



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



International Development of P 10 and Asia →S.1

1998 Aarhus Convention

47 Parties from UNECE

2010 Bali Guidelines

On going

**New regional
instrument for ECLAC**

**No such regional
movement in
Asia**

Why not?

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





International Development and Rights-based Approach

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)
- Act on the Promotion of Environmental Conservation Activities through Environmental Education (2003)
- 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

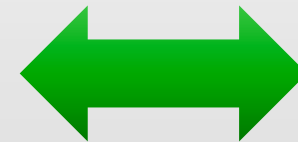
- Public comment (general rule: Administrative Procedure Act)



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).



Rights based Approach

‘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)



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



Community-based Approach

(e.g. Indonesia, Thailand)

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



NGT, India



Supreme Court, Philippines



Supreme Court, Indonesia



District Court, ↑
Pamekasan Indonesia

Supreme Court & Supreme
Administrative Court,

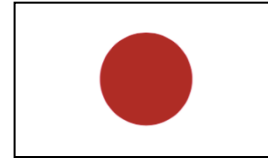
Environmental
Court, China

Supreme Court,
Japan ↓



THAILAND

Environmental benches
in ordinary and
administrative courts



JAPAN

No specialized court,
but EADR Commission

PHILIPPINES

117 designated
environmental
courts



INDONESIA

Certified
Environmental
Judges in
ordinary courts



Specialized
Environmental
Courts?



CHINA

Environmental
courts/benches
in some cities



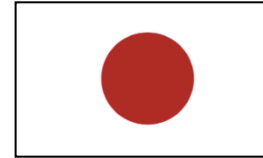
INDIA

National
Green
Tribunal



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).



Legal Standing



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.

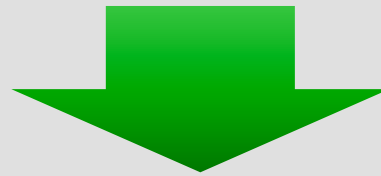


Need for right-based approach



Japanese Environmental Cooperation Model Only in Japan?

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!

