Principle 10 in Asia and Japan

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What is the Global Standard for Public Participation?
Principle 10 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
No such regional movement in Asia

Why not?
Languages and cultural/social/natural environment are diverse.
Don’t we have common features?

1998 Aarhus Convention
47 Parties from UNECE
2010 Bali Guidelines
On going

New regional instrument for ECLAC

→ S.1
Two meanings
1 Promotion of rights based approach
   Strengthening 3 procedural rights
   Effective protection of environmental right
2 Beyond rights based approach
   Expansion of legal standing
   Traditional: Infringement of right
   Recent: Efficient interest/EPIL
Development in Asia and Japan

Asia: Similar trend to other regions
Japan: Unique development
Trend in Japan
Japanese Situation

1. Public participation of all
   One of the long-term goals in Basic Environmental Plan

2. Access to information
   Right to request information disclosure

3. Public participation (voluntary-based approach)
   Promotion of voluntary activities

4. Access to justice
   Legally protected interest + Schutznormtheorie
   No EPIL (right-based approach)
Japanese Environmental Cooperation Model

- Japan Fund for Global Environment (1993)
- Global Environmental Outreach Centre
- Environmental Partnership Office (1996)
- Various councils for consultation, proposal and agreement systems have been legally introduced (early 90s).
Public Participation in Decision-making

1 Projects, specific activities
   • EIA (3 times opportunities) → S.5
   • Some permissions/licenses (no general rule)
     Landfill, reclamation etc.

2 Plan, policy, program
   • Some plans (no general rule)
     National Spatial Planning,
     River Improvement Plan etc.

3 Rules, regulation
   • Public comment (general rule: Administrative Procedure Act)
PP in EIA for Collecting Information?

- Aarhus Convention
  (1) Guarantee of the right of PP in decision-making.
  (2) The public concerned has access to a review procedure to challenge the substantive and procedural legality of any administrative decision.

- Japanese Government/Case Law
  (1) Purpose of PP: collecting environmental information for better decision
  (2) Procedural defect of PP: No admission of legal standing for the public.

Negligence or inefficient consideration of the public comments
Disparities of Participation Level

1 Disparities by field and agency
Wide discretion of administrative agencies
▲ Water management → S2
× Energy, nuclear power → S3

2 Disparities by local government
More than 30% of local governments have own general ordinances concerning PP.
Trend in Asia
Environmental Right

• The environmental right is guaranteed nowadays by constitutions, case law, and the specific environmental laws of many countries in Asia.
• Provisions of constitutions are normally very simple. ‘All citizens shall have the right to a healthy and pleasant environment’ (Korea).
• PP provision in Constitution (Thailand)
• In South Asian countries, environmental rights may be guaranteed as a part of the right to life by case law (India).
‘Everybody shall be entitled to environmental education, information access, participation access and justice access in fulfilling the right to a proper and healthy environment’. (Indonesia)
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
1 Communities have the equal and broad right and opportunity to participate actively.
2 Involvement of communities should be based on the principle of information transparently and completely.
3 Right of communities to file class actions.
Trends of Access to Justice and EPIL in Asia
Specialized Environmental Courts?

THAILAND
Environmental benches in ordinary and administrative courts

JAPAN
No specialized court, but EADR Commission

PHILIPPINES
117 designated environmental courts

CHINA
Environmental courts/benches in some cities

INDONESIA
Certified Environmental Judges in ordinary courts

INDIA
National Green Tribunal

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**THAILAND**
NGO has standing at ordinary and administrative court.

**JAPAN**
Limited, no special standing rule for NGOs, communities and local governments. Case law is reluctant to expand standing.

**PHILIPPINES**
Wide standing for NGOs, individuals, communities (case law + special provision for citizens’ suit/ Writ of Kalikasan by court’s rule).

**CHINA**
NGOs have standing only in civil cases.

**INDONESIA**
Legislation admits wide standing.

**INDIA**
Wide standing for NGOs, lawyers, individuals and communities (case law).
Future Perspectives
What are the Challenges in Japan?

- Insufficient implementation of environmental law is a serious problem in many Asian countries. And EPIL contributes to improve it.
- Although environmental law has been relatively well implemented in Japan, it is difficult to control administrative discretion, including how to organize PP.

Need for right-based approach
Although the rights-based approach has been legally introduced in many Asian countries, cooperation model seems dominant in some of such countries.

It may be important to appropriately combine the rights-based approach and the voluntary-based approach.
What is Next Step? → S.4

1. To continue comparative study among Asian countries in cooperation with multi stakeholders → To make research based on uniform format
2. To share information including good/bad praxis among Asian region and with other region → To make database and portal site for Asia
3. To develop and improve international indicators such as EDI (Environmental Democracy Index) including regional indicators.

Common instrument for Asia?
Thank you for your attention!