



International Trend of Access to Justice in Environmental Matters and EIA Litigation

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What is Green Access project II?

<http://greenaccess.law.osaka-u.ac.jp/>

- To investigate application of Principle 10 in different regions in comparison with Asia
- To promote environmental democracy

Core members

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International Collaborators for EIA survey

- China: Deng Haifeng, Tsinghua University
- India: Ritwick Dutta,
Legal Initiative for Forest and Environment
- Indonesia: Rika Fajrini,
Indonesian Center for Environmental Law
- Philippines: Rose-Liza Eisma-Osorio, University Cebu
- Taiwan: Thomas Shun-Kuei CHAN,
Environmental Protection Administration Executive Yuan
and Ming Chih Lee, Osaka University
- Thailand: Chacrit Sitdhiwej, Thammasat University



Why is EIA important?

- 1 Basic tool to reduce as much as possible the environmental load
- 2 one of the most important opportunities for public participation in many countries



Trend in Asia

- 1 Many countries have EIA system which requires PP.
- 2 Guidelines on Public Participation in Environmental Impact Assessment (EIA) in the Mekong Region (2017)
- 3 PP in EIA is relatively similar at first sight, in terms of detail, it varies from country to country.
- 4 Some common and significant challenges, such as insufficient public notice and improper consideration of public comments.
- 5 Access to justice has contributed to ensuring that the obligations of EIA law are attained and public concerned exercises rights.



Research Topic

Comparative study of seven Asian countries: China, India, Indonesia, Japan, Philippines, Taiwan and Thailand

1 To develop the PP indicator and the A2J indicator in EIA

2 To evaluate the current situation of each country based on the indicators



Research Objectives

- 1 Sharing the good practices
- 2 Discussing what are the current challenges and how to overcome them
- 3 Contributing to developing the better indicators for Goal 16 of SDGs



International Standards Developments on P10

1998

Aarhus Convention

47 Parties

2010

Bali Guidelines

2018

New regional

agreement in ECLAC





How to make indicators?

1 Legal indicators based on Principle 10 and Aarhus Convention

- Main indicators + Sub-indicators

2 Referred to EDI (Environmental Democracy Index), but more focused on EIA

3 Referred also to the findings of Aarhus Compliance Committee, ECJ case law and Commission Notice on access to justice in environmental matters (2017)



Main indicators for PP in EIA

- 1 Object of EIA
- 2 Range of participants
- 3 Identification of stakeholders
- 4 Adequate notice
- 5 Timing: Early participation + reasonable timeframe
- 6 PP methods
- Organizer and rule on public hearing
- 7 Informed participation
- 8 Due consideration
- 9 Publication of decision and its reasoning



Opportunities to participate?

- 1 Required in all 7 countries by laws and/or regulations
- 2 Early participation?
 - No PP at screening in 5 countries
 - **Taiwan: 4 times for Phase I EIA**
 - Philippines: Encouraged to be initiated early and in all stages
 - Japan: Primary Environmental Impact Consideration obligation to strive to initiate PP
- * New developments
 - China: revised in 2017
 - Thailand: new legislation soon in 2018



How many times?

1~8 times

1 One time:

- India
- Thailand: at least one time, more at discretion

2 Two times

- Indonesia (scoping + EIS)
- China (construction PJ) (draft EIS + EIS)

3 Three times

- Japan (before scoping + scoping + draft EIS)

4 4 times for Phase I + II respectively=8: Taiwan

5 All stages: Philippines (encourage)



Range of Participants

Type A Public: Japan, Thailand

Type B Affected people: India, Philippines

Type C Public + affected people/public concerned
China, Indonesia, Taiwan

1 Wide meaning of public and affected people
including community, environmentalist and NGOs

2 Three countries distinguish public and affected
people (different way to participate)

China: Selection of representative for public hearing

Indonesia: Affected community has priority.



Methods for PP

1 Submission in writing

- 6 countries except for Philippines

2 Public hearing: 6 countries

- Japan: only explanation meeting

Public hearing based on ordinance in big cities

- China: exhibition

*Obligation for minutes/record: 6 countries

Video record: India

3 Participation of community as committee member

- Indonesia: EIA Appraisal Committee



Due consideration of opinions

1 Publication of submitted opinions
and/or summary?

China, Japan, Taiwan, Thailand

2 Publication of result of consideration?

China, India, Taiwan, Thailand

* Japan: feedback only from project operator

3 Publication of decision?

India, Indonesia, Taiwan



Indicators for Access to Justice

- 1 Wide/liberal/active legal standing
- 2 Scope of judicial review
 - (1) Possible grounds of judicial review
 - (2) Intensity
- 3 Effective remedies
 - (1) Remedies in case of procedural defects in EIA
 - (2) Suspension, revocation of unlawful decision
 - (3) Remedies in case of omission
 - (4) Interim measures
- 4 Costs
 - (1) Not prohibitive
 - (2) Legal aid
- 5 Timelines and efficiency of procedures
- 6 Practical information



Legal standing

- 1 Land owners: 6 countries
- 2 Local residents other in the affected area: all 7 countries
- 3 **Community**: 4 countries
- 4 **Local government**: at least 4 countries
- 5 **ENGO**: All except Japan



Public interest litigation

1 Public interest litigation

Admitted in 6 countries except for Japan

- * Wide possibility for community and ENGOs in **India, Indonesia, Philippines**
- * Citizen's suit, writ of Kalikasan, suo moto

2 Japan

- legally-protected interest
legally protected interest must be concrete and individualistic (case law).



Early access to justice

1 Possibility to challenge SEA

- Indonesia, Philippines

2 Possibility to challenge any **action** **during EIA**

- Philippines
- Indonesia: possible to challenge at
EIA Appraisal Forum



Types of litigation

1 Typical

- (1) Revocation/injunction of admin. decision
- (2) Injunction of public works and/or project
- (3) Claim for damages

*Claim for ecological damage:
possible in Southeast Asian countries

2 Rare

- Action for re-implementation of EIA
possible in Philippines and Thailand
- * Action for seeking implementation of EIA is
admitted in more than half countries surveyed.

3 Provisional relief is admitted in all countries.

Philippines: Temporary Environmental protection Order



Cost and scope

1 Cost

(1) Looser pays principle is dominant.

- No fee for administrative case: Thailand

(2) Financial support for vulnerable people:
all countries

2 Scope of judicial review

- To challenge substantive and procedural legality:
possible in all countries
- Difficult to compare intense of review
Further survey about concrete cases is
necessary.



Review court and principles

1 Review organization

(1) Environmental court or bench

- 5 countries
- Japan and Taiwan: Specialized ADR system
- Utilization of experts: in all countries

(2) Ombudsman: in more than half countries

2 Special principle / standard

(1) Sustainable development: India, Thailand etc.

(2) Precautionary principle: India, Indonesia, Philippines etc.

(3) Strict liability: India, Japan (partially), Thailand etc.

(4) PPP: India, Indonesia etc.



Easy access to Justice

1 Use of local language and/or several languages

All countries except Japan

2 **On-site hearing**: Indonesia, Thailand

3 Teleconference: Indonesia, Thailand

4 Practical information?

5 Capacity building?



Recent challenge

- Obvious increase of **SLAPP** plus various harassment
- **How to protect environmental defender?**



Remarkable!!

Article 9 of new ECLAC PP Agreement

Similar provision in Indonesia

Anti-SLAPP clause in Philippines