
Environmental Law in China: Actual Situation and Challenges

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Introduction

It is not complicated to forge a personal opinion on environmental situation in actual china by travelling in the country. The two most shocking and vibrant examples are the quality of air and the quality of water which are both below poor. Not only the water is polluted but rare, other problem as waste invasion and treatments, acid rains, desertification, and deforestation are serious threats to the Chinese environment.

The reasons of this situation are, following Zhang Yikai in his research¹, the results of “an imperfect legal system, an immature civil society and an autocratic political system”.

For Many years China adopted a Marxist-Leninist point of view: The nature should be tamed to serve the men and the economical growth. China is a massive consumer of raw materials, oil and coal each of it causing great pollution.

Today China (as many country around the world) still tend oppose the environmental interest to the economic growth. It is certainly forgetting about the cost of pollution each year which is 8 to 12% of the Chinese GDP². A balance between environmental interest, economic growth and social development is the only way to ensure a future to China and the rest of the world. This balance should be obtained thanks to pro-environmental political will, enforcement mechanisms and judicial system, public awareness and participation.³

The Law

The Marine Environment Protection Law of the PRC and Environmental protection Law of the PRC which entered in force at the respective dates of promulgation 1983 and 26/12/1989 set the scope and the limits of the Chinese environmental policies.

They are described like really innovative and advanced for a developing country.

The laws are organized in different chapter on general or specific provisions. It defines the purpose of the law Protecting and Improving the environment and also define the term of environment as the “*total body of all natural elements and artificially transformed natural elements: atmosphere, sea, water, land, mineral, forest, grassland, wildlife, natural and human remains, nature reserve, historic and scenic spots, urban and rural area.*”⁴ It also determines where the laws are applicable and give the right to citizen to report abuses and the obligation to protect the environment.

The management and supervision is organized as following: The department directly under the State Council shall establish national standards regarding the environment. The province

¹ *Towards sustainable development: Chinese Law Enforcement Mechanisms research*, University of Toronto, Zhang Yikai, 2009

² *Environmental sector China : From Major building site to growth market*, Deutsche Bank Research, Eric Heymann, February 2006

³ *Towards sustainable development: Chinese Law Enforcement Mechanisms research*, University of Toronto, Zhang Yikai, 2009

⁴ Environmental protection law of the PRC chapter I article 2

governments and autonomous regions are allowed to set further standards for items not specified in the national standards law and must reports to the department under the state Council.

The same system is utilized in the regulation on the discharge of pollutant the autonomous regions and government of the province can impose more stringent directives than the ones specified in the national standards and have to report it.

A monitoring system is established through reports bulletin on the environmental situation.

The construction projects have to estimate the amount of pollution they will cause and propose preventive and curative measures.

In case of pollution caused by a unit the unit has to incorporate a plan to stop, the buildings dedicated to prevent and control pollution should be built along with the core building. No authorization to postpone the construction of environmental control and prevention unit can be received; if such a unit should be dismantled a prior authorization has to be received.

In case of violating the law anti-pollution provision of the law fine can be given to the responsible and the obligation to repair the damages caused by his activity in a certain amount of time. Causality between the activity and the pollution should be proven though and the unpredictability or good faith is also taken into consideration. Filing a case on environmental degradation should be made within three years counting from the moment the party become aware of it. Severe case of pollution can lead to criminal prosecution. If functionaries are guilty of negligence, corruption or bribery severe administrative or criminal prosecution can be engaged against him.

If China signs an international treaty on environment, in contradiction with the provisions contained in the national environmental protection law, the international treaty will prevail unless the PRC explicitly mentioned reservation on specific provision of the international treaty.

Environmental Law enforcement and Tort Litigation in China

- Six Major Problems with Environmental Law Enforcement in China

1. Law implementation: while the Chinese ecosystem is deteriorating as a whole (air, water, accident,) the Chinese law tends to improve specific areas (historic sites, reserve,) and mitigate environmental deterioration instead of really improving it.

2. Superficial Enforcement of Environmental Mechanisms: while environmental management mechanisms regulate various behaviors through bodies as EIA (environmental impact assessment) or the SEPA (State Environment Protection and Administration), statistics and several examples⁵ shows that the system is corrupted and the assessment falsified.

3. Lax investigation and delayed punishment of Illegal activities: When “The Three Simultaneity” in construction projects is seen as an effective prevention tool to pollution, we notice major discrepancies between theory and practice. Moreover it is difficult to punish the authors in time.

4. Unavailability of adequate compensation for pollution victims: As the severe pollution increase, environmental dispute increase as well but the resolution of those problems is not made in a timely fashion. Moreover no incentive are proposed to company which respect the environmental standards, and the Public often remain uninformed, distant or confused about ecology to file a case.

5. Environmental violators receive Administrative punishment instead of Criminal punishment: Even if it is an effective tool and China revised the Criminal law to integrate an environmental provision in it. Less than 5% of the case has been prosecuted as criminal cases. It can be explained by the lack of awareness within the judicial community and also by a reluctance to transfer a case from the environmental authority to the judicial authority.

6. The lack of authority within relevant Environment Protection Administration: The environmental pollution is related to the corresponding administrative department. Local Government tends to favor tax coming from industrial activity in the area than fining them for disrespect of environmental law. Moreover the Environmental Protection Agency suffers from a lack of authority in its field because the competence to give orders to stop polluting activities is reserved to the local government.

⁵ As an example a construction project was 20m from a residential district but in the EIA report it was stated that the distance was 400meters. See *generally* Center for Legal Assistance to Pollution Victims (CLAPV), 焦化厂建到居民区：“政府行为”使受害者走十年官司路, Oct. 19, 2005, <http://www.clapv.org/new/show.php?id=1111> (describing construction violations of a coke plant).

- Four Major Problems with tort litigation in China

1. Cost of filing a case: fees are asked to the plaintiff before filling a case, the general fees are from 0, 5 to 4% of the demanded amount. Moreover abusive fees can freely be asked in order to process the case.

2. Lack of competent lawyer in environmental field

3. Prove the defendant polluting activities, prove and quantify the damages and show the causality: Even if the Tort Law and its interpretation of 2001 by the Supreme People's court that the polluters carry the burden of proof in environmental case anyway "local courts [continued to] rule against plaintiffs because [plaintiffs] were not able to provide evidence for the causal relationship between the polluting act and the damages incurred"⁶.

4. The courts are under the influence of the local governments: and the local governments under the influence of polluters simply because «*industrial polluters frequently provide significant economic benefits to local jurisdictions.*»⁷

To explain the difficulty of environmental law enforcement Wang Canfa in his research⁸ underline four reasons: an unrealistic legislation where the general provision are numerous and poor decision considering the fines and liability due to uninformed lawmaker, a benefit driven policy by local governments, a confining of justice within administrative departments and no possibility to address it at a national scale to the Central Government and finally a neglecting of the role of the citizens in environmental protection.

Regarding the poor environmental education of lawmakers I would like to draw your attention on a general tendency of failure of taking full advantage of scientific concept⁹. The principal cause is the difference between law and science methodology and goals. When law study human behavior based on process, science is axed on cumulative knowledge and experimentation. A second reason is the when, where, who, what correlation with scientific discovery. Finally the packaging or presentation of scientific concept seems equally important to the nature of the concept and will certainly play a major role in the integration of it in environmental law and policy.

⁶ Benjamin Van Rooij, *People v. Pollution: understanding citizen action against pollution in China*, 19 J. of Contemporary China 68-70 (2010). Mentioned in "Environmental Tort Litigation in China", Vermont Law School, Adam Moser and Tseming Yang, May 2010 p.7

⁷ "Environmental Tort Litigation in China", Vermont Law School, Adam Moser and Tseming Yang, May 2010 p.7

⁸ "Chinese Environmental Law Enforcement : Current Deficiencies and Suggested Reforms", Vermont Journal of Environmental law vol.8, Wang Canfa,2007

⁹ "Harnessing the power of science in Environmental Law: why we should, why we don't, and how we can", University of Florida, Mary Jane Angelo, 2008

Adam Moser and Tseming Yang in their research¹⁰ about tort litigation in China draw our attention on a Chinese Typical conception of the civil law: the Utilitarizm of law. The law is created to rule a country and not individuals moreover Chinese culturally favors non adversarial methods as petitioning to Congress People (Xinfang) or Mediation over Litigation. They also underline the fact that the resolution of civil case is quite new (the first case was in 1978 under the impulsion of Judge Jiang Hua). They noted two common difficulties in the judicial process: first there is no obligation to render a court decision public; it leads to a general ignorance of law, private initiative as the Center for Legal Assistance Pollution proposes a solution at that problem by keeping a record of environmental litigation. Secondly there is a tendency to close the case.

- Reforms of the Enforcement system as suggested by Wang Canfa

1. From a GDP to a GGDP (green GDP)
2. Establishment of an environmental Supervision Bureau in the SEPA to focus on spot law enforcement
3. Environmental Protection Agency should be a detached, independent agency
4. Reforming judicial Management Mechanisms
5. Establishment of procedure and methods to increase public participation

- The creation of E-courts

E-courts or Environmental Courts dedicated to Environmental law enforcement have been created since 2007 at the intermediate or lower levels of the provinces. Some law scholars already question the legal validity of E-courts provisions; moreover not enough public interests are brought to this courts but only routine administrative and criminal actions.

¹⁰ “*Environmental Tort Litigation in China*”, Vermont Law School, Adam Moser and Tseming Yang, May 2010

The role of Civil Society and the Environment

Result of a post materialist view (the basic needs are fulfilled, people tend to improve other grounds) or of a post industrialist view (acceptation of a growth limitation), “ENGO” are flourishing towards China. It really happened when the State decided to retrieve and let intermediary deal with some aspect of life organization. The intermediary are still under control of the State because they have to be sponsored, limit on number of adherent to 50, a start capital of and a limitation on number of organization in the same city are also ways to keep control. Today the organizations take different form registered, unregistered, state organized, etc but the registration being to tremendous most of the organization fail to do so and simply vanish from the state sight.

The boom of Environmental organization open the path for other cause as women rights, welfare help, etc. and surely serve the democratization of China (often other demands are made behind environmental reclamations).

The factors explaining the great development of those environment movements are certainly the State attitude towards them alternating strict and tolerant control of the organizations and an emergence of green Ngo’s which coincided with a “greening” of the Central State.¹¹

Most of the Chinese environmentalist in China defends non-confrontational ideology which can be a real force to the future of environmentalist. GONGOs for example benefits from a better knowledge of the Congress people and activist in GONGOs can use their relations in the government to achieve more than NGOs without any resources. It is a more result driven way than method driven.

Also organization have to deal with a mix of fields: Media and Public debates which may lead to democratization, other NGOs with another goals which raise the impact of Civil Society and the discussion of the State or Local governments which create new relations between the State and the citizens.

¹¹ “Greening without conflict? Environmentalism, NGOs and Civil Society in China”, Peter Ho

Environment pollution and Foreign Opportunities

A 2008 report of the Federation of Finish Technology industries¹² emphasizes 6 great fields of opportunity for foreign companies possessing a know-how or expertise in environmental issues: Water pollution treatment, air pollution control, solid waste treatment, nuclear safety and treatment of radioactive waste, rural pollution control and ecological conservation, and capacity building.

Only the “good students” in environmental protection, from Europe and all around the world, would be able to take this opportunity in China. Country mastering the art of low energy consumption per unit of GDP and perfect treatment of industrial water waste as Germany or Finland seem to be in a good place to strengthen their economic relationship with China.

International NGOs are also spreading in China, in 2002 the number of INGOs was estimated to 33 and they had 91 environmental projects¹³. The INGOs influence the national social organizations, share expertise and collect fund for Chinese national projects.¹⁴ Of course it is still too soon to exactly know what the viability of external aid is.¹⁵

Conclusion

Finally, even if the Chinese environmental situation seems highly catastrophic a lot of personal initiative and organizations work in the way to ameliorate it and stop the massive pollution. As we studied legal and economic aspects are leading to a relative impunity concerning the environmental crimes. The future of environment in China seems to be deeply linked with the government consciousness and decision on the matter. Decisions that can be influenced by: scholar’s studies, public implication, NGOs demands or international expertise and through Chinese non-violent methods as public debates, and discussion.

Concrete reforms have been proposed and innovative actions have been taken; the future of the Chinese environmental situation is now between the hands of the State. And the promotion, education and protection of environment seem to be the next major challenge of China.

¹² « *Environmental legislation in Mainland China* », *FINPRO*, November 2008

¹³ China Environment Series, Issue 5 (2002).

¹⁴ “Environmental NGOs and Institutional Dynamics in China”, Yang Guobin in the *China Quarterly*, 2005

¹⁵ Michael Edwards and David Hulme, “Too close for comfort? The impact of official aid on non-governmental organizations”, *World Development*, Vol. 24, No. 6 (1996), pp. 961–973.

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