Green Access Discussion Paper

DP-2015-009

The Bali Guidelines and Asia

Noriko Okubo

2015/3/6

3-1-01 okubo

International Workshop on "Participation Principle Indicators under the Environmental Law: Towards Establishing International Collaboration in Pursuit of Environmental Justice" at 9th-10th March 2015

Organizers: **GREEN ACCESS PROJECT II** "Review of Legal Indicators for the Participation Principle in Environmental Matters - Promotion of an International Cooperation towards Strengthening the Environmental Democracy" (JSPS Grant-in-Aid), **OSAKA UNIVERSITY, PROJECT TIGER** "Policy decision-making and public participation on energy, chemicals and water management: an international comparative study" (Global Initiative Program), and MITSUI & CO., LTD., ENVIRONMENT FUND – Project "**Proposing an Asian Version of the Aarhus Convention – Constitution of an International Cooperation for Implementing the Environmental Justice**"

GREEN ACCESS PROJECT II

Osaka University

The Bali Guidelines and Asia

Noriko Okubo

1 Developments in international schemes

Public participation is essential to the promotion of sustainable development. As Principle 10 of the Rio Declaration of 1992 states, environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Public participation contributes to the protection of the right to live in a healthy environment as a basic human right. It is also an important instrument of 'environmental democracy'. Due to the limited resources of public administrations, public participation is indispensable for better policy decision-making and for effective implementation of environmental law. In addition, public participation from the earliest stage promotes public acceptance of environmental policy and leads to a reduction in conflicts later.

In order to accelerate action in terms of implementing Principle 10, the United Nations Economic Commission for Europe (UNECE) on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted in 1998 in the Danish city of Aarhus, and hence is known as the Aarhus Convention. It requires parties to guarantee the procedural rights of access to information, public participation in decision-making, and access to justice. Effective public participation depends on full, accurate, and up-to-date information. Access to justice ensures that participation occurs in reality and not just on paper. Therefore, it is important to guarantee these three access rights in an integrated way. Here, I call them jointly the 'Green Access Rights'.

The Aarhus Convention is open to any state to join. As of 16 January 2015, however, all 47 Parties were from the UNECE region. The Governing Council of the United Nations Environment Programme (UNEP) adopted the Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters (the Bali Guidelines) on February 26, 2010 in order to promote Principle 10. Like the Convention, these Guidelines have three pillars. However, their content is much more abstract and gives more flexibility and discretion to legislators. In this sense, the Guidelines focus particularly on developing countries and emphasize the importance of capacity building within each pillar. Although the Bali Guidelines are not legally binding, Japan also should respect them, especially as a then member of the Governing Council. The importance of Principle 10 was also reaffirmed in Articles 43 and 44 of the Rio+20 outcome document, entitled 'The Future We Want'.

The measures and methods used to implement Principle 10 differ from country to country.

They depend on the social and cultural conditions of each country and region. They vary depending on the field, as well as the social and cultural conditions. Therefore, it is important to make a comparative study of the various countries and regions, and to share their good practices. The Latin-American and Caribbean countries, for example, are now planning to have their own regional instrument in relation to Principle 10 in the framework of the Economic Commission for Latin America and the Caribbean (ECLAC). In contrast, there has been no movement in Asia until now to have its own regional instrument on the Green Access Rights. Even though there have been remarkable developments in environmental law in this region following the Rio Summit of 1992, the problem of deficient implementation still remains. There are various reasons for that, such as the lack of detailed regulation, insufficient financial resources, and corruption among officials. The guarantee of the Green Access Rights could contribute also to improving the effectiveness of the law and to ensuring the rule of law through the involvement of the public in this process.

In Asian countries, the Green Access Rights have been strengthened dramatically in the last 20 years. In some countries, for example, environmental courts have been established. In order to promote this tendency, it is very important to analyse and discuss the common characteristics and issues of each region and to share those good practices. In the following sections, this paper aims to analyse the recent remarkable developments with regard to Principle 10 in Asian countries, focusing on legal systems promoting public participation and access to justice because legal systems on access to information are relatively similar in comparison with the other two pillars.

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

(1) Constitutional provision of the environmental right and participation principle

The environmental right to live in a healthy environment is guaranteed nowadays by constitutions, case law, and the specific environmental laws of many countries. The Aarhus Convention assumes the recognition of environmental rights and aims at contributing to their effective guarantee through the Green Access Rights.

Constitutions in Asian countries include various provisions about environmental protection, such as environmental rights and the obligation of the state or the people to protect the environment. Even though these constitutions guarantee environmental rights, they are normally expressed very simply. For example, Article 35 of the Constitution of the Republic Korea states that ‘all citizens shall have the right to a healthy and pleasant

environment' (Para. 1), and the substance of the environmental right is determined by Act (Para. 2).

In South Asian countries, environmental rights may be guaranteed as a part of the right to life by case law. For example, India's constitution actually establishes the obligation of the state (Article 48A) and the citizens (Article 51A) to protect the environment, and contains no explicit provisions on environmental rights. But judicial precedents have established the interpretation that environmental rights are included in the right to life in Article 21, and courts have ruled that in the event of the pollution of an environment essential to maintaining quality of life, people have the right to demand that such pollution be eliminated under Article 32. Recognizing environmental rights as basic human rights, therefore, has made it possible to use constitutional lawsuits to address environmental damage. Article 32 empowers the Supreme Court to issue the appropriate direction, order, or writ for mandamus, and other orders to address infringements of constitutionally guaranteed human rights. These provisions have been used in a growing number of cases to seek redress in the courts against violations of environmental rights.
In contrast, the 2007 Constitution of Thailand has various and detailed provisions, such as a community right to participate in the management of natural resources and the environment (Article 66), the setting up of a natural resource management plan with public participation (Article 85), and the participation of the public in local environmental management (Article 290). In particular, Article 67 guarantees the public's right of participation in the conservation of the environment and the right of a community to sue a government agency. It states also that any project or activity which may seriously affect a community's environmental quality is not permitted without the conducting of an EIA (Environmental Impact Assessment), a HIA (Health Impact Assessment) with a public hearing, and a hearing of an independent organization, including representatives from environmental NGOs.

This provision plays a very important role in the case of Map Ta Phut, one of the biggest industrial parks in Rayong Province. Despite the serious air and water pollution involved, the government announced the third development plan, with 76 new projects earmarked for this area, in 2007. The local network of residents litigated against the National Environmental Council. The administrative Court of Rayong Province ordered the council to designate this area as a pollution regulation area (March 3, 2009). However, new projects did not stop after the area designation. Therefore, the Stop Global Warming Association and local people sought an injunction to stop them. The plaintiffs insisted that it was unconstitutional to carry out these projects without the EIA and HIA procedures, as required by the Constitution of Thailand. On September 29, 2009,

Thailand's Central Administrative Court issued a temporary suspension order, and the Supreme Administrative Court also issued temporary suspension orders for 65 projects (December 2, 2009).

(2) Reform of environmental law after the Rio Summit and public participation

Since the Rio Erath Summit, there have been remarkable reforms and developments of environmental laws, including provision for public participation, in Asian countries. Many Central and West Asian countries have already ratified the Aarhus Convention (e.g., Kazakhstan and Armenia etc.). Even though no countries in other parts of Asia are yet party to this Convention, the implementation of Principle 10 has been strongly promoted in wider region for the last two decades, and now some countries in East and Southeast Asia are interested in ratifying it.

First, some countries have introduced the provision for public participation principle in their principle environmental laws. For example, the Enhancement and Conservation of National Environmental Quality Act, B.E.2535 (1992), in Thailand guarantees the right to be informed in order to lodge a complaint against the offender for the purpose of public participation (Section 6). In Indonesia, the law concerning environmental protection and management (Law No. 32/2009) enshrines the right to the environment as a part of human rights (Article 3, g. and Article 65(1)). Chapter X provides several important provisions on rights, obligations, and prohibitions. Article 65 (2), in particular, states that 'Everybody shall be entitled to environmental education, information access, participation access and justice access in fulfilling the right to a proper and healthy environment'. It is characteristic of this law that it assures the right to submit an objection against any business predicted to affect the environment, and to report the alleged consequences of environmental pollution (Article 65 (3), (5)). In addition, Article 66 ensures that anybody struggling for the right to a proper and healthy environment may not be charged with a criminal or civil offense. This could contribute to an effective guarantee of participation rights.

In East Asia, the new Environmental Protection Law of the People's Republic of China (2014) reflects a remarkable development. There is a special chapter for access to information and public participation (Chapter 5). According to Article 53, citizens, legal entities, and other organizations have the right to obtain environmental information, and participate in and supervise the activities of environment protection in accordance with the law. In addition, competent environmental protection administrations are obliged to improve public participation procedures and to facilitate citizens' participation in, and supervision of, environmental protection work. It is a common trend of European law to

specify an organization clearly as the subject of participation rights. More concretely, Chapter 5 includes provisions for access to information held by an administration (Article 54), access to emissions information held by the business sector (Article 55), participation in EIA procedures (Article 56), the right to complain about environmental pollution (Article 57), and access to justice for social organizations (Article 58).

Recently, the number of SLAPPs has increased in some Asian countries. A SLAPP is a civil complaint or counterclaim filed against non-governmental individuals or groups because of their communication to a government body or the electorate on an issue of some public interest or concern. Therefore, it is important to specify the right to lodge a complaint.

Second, there are some countries that specify the role of environmental NGOs and promotion of its activities. From this viewpoint, the Enhancement and Conservation of National Environmental Quality Act in Thailand establishes a registration system for environmental NGOs and provides a register of NGOs that have received government assistance or support. The requirements for the registration are not strict: a) having the status of a juristic person; b) being directly engagement in environmental activities; and c) being apolitical or non-profitmaking (Section 7). According to Section 8, the registered NGOs may request of government the various supports for a public relations campaign, environmental research, and providing legal aid to victims of pollution, etc. In addition, it is unprecedented that they may nominate private sector representatives for the National Environment Board (Section 8).

Third, it a common characteristic of several Asian countries to strengthen and uphold the rights of communities in relation to environmental matters. Thailand specifies this in its constitution. In Indonesia, the law concerning environmental protection and management states that 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 information or reports (Article 70). This law also ensures the participation of communities in the EIA and the SEA (Strategic Environmental Assessment) (Article 18, 26). The notion of communities here is a wide one. It includes not only the affected communities, but also the environmental activists or parties affected. Moreover, Article 26 states that involvement of communities should be based on the principle of provision of information transparently and completely. Finally, Article 91 ensures the right of communities to file class actions in their own interests or the public interest in relation to issues of environmental pollution or damage.

The Aarhus Convention and the Bali Guidelines do not specifically mention

communities' rights. However, the definition of the public according to the convention is very wide and also includes communities. Nevertheless, the importance of the community-based approach in Asian countries should be noted.

(3) EIA and public participation

The formality of public participation has been always criticized not only in Asian countries, but also in other regions, and meaningful and proactive measures for public participation have been sought. The Aarhus Convention requires parties to ensure they challenge the substantive and procedural legality. This could contribute to improving the process of public participation. Guideline 9 of the Bali Guidelines states that countries should seek proactive public participation in a transparent and consultative manner.

There have been some remarkable developments in EIA law in Asia in this context. For example, India revised its Environmental Impact Assessment Notification in 2006. It replaced the former public hearing with a public consultation. At first, 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.

In Taiwan, the 2003 revised EIA Act also strengthened the provision for public participation. According to Article 11, the developer prepares a draft environmental impact assessment 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 (Article 23).

In September 2007, the Kaohsiung High Administrative Court ruled that the Taitung County government should force the developer of a tourist resort stop construction (the Mira Bay case). This action was a public interest lawsuit brought by the Taiwan Environmental Protection Union, a leading environmental organization in Taiwan, and the reason for the court's decision was that the project had not undergone the requisite procedures based on the environmental impact assessment law. Many such lawsuits had been filed before, but this was Taiwan's first environmental public interest lawsuit in which the plaintiffs were victorious. However, the development project in the Mira Bay area has not been abandoned. There is still a pending case in the court.

Another important EIA case relates to the development plan for the Third Central Science and Industrial Park. The local residents and an environmental NGO filed a suit against the Environmental Protection Administration, Executive Yuan, and insisted that it was illegal because the risk assessment had been insufficient. In January 2010, the

Supreme Administrative Court judged this EIA procedure to be invalid. However, the administration did not follow the judgment and continued to promote the development plan. The plaintiffs complained that that this was a denial of the rule of law. Thus, there is an intense debate about the effectiveness of the EIA in Taiwan.

3 Access to justice and the establishment of the environmental courts

(1) Expansion of the legal standing and introduction of public interest litigation

There has been a clear tendency in Asia since the 1992 Rio Earth Summit to introduce legislation enabling public interest litigation. In the late 2000s, access to justice was greatly strengthened not only through the expansion of legal standing (*locus standi*), but also through the introduction of various new types of litigation and improvement of provisional remedies. In addition, recently more countries have established an environmental court or specialized environmental divisions.

a) Southeast Asia

First, standing was expanded by case law in the Philippines in the 1990s. A well-known landmark decision was the Oposa case (Oposa v. Factoran, 224 SCRA 792 [1993]). A group of children, including those of renowned environmental activist Antonio Oposa, brought the lawsuit to stop the destruction of the rain forests. The plaintiff children based their claims on the constitution, which recognizes the right to a 'balanced and healthful ecology'. The Supreme Court ruled that there was an intergenerational responsibility to maintain a healthy environment and that children might sue to enforce that right on behalf of both their generation and future generations.

Second, Indonesia has institutionalized its public interest litigation procedures by legislative measures. Indonesia's Law Concerning Environmental Management (1997) introduced the concept of the class action. Subsequently, the class action system was incorporated into the Law on Consumer Protection (Law No. 8 of 1999, Article 46), the Act on Forestry (Law No. 41 of 1999, Article 71), the Act Regarding Waste Management (Law No. 18 of 2008, Articles 36 and 37), and others. However, most lawsuits were dismissed because of the lack of procedural rules. Therefore, on April 26, 2002, the Supreme Court promulgated the 'Regulation of the Supreme Court of the Republic of Indonesia Concerning Class Actions'. Subsequently, there have been some cases concerning pollution by haze and the conservation of cultural assets.

Chapter 13 of the current Law Concerning Environmental Management provided rich provisions on alternative dispute resolution (ADR) and litigation. The law gives

community members the right to bring lawsuits for their own or the community benefit when they have suffered losses from pollution or environmental damage. In this event, 'Class action may be submitted in the case of representatives of groups and members of their groups sharing the same fact or incident, legal basis as well as kind of demand' (Article 91). Within the framework of executing responsibility for environmental protection and management, environmental organizations may reserve a right to file lawsuits in the interest of environmental conservation. There are requirements to qualify as an environmental organization (organizations are incorporated and their articles of association state that environmental conservation is the purpose of the organization's founding. In addition, the organization must have had at least two years of substantive activities) (Article 92). These requirements are not so strict that they are similar to many European countries. As regards administrative lawsuits, it is remarkable that everyone has the right to bring them, but, based on the Administrative Procedure Act (Article 93), they are limited to issues relating to incomplete documents for environmental impact assessment procedures.

b) South Asia

Initiatives to use environmental public interest lawsuits have been spreading to countries around India, including Pakistan and Bangladesh, and one can discern a trend in the courts compensating for legislative and administrative dysfunction.

India is one of the countries where public interest lawsuits have been most used, and the courts play an important role in not only the environmental field, but also in protecting workers, women, and the other weak members of society. India's public interest lawsuits are constitutional lawsuits based on the constitution's provisions for protecting human rights. Specifically, Article 32 empowers the Supreme Court to issue the appropriate directions, orders for mandamus, and other orders to address infringements of constitutionally guaranteed human rights. These provisions are used in a growing number of cases to seek redress in the courts against violations of environmental rights.

However, India's constitution only establishes the obligation of the state (Article 48A) and the citizens (Article 51A) to protect the environment, and contains no explicit provisions on environmental rights. But judicial precedents have established the interpretation that environmental rights are included in the right to life in Article 21, and courts have ruled that in the event of pollution of an environment essential to maintaining the quality of life, people have the right to demand that pollution be eliminated under Article 32. Recognizing environmental rights as basic human rights, therefore, made it possible to use constitutional lawsuits to address environmental

damage.

The characteristics of India's constitutional lawsuits are, first, that even if a person cannot be regarded as a direct victim, plaintiff standing is broadly recognized for people who have a sincere concern for environmental protection. Second, courts issue orders to rectify unconstitutional and illegal actions by administrative authorities, and continually monitor the execution of those orders. In case of noncompliance, it is possible to guarantee their effectiveness by imposing penalties for contempt of court. Third, courts do not simply guarantee that existing environmental laws are observed. When environmental laws are inadequate, they can also take measures such as issuing guidelines to follow until new legislation has been passed, thereby performing a partial legislative function. Fourth, the avenue to judicial redress is opened broadly even to victims with no knowledge of lawsuit procedures. For example, a lawsuit might be initiated by the arrival at the Supreme Court of a letter which makes a plea about the tragedy of environmental damage.

While the use of public interest lawsuits goes back to the mid-1970s, environmental public interest lawsuits appeared in the mid-1980s. This was because increasingly serious political corruption and environmental problems had become the order of the day. Although public interest lawsuits in India had played a major role in providing relief for the weak of society, those most harmed by environmental damage were the low-caste poor and forest-dwelling tribal peoples. After being discouraged by laws and administrative authorities, people held higher expectations for the courts as their only remaining redress. At this time, most environmental lawsuits are public-interest lawsuits whose plaintiffs are environmental NGOs or lawyers, and their judgments contribute greatly to the formation of environmental law.

There have been many notable decisions involving water pollution. In one case, for example, M. C. Mehta brought a suit against the Indian government and the many tanneries that were the main cause of the Ganga River's pollution and demanded a ban on their discharging of effluents. The Supreme Court recognized a violation of the Water (Prevention and Control of Pollution) Act, criticized administrative officials for not using their regulatory authority, and ordered the closure of at least 80 tanneries that lacked effluent treatment facilities. With the coming of the 1990s, 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.

c) East Asia

The introduction of environmental public interest lawsuits in East Asian countries has been slow relative to the rest of Asia. No environmental public interest litigation has been introduced in Japan or in Korea.

But Taiwan has introduced a citizen lawsuit system. In conjunction with the rapid advance of democratization in the 1980s, environmental NGOs lobbied vigorously to have the US citizen suit system introduced into Taiwan, and thanks to their efforts, the 1998 amended Clean Air Act became Taiwan's first law to include provisions for citizen lawsuits. Subsequently, similar provisions for citizen lawsuits were incorporated into the Clean Soil and Groundwater Law and the Basic Environment Law. In more recent times, almost all new environmental laws contain provisions which allow for administrative lawsuits seeking injunctions to be filed compelling administrative agencies to enact the necessary measures against polluters.

Although the legal provisions underlying Taiwan's public interest lawsuits are influenced by US law, there are differences in the areas of plaintiff standing and cause of action. Under Taiwan's system, only victims and public interest organizations, Environmental NGOs can initiate actions against environmental administrative agencies for inaction on all environment-related regulatory measures when administrative authorities have not properly controlled illegal acts.

In China, environmental public interest litigation has begun attracting attention since the 1990s. In 2005, the State Council decided to promote the concept of environmental public interest litigation by social associations. Some cities, such as Guiyang City, have allowed the public prosecutor or NGOs to bring public interest cases to court based on the local by-laws or the opinion of the People's Court on a trial basis over the last few years. Moreover, the 2012 revised Civil Procedure Act allows relevant bodies and organizations prescribed by the law to bring a suit to the People's Court against such acts as environmental pollution, the harming of consumers' legitimate interests and rights, and other acts that undermine the public interest (Article 55). However, associations that fill the necessary legal requirements have been very limited in number.

The new environmental Protection Law of 2014 has entitled certain social organizations to file cases at the People's Court (Article 58). Such qualified NGOs should meet the following requirements: (1) Be registered at the civil affair department of the people's government at or above municipal level with sub-districts, in accordance with the law; (2) Have specialized in environmental protection public interest activities for five consecutive years or more, and have no law violation records. From the viewpoint of protecting the public interest, social organizations that file cases may not seek economic benefits from the litigation. In the past, there has been criticized that the courts sometimes

have just rejected the new type of the case without providing a substantial review. It is remarkable that this article obliges the courts to accept cases filed by social organizations that meet the above criteria.

The requirements for the standing of NGOs seem rather strict. First, it is not easy to be registered. Second, the criteria for 'five years' activities' is stricter than in many European countries. Third, the extent of the violation records is not clear. Therefore, the effectiveness of this new provision should be observed carefully. The Supreme People's Court issued its opinion concerning the strengthening of environmental litigation (in June 2014), and the interpretation of the application of environmental civil public interest litigation. The latter includes guidelines for the requirements of acceptance, announcement of the action, intervention, support of the public prosecutor, etc.

It is a common view that the Environmental Protection Law consolidates the requirements for environmental civil public interest actions, and it does not allow environmental administrative public interest actions. In November 2014, the Administrative Litigation Procedure Act was revised to expand the standing. However, the possibility of administrative public interest action has not been introduced. In China, it is commonly recognized that ensuring the administration's execution of the law is the role of the public prosecutor only. In some provinces, such as Guizhou Province, the public prosecutor is entitled to bring environmental administrative public interest actions. Therefore, it is likely that China in the near future will admit the standing of the public prosecutor at national level. In other regions, for example, Brazil, standing is given not only to NGOs, but also to the public prosecutor who has litigated in most public interest cases. In this sense, it is not unusual to give the standing for administrative cases to the public prosecutor. However, it would be characteristic of China if it only gave it to the public prosecutor.

In contrast to Taiwan and China, the situation regarding access to justice has become deadlocked in Japan and Korea. According to Korean case law, the standing for the EIA case has been admitted to the local people and the NGOs in the environmentally affected area. Plaintiffs may challenge the legality of the development project not only from the viewpoint of their own interest, but also in order to protect nature, such as in the Saemangeum dam case and the Four Great Rivers case. Any action by the plaintiffs plays a partial role as a public interest litigation.

(2)Environmental courts and special procedures for environmental cases

As mentioned above, public interest litigation procedures have been utilized to some extent in many Asian countries. Standing has been one of the most difficult barriers for the effective guarantee of access to justice. However, it is not the sole problem. After

expanding the standing concept, some countries have begun to improve their judicial review processes. Capacity building for judges is also one of the critical issues for the proper review of technical issues. Thus, several Asian countries have established an environmental court or a specialized division (e.g., China, India, the Philippines, and Thailand), and adopted a special procedure for environmental cases (e.g. India, the Philippines and Thailand) over the last 10 years.

First, India has established the National Green Tribunal based on the National Green Tribunal Act of 2010. It consists of a judicial member and an expert member (Chapter 2). According to Article 16, any aggrieved person has standing. Although it seems at a glance that this act adopted the narrower approach for standing than case law, case law still allows standing to apply widely to communities and NGOs. Any person aggrieved by a decision of the tribunal may file an appeal to the Supreme Court (Article 21). The tribunal applies the principles of sustainable development, the precautionary principle, and the polluter pays principle. But there are no detailed rules for the application of these principles.

As it is a new system, its effectiveness should be observed. The Green Tribunal has already made several remarkable rulings. For example, on 16 April, 2013, it held that the 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 (*Hon'ble National Green Tribunal, Jeet Kanwar & Anr. Vs. UoI & Anr. [Appeal No. 10/2011]*.

Second, the judicial system in Thailand is a so-called dual system. The Court of Justice has jurisdiction over environmental civil and criminal cases, and the Administrative Court has jurisdiction over environmental administrative cases. The Supreme Court of Justice deals with between 200 and 300 environmental cases annually. In 2011, the environmental division was established for the purpose of specifying the contentious issues, expanding standing and capacity building for judges in environmental matters. It also issued the Guidelines for Environmental Litigation (9 March, 2011). These include provisions on such issues as the precautionary principle, provisional remedy, and ex officio status.

According to the Act on Establishment of Administrative Court and Administrative Court Procedure of 1999 (Administrative Court Procedure Act), there are two instances in which the administrative court deals totally with several thousand environmental cases. On 29 June, 2011, the Supreme Administrative Court announced the 'Recommendation of the President of the Supreme Administrative Court on Administrative Court Procedure

concerning Environmental Issues'. It provides various special measures for environmental cases, such as expanding standing, providing a provisional remedy without any application made by the plaintiff (Clause 4), and a supplemental judgment for future damages (Clause 12). Although in general, a person who is aggrieved or who may inevitably be aggrieved has standing in other administrative cases (Section 42 of Administrative Court Procedure Act), the Supreme Court has interpreted this widely. The Guidelines also recommend to interpret standing with respect to community rights, the rights of indigenous people, and NGOs, all of which have environmental interests (Clause 3). Thus, environmental NGOs have brought public interest cases to the administrative court. In addition, 11 specialized environmental divisions have been established since 2011 at provincial and national level.

Third, the Philippines' Supreme Court has designated the 117 ordinary courts as environmental courts in order to protect environmental right effectively. In 2010, the Supreme Court issued the 'Rules of Procedure for Environmental Cases' (A.M. Np.09-6-8-SC). These provide various innovative measures, such as citizen lawsuits, environmental protection orders, a Writ of Kalikasan, continuing mandamus, and anti-SLAPP clauses.

A Writ of Kalikasan is a remedy available to a natural person, NGO, or any public interest group on behalf of a person whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation, by an unlawful act or omission of a public official, private individual, or entity, involving environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces (Part III, Rule 7).

Continuing mandamus is a writ issued by a court in an environmental case, directing an agency or instrument of the government or officer thereof to perform an act decreed by a final judgment, which remains effective until the judgment is fully satisfied. It is in line with the ruling in the *Manila Bay* case, where the respondents were ordered to maintain a fund for the restoration and rehabilitation of Manila Bay. The court in the *Manila Bay* case did not specify an amount for restoration, but instead ordered the respondents to restore and rehabilitation Manila Bay whatever the costs (*Metropolitan Manila Development Authority v.* Concerned Residents of Manila Bay, G.R. Nos. 171947–48 [S.C. Dec. 18, 2008]). It could contribute to improving on the inadequate implementation of the law.

4 Future perspectives

Green access rights have been strengthened in many Asian countries over the last 20 years in order to implement Principle 10. This kind of rights-based approach seems to be increasingly widespread and has become a global trend. On the one hand, there are also some common features to be seen in Asian countries, for example, stressing community rights and capacity building, and promoting public interest litigation. On the other hand, concrete measures to strengthen the green access rights differ from country to country.

In comparison with other countries, in general, public participation in Japan has been traditionally grounded in strong local initiatives, and effective voluntary activities have materialized in cooperation with private and governmental actors. These are 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.

The Rio Earth Summit also encouraged progress in the Japanese legal system with regard to public participation. Several new measures have been introduced, such as a Consulting Committee and proposal system. The Act on the Promotion of Environmental Conservation Activities through Environmental Education was introduced in 2003. In 2011, this act was revised. Article 1 specifies the promotion of partnership among various groups as being key to sustainable development and has established various legal schemes for fostering collaboration, such as partnership agreements (Article 21-4). However, it is still a kind of voluntary approach.

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 public participation. A Japanese model could contribute to effective implementation of legal provisions for public participation in Asia and other regions.

In this context, it might be effective to develop international indicators on Principle 10, 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, this research project is aimed at discussing how to develop and improve this process.