for Environmental Cases'** (2010).
- Innovative measures, such as citizen lawsuits, environmental protection orders, a Writ of Kalikasan, continuing mandamus, and anti-SLAPP clauses
- **Writ of Kalikasan:** Remedy available to a natural person/ NGO on behalf of a person whose constitutional right to a balanced and healthful ecology is violated, by an unlawful act or omission of a public official/private individual
- **Continuing mandamus:** Writ issued by court, directing an agency to perform an act decreed by a final judgment, which remains effective until the judgment is fully satisfied.



# Future perspectives



## Japan and Asia

Green access rights have been strengthened in many Asian countries over the last 20 years. This kind of **rights-based approach** seems to be increasingly. On the one hand, there are also some common, for example, stressing community rights and capacity building, and promoting PIL. On the other hand, There is **insufficient implementation of PP provisions**.

In comparison with other countries, in general, PP in Japan has been traditionally grounded in voluntary activities. This is the primary characteristics of Japanese environmental policy. This could be called the **Japanese Environmental Cooperation Model**, a kind of **voluntary-based approach** in contrast to the rights-based approach of the Aarhus Convention.



## Next Step

It may be important to appropriately combine the rights-based approach and the voluntary-based approach in Japan in order to improve the effectiveness of PP. A Japanese model could contribute to effective implementation of legal provisions for PP in Asia.

In this context, it might be effective to develop international indicators on P10, and to evaluate each legal structure and its implementation based on such common indicators.

Now, new leading projects for such indicators as EDI (the Environmental Democracy Index) by the TAI are running. Also, it is important to develop and improve this process.