

## Strength and weakness of Japanese EIA law

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### Introduction

Environmental impact assessment (EIA) in Japan has a long history and is now an indispensable part of Japanese law. However, compared to the contemporary EIA schemes in international law and in other jurisdictions, current Japanese EIA law has differences—or weaknesses. This paper discusses such differences including their possible causes, refers to a positive side of the law, and makes suggestions for the future of Japanese EIA law. This paper uses the term “EIA” broadly, meaning any procedure by which potential environmental impacts of a certain activity are assessed and whose result is to be considered in decision-making on such an activity.<sup>1</sup> “EIA” here includes strategic environmental assessment (SEA).

### EIA law in Japan

The central instrument in Japanese national EIA law is Environmental Impact Assessment Act<sup>2</sup> (*Kankyo eikyo hyokaho*) (Act No. 81 of 1997, “EIA Act”), which prescribes the obligations and procedures of EIA on the listed projects (certain construction projects and land-use changes) and requires the authorities to consider the assessment results in their decisions.

Other laws require EIA for specific activities and/or specific areas, often in the course of permit procedures. Details of the procedures vary. Some include provisions on the assessment by the permit applicant and consultation (Waste Management and Public Cleansing Law (*Haikibutsu no shori oyobi seiso ni kansuru horitsu*)(Act No.137 of 1970) and Act on Special Measures concerning Conservation of the Environment of the Seto Inland Sea (*Setonaikai kankyo hozen tokubetsu sochiho* (Act No. 110 of 1973)). Another (Factory Location Act (*Kojo ricchiho*) (Act No. 24 of 1959) (Otsuka, 2010, p.259)) requires the competent authority to research and analyze potential impacts. Identifying all statutes of this category is difficult.<sup>3</sup> The Act on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (*Kaku genryo busshitsu, kaku nenryo busshitsu oyobi genshiro no kisei ni kansuru horitsu*) (Act No. 166 of 1957, ARNMR) may be another (atypical) example (See the next

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<sup>1</sup> Many authors define environmental (impact) assessment. Holder (2004, p.1), Koyano (2011, p.72) and Asano (2011, p.3) were, among others, consulted for the definition in this paper. Asano (1998) presents a broad definition of this concept.

<sup>2</sup> The English translations of the law titles in this paper are based on, or are in reference to, those on the “Japanese law translation” site (<http://www.japaneselawtranslation.go.jp/>) or on the websites of the ministries in charge.

<sup>3</sup> E.g., Kabushikigaisha kankyo sogo tekunosu (2019) refers to other statutes.

section).<sup>4</sup>

## Weaknesses (1): Narrow scope of EIA Law

### i) Limited activities

**Activities using nuclear materials (Shiroyama & Koyano, 2013, Koyano, 2013):** International law on nuclear safety requires EIA for nuclear facilities/activities. In Japan, nuclear power plants are subject to the EIA Act, but other facilities (e.g., nuclear waste disposal facilities) are not. ARNMR requires impact assessments for various nuclear activities in the context of nuclear safety, but the “impacts” are mainly on human beings and do not necessarily include ecosystems. Where both the EIA Act and ARNMR apply, in assessing impacts caused by the potential emissions of radioactive substances<sup>5</sup> from nuclear power plants, the relationship between two laws would be an issue.

**Activities in primary industries:** In Japan, there appears no clear EIA requirement for activities in primary industries. For example, mining activities can be subject to EIA, in some cases, under the United States’ National Environmental Policy Act (NEPA), New Zealand’s Resources Management Act (RMA), or EU EIA Directive (Directive 2011/92/EU), but not the Japanese EIA Act. Japanese mining laws require the proponents to report certain environmental information and authorize the government to demand further information, but they may fall short of the expectation of international law (Koyano, 2018, pp.174–178). Moreover, EIA is not required for aquaculture in Japanese legislation.

### ii) Limited types of impacts

The EIA Act assesses limited types of impacts. Environmental impacts caused by accidents are out of scope (Koyano, 2013, p.104). Transboundary impacts are not required to be assessed under the EIA Act (Koyano, 2017, p.69). These approaches are not necessarily the standard in other jurisdictions and international law.

## Weakness (2): Lack of legislation for SEA

### i) Still “project-level” EIA Act

The most notable weakness of Japan’s EIA law may be the lack of SEA. The 2011 amendment to the EIA Act introduced the procedure by which proponents prepare primary environmental consideration documents when they decide the areas or other elements of the projects. Although it made the formal

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<sup>4</sup> Government Policy Evaluation Act (*Gyosei kikan ga okonau seisaku no hyoka ni kansuru horitsu*) (Act No. 86 of 2001) requires *ex-ante* evaluation for certain policies. It could be implemented so that environmental impacts are evaluated in some cases (Uga, 2002, pp.82-83; Uga, 2008, pp.54-55).

<sup>5</sup> Environmental impacts caused by radioactive substances became subject to the EIA Act after the 2011 earthquake.

assessment process start earlier, the amended EIA Act is still considered a project-level EIA system<sup>6</sup> (e.g., Yanagi, 2011, p.104). There is no SEA law applicable to the wide range of plans and programs in Japan.

#### ii) The problems of the absence of an SEA law: A recent case

This does not mean the SEA law is not necessary in Japan. The Chuo Shinkansen project—a major railway construction project—involves nature-rich mountainous areas in central Japan and connects three mega-cities. It was shaped under the Nationwide Shinkansen Railways Development Act (*Zenkoku shinkansen testudo seibiho*) (NARDA),<sup>7</sup> first by the “basic plan” in 1973, and then by the “development plan,” which included the rough route and the train technology and was adopted in 2011 by the Minister of Land, Infrastructure, Transport and Tourism (Kokudo kotsusho; Isono, 2018, pp.424–425). Finally, the designated construction entity submitted a “construction plan” for approval by the Minister in 2014, after the EIA had been conducted under the EIA Act (Kokudo kotsusho; Isono, 2018, p.425). While NARDA did not explicitly require SEA, environmental conditions were researched and discussed in the course of formulating the development plan (Isono, 2018, pp.430–438). When seeing this process as SEA, however, there were many deficiencies (Id., pp.431–438). Potential environmental impacts were never thoroughly considered when “no project” was among the practical options for this project (Id., p.439).

#### iii) Difficulties in introducing SEA law in Japan

Why is it hard for an SEA law to be introduced in Japan when many countries already have theirs? One possible reason is the theoretical distinction between the project-level EIA and SEA in Japanese law.

Iwahashi (2000), after identifying three types of EIA systems—each represented by NEPA, a law in Germany, and the EIA Act—distinguishes between two settings in which environmental considerations are to be made : when the government makes policy decisions and when the project proponents decide on project management (Iwahashi, 2000, pp.20–24). Iwahashi considers the EIA Act functions well for the latter (Iwahashi, 2000, p. 24). Similarly, other authors view the EIA Act as a legal instrument which facilitates environmental consideration of proponents by imposing certain procedural requirements (e.g., Yanagi, 2011, pp.28–40. See also, Kurasaka, 2014, p.208). Such views are supported by the understandings of the EIA Act by those involved in the development of this law ((Iwahashi, 2000, pp.22, 32; See also Kankyocho Kankyo eikyo hyoka kenkyukai, 1999, pp.49–50), and the provisions of Japan’s Basic Environmental Law (BEL).<sup>8</sup>

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<sup>6</sup> The EIA Act provides an assessment procedure for a certain plan, but it is an exception.

<sup>7</sup> Before the NARDA procedure started, the idea for it appeared in a national development plan (Isono, 2018, p. 424).

<sup>8</sup> Project-level EIA and SEA are considered to be grounded in the separate provisions in BEL (e.g.,

Paying attention to the proponents' own decisions is not unique to the Japanese EIA Act. The procedural nature of EIA laws affects the decisions of both the governments and proponents (Lee, 2014, p.165; McGillivray & Holder, 2007, p.5). The difference exists, however, which is the primary concern of an EIA law: decisions by the proponents or the government. An author noted that among various decisions made in the course of an EIA, the "main" one is the public decision, usually made by the government (Wood, 2003, p.221). This is exemplified by EIA laws in other jurisdictions. NEPA requires federal agencies to make environmental impact statements by officials accompany the proposals for certain "major Federal actions" ( § 102(c)). The structure of and the background to the system suggests its principal interest is in governmental decision-making (Iwahashi, 2000, p.21-22). The EU EIA Directive targets "public and private" projects (Article 1 (1)), and environmental impact reports are prepared by the developers (Art. 1(2)). However, the competent authority needs to reach a "reasoned conclusion" on the significant environmental effects of the projects, which shall be incorporated into the decision to grant development consent (Art. 1(2)(g)(iv), (v), Art. 5(3)(c), Art. 8a (1)). Unlike the Japanese EIA Act, the definition of the "environmental impact assessment" includes such a "reasoned conclusion" and its integration into the decision (Art. 1(2)). Considering these provisions, it can be said the EIA Directive puts more emphasis on the decisions by the authorities than on those of the developers. RMA prohibits many uses of natural resources unless they are allowed by national/local rules or resource consents (e.g., Art. 9). The project-level EIA is part of the resource consent procedure. In other words, the primary purpose of the EIA is to inform the relevant authorities in making decisions (See Iwahashi, 2000, p.21 (about a German law)).

As SEA concerns governmental decisions, if a project-level EIA law is also considered a system whose primary/original concern are governmental decisions, the former can be an extension of the latter if the latter precedes it (See Iwahashi, 2000, pp.24–25). This means the EIA Act cannot incorporate SEA without major modification including the objective of the law, and a new statute may be a better option for SEA (See Asano, 2018, p.6; Otsuka, 2014, pp.20–21; Murayama, 2017, p.45).

### Strength of EIA law

Although still limited, the EIA Act is one of Japan's most inclusive environmental statutes. The EIA Act requires project proponents to assess and consider environmental impacts not strictly regulated by other laws, such as GHG emissions. After the major earthquake in 2011, many new coal power plants have been planned in Japan. Whereas Japan has a commitment to cap the future GHG emissions as a nation, there are no statutory restrictions on the emissions from individual facilities. The EIA Act has provided opportunities for the Environment Minister to work on the individual projects from the viewpoint of the national policy, which also contributed to strengthening GHG emissions control under other laws (Otsuka, 2017; Shimamura, 2016, 2017; Kankyosho, 2019).

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Otsuka, 2010, p. 285).

## Conclusion: A few suggestions for the future EIA law in Japan

- 1) Certain activities in the nuclear sector and primary industries should be subject to the comprehensive EIA. Inserting/improving EIA provisions in the natural resources management laws or the nuclear safety laws, with other provisions involving environmental aspects, would be an option.
- 2) Transboundary impact should be required to be assessed for activities that are likely to have significant transboundary adverse impact.
- 3) Introducing (a) law(s) on SEA for major plans/programs separate from the EIA Act should be considered (Murayama, 2017, p.45). Discussions on the typology of plans/programs from the viewpoint of the EIA (SEA) are necessary to decide the scope(s) of such (a) law(s).<sup>9</sup>
- 4) Further research is needed for better integration of sectoral policies and EIA, including the sustainable energy policy and the EIA of renewable energy power generation facilities.

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## References

- Asano, N. (1998). *Kankyo eikyo hyoka no seido to ho: kankyo kanri shisutemu no kochiku no tame ni* [The institution and the law of the environmental impact assessment: For establishing an environmental management system]. Tokyo: Shinzansha.
- Asano, N. (2011). Kankyo eikyo hyokaho no kaisei to kongo no kadai [The amendment of the Environmental Impact Assessment Act and the issues hereafter]. In Kankyo hoseisaku gakkai (Ed.) *Kankyo eikyo hyoka: sono igi to kadai* [Environmental impact assessment: Significance and issues] (*Kankyo hoseisaku gakkai shi*, 14) (pp.3-13). Tokyo: Shojihomu.
- Asano, N. (2018). Kankyo eikyo hyoka ho no koremade to korekara [Japanese environmental impact assessment law, until now and thereafter]. *Kankyo joho kagaku*, 47(4), 2–6.
- Holder, J. (2004). *Environmental assessment: The regulation for decision making*. Oxford: Oxford University Press, (Rpr. 2011).
- Isono, Y. (2018). Rinia Shinkansen to senryakuteki kankyo asesu no kadai—Sanka ni chumoku shite— (Issues in linear Shinkansen and strategic environmental assessment). In Saito, M., Ode, Y., Hishida, T. & Imamura, Y. (Eds.), *Nihon no shiho—Genzai to mirai. Eto Yoshihiro sensei tsuito*

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<sup>9</sup> Yanagi (2011, pp.279–294) discusses a typology of SEA systems, including but not confined to the plans/programs SEAs.

- ronshu*. [Japanese judicature: Now and future, for the memorial to Professor Kensuke Eto] (pp.421–446). Tokyo: Nippon hyouron sha.
- Iwahashi, T. (2000). Kankyo asesument seido no saizensen [The forefront of environmental impact assessment]. In Kobe daigaku hoseisaku kenkyukai (Ed.), Abe, Y. & Negishi, T. (supervisor), Hoseisaku gaku no Kokoromi — *Hoseisaku gaku kenkyu (Dai 3 shu)* [Challenges of Law and Policy—Study of Law and Policy (3rd collection)] (pp.17–32) Tokyo: Shinzansha.
- Kabushiki-gaisha kankyo sogo tekunosu (2019). Sonota, kobetsuhoto ni motozuku asesumento. (Others, the assessments based on the separate statutes). Retrieved from <http://www.kanso.co.jp/environment/assessment/assessment04.html> (accessed 18 April, 2019).
- Kankyocho Kankyo eikyo hyoka kenkyu kai & Kankyocho kankyo eikyo hyoka seido suishin shitsu (supervision). (1999). *Chikujo kaisetsu kankyo eikyo hyoka ho* [Environmental Impact Assessment Act, A commentary] (Saihan). Tokyo: Gyosei.
- Kankyosho, Denryoku bunya no teitansoka ni mukete ~aratana 3tsuno akushon~ [Towards decarbonizing the electric sector: three new actions]. Retrieved from <https://www.env.go.jp/press/files/jp/111265.pdf> (accessed 23 April 2019).
- Kokudo kotsusho. Chuo Shinkansen no genjo — tetsuduki no furo—[The current status of Chuo Shinkansen: Procedures and a timetable]. Retrieved from <http://www.mlit.go.jp/common/001058064.pdf>. (April 12, 2019).
- Koyano, M. (2011). Kokusai joyaku to kankyo eikyo hyoka [International conventions and environmental impact assessment]. In Kankyo hoseisaku gakkai (Ed.) *Kankyo eikyo hyoka: sono igi to kadai* [Environmental impact assessment: Significance and issues] (*Kankyo hoseisaku gakkaiishi*, 14) (pp.72-105). Tokyo: Shojihomu.
- Koyano, M. (2013). Genshiryoku Saigai to Kokusaiho—Songai boshi ni kansuru tetsuzuki-teki kiritsu wo chushin ni—[Nuclear disasters and international environmental law: Focusing on the procedural requirements concerning prevention of damages]. *Sekaiho Nenpo* (32), 62–126.
- Koyano, M. (2017). Gurobarukajidai niokeru kokusaikankyoho no kinou—Kokunaihochitsujo no “Henkaku to Chosei” niyoru Chikyukibo no “Koueki” no Jitsugen—[Functions of international environmental law: realization of global “public interests” by “reform and adjustment” of municipal legal order]. *Jurist* (23), 62-70.
- Koyano, M. (2018). Kaitei kobutsu shigen no tansa • kaihatsu (Deep seabed mining) to kankyo eikyo hyoka —Kokusai kihan no hatten doko to Nihon no genjo • kadai [Deep seabed mining and environmental impact assessment: The development of international norms and the states and issues in Japan]. In Kankyo hoseisaku gakkai (Ed.), *Tenki wo mukaeru ondanka taisaku to kankyoho: Kadai to tenbo* [Countermeasures against the global warming coming to a turning point: issues and prospects] (*Kankyo hoseisaku gakkaiishi*, 21)(pp.165–187). Tokyo: Shojihomu.
- Kurasaka, H. (2014). *Kankyo seisaku ron* [Environmental policy study] (3rd ed.). Tokyo: Shinzansha.

- Lee, M. (2014). *EU environmental law, governance and decision-making* (2nd ed.). Oxford: Hart publishing.
- McGillivray D. & Holder, J. Taking Stock. In McGillivray D. & Holder, J. (Ed.), *Taking stock of environmental assessment: Law, policy and practice* (pp.1–15). Abingdon, UK: Routledge-Cavendish.
- Murayama, T. (2017). Korekara no kankyo asesumento no kadai [Issues in environmental assessment hereafter]. *Kankyo Asesumento Gakkaiishi*, 15(2), 44–46.
- Otsuka, T. (2010). *Kankyoho* [Environmental law] (3rd ed.). Tokyo: Yuhikaku.
- Otsuka, T. (2014). Kaisei asesument ho no genjo to kadai [The present states and issues in the amended EIA Act] *Kankyoho kenkyu* (Ningen kankyoho mondai kenkyukai (ed.)) (39), 3–28.
- Otsuka, T. (2017). Denryoku ni taisuru ondanka taisaku to kankyo eikyo hyoka—Kinji no denryoku shisutemu kaikaku ga kankyoho • kankyo seisaku ni ataeru eikyo heno taisho [Countermeasures of the electricity sector against climate change and the environmental impact assessment procedure—Coping with the influence of the recent electricity system reform on environmental law and policy]. *Kankyoho Kenkyu* (Otsuka, T. (Ed.))(6), 1–30.
- Shimamura, K. (2016). Sekitan karyoku hatsudensho no shinzosetsu to kankyo eikyo hyoka [Establishing coal power plants and environmental impact assesment] (1). *Jichi Kenkyu*, 92(11), 77–96.
- Shimamura, K. (2017). Sekitan karyoku hatsudensho no shinzosetsu to kankyo eikyo hyoka [Establishing coal power plants and environmental impact assessment] (2). *Jichi Kenkyu*, 93(1), 40–63.
- Shiroyama, H. & Koyano, M. (2013). Genshiryoku no heiwa riyo no anzen ni kansuru joyakuto no kokunai jishi —Kokusai teki kijun to Fukushima daiichi genshiryoku hatsudensho jiko go no kanren kokunai hosei no doko [National implementation of the conventions on nuclear safety: International standards and the relevant national legislations after Fukushima-1 nuclear power plant accident]. *Ronkyu Jurisuto* (7), 57–65.
- Uga, K. (2002) *Seisaku hyoka no hoseido—Seisaku hyoka ho • jorei no kaisetsu* [Legal system of policy evaluation: A commentary on policy evaluation law and ordinances]. Tokyo: Yuhikaku.
- Uga, K. (2008) Senryakuteki kankyo asesument [Strategic environmental assessment], *Gekkan Jichi Forum* (588) 47-56.
- Wood, C. (2003). *Environmental impact assessment: A comparative review* (2nd ed.). Upper Saddle River, NJ: Prentice Hall (2013 Routledge).
- Yanagi, K. (2011). *Kankyo asesumento ho ni kansuru sogoteki kenkyu* [Study on environmental assessment law].Tokyo: Seibunsha.