

COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA

Human Rights Protection in Ecological Conservation in China: Progress, Problems and Prospects

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Introduction

The myriad declarations, international conventions and agreements that address human rights and environmental protection – separately and jointly – reflect the international community's recognition that international actors, particularly States, have obligations in these areas; and that individuals, as well as groups of peoples, have a number of rights.¹ Although there is uncertainty as to whether a human right related to the environment will ever be recognized,² and several existing approaches³ to link human rights and the environment are still being debated, environmental protection is undoubtedly an essential prerequisite to the effort to secure the effective enjoyment of human rights.⁴

The last three decades of rapid industrialization, urbanization and socio-economic development in China is well-known and discussed, as is the fact that the transition to a

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¹ Marie Soveroski, "Environmental Rights versus Environmental Wrongs: Forum over Substance?" (2007) 16 *Review of European Community and International Environmental Law*, 262.

² Alan Boyle, "Human Rights and the Environment: Where Next?" (2012) 23 *European Journal of International Law*.

³ See Sarah C. Aminzadeh, "A Moral Imperative: The Human Rights Implications of Climate Change" (2006-2007) 30 *Hastings International and Comparative Law Review*, 231; Dinah Shelton, "Human Rights, Environmental Rights and the Right to Environment" (1991-1992) 28 *Stanford Journal of International Law*, 103; Thomas Greiber *et al*, *Conservation with Justice - A Human rights-based approach*, (IUCN, Gland, 2009).

⁴ Dinah Shelton, 2010, *Linkages between Human Rights and Environmental Protection*, http://www.ttenvironmentalcommission.org/lectureseries/2010/dinah_shelton.pdf accessed 10 October 2013, p.6.

market economy has caused wide-spread environmental degradation.⁵ China has taken, and is taking, various measures to improve ecological conservation to guarantee the citizens' environmental interests. After the concept of human rights was successfully enshrined in China's Constitution and national economic and social development plans in 2009, the Chinese State Council released the first *National Human Rights Action Plan of China (2009-2010)* in which there are several positive signals, such as the statement that environmental protection as a human right is a long-pursued goal of the Chinese government and people.⁶ However, it contains few actual commitments.⁷ One of the goals set by the 18th National Congress of the Communist Party of China in November 2012 was 'To respect and protect human rights'. More importantly, the white paper 'Progress in China's Human Rights in 2012' was issued by the Information Office of the State Council in May 2013. This white paper introduces the new development of human rights protection in China. For the first time an independent chapter is concluded on the 'Protection of Human Rights in Ecological Improvement'. This chapter can be regarded as a milestone to combine human rights protection and environmental conservation in China.

This country report focuses on the chapter on 'Protection of Human Rights in Ecological Improvement' in the 'Progress in China's Human Rights in 2012' paper. It provides details about the contents of the chapter and its progress, problems and prospects in China.

The Contents of Human Rights Protection in Ecological Progress

The chapter on 'Protection of Human Rights in Ecological Improvement' is one of the key chapters in the 2012 paper. This chapter specifically deals with: (1) the legal and policy framework which has been established to protect citizens' environmental rights; and (2) the fact that the right to live in a clean and healthy environment has been further protected.

⁵ Bjarne Andreassen, 2011, *Protection of Environmental Rights in China*, <https://community.iucn.org/rba1/projects/Pages/Protection%20of%20environmental%20rights%20in%20China.aspx> accessed 19 August 2013.

⁶ State Council, 2009, *National Human Rights Action Plan of China (2009-2010)*, Information Office of the State Council, http://english.gov.cn/official/2009-04/13/content_1284128.htm accessed 18 September 2011.

⁷ Supra No.5.

1. The Legal and Policy Framework to Protect Citizens' Environmental Rights⁸

Thanks to efforts in recent years, China has established a rather complete legal framework for environmental conservation, covering pollution control, resources conservation and preservation of protected areas and biodiversity. Since 2010, China has formulated 12 policy documents, which have included the *Strategy and Action Plan for Biodiversity Preservation in China (2011-2030)* and the *Plan on Energy Conservation and Emission Reduction during the 12th Five-year Plan Period*. China amended the *Law on Water and Soil Conservation and Ambient Air Quality Standard (AAQS)*, and promulgated administrative regulations such as the *Regulations on the Management of Ozone-depleting Substances* and *Regulations on the Administration of the Taihu Lake Basin*. All of these steps have significantly improved China's legal guarantee of the environmental rights and interests of Chinese citizens and made some invaluable contributions to the building of an eco-friendly country. For example, the first pioneer field of the *Strategy and Action Plan for Biodiversity Preservation in China (2011-2030)*⁹ is specifically to improve the policy and legal system for biodiversity conservation and sustainable utilization, including completely reviewing the law and regulations to solve the conflicts regarding them; researching on the law and regulations on protected areas management; strengthening the implementation system for the law and regulation. In addition, Action 29 of this Strategy and Action Plan emphasizes that it should establish a broad public participation mechanism to guarantee the implementation of relevant policy.

*Further Protections for the Right to Live in a Clean and Healthy Environment*¹⁰

As the white paper indicates there have been a number of other improvements: Environmental assessment and monitoring have been strengthened at both a national and local level through routine monitoring of environmental elements, supervisory monitoring of pollution sources and early-warning monitoring of emergencies. In addition, an early-warning system of environmental monitoring, a supervision system of environmental emergency response and law enforcement, and a nuclear and radiation safety supervision system have

⁸ Chapter V. 'Protection of Human Rights in Ecological Improvement' in the "*Progress in China's Human Rights in 2012*", Paragraph 2, <http://www.scio.gov.cn/zfbps/ndhf/2013/Document/1322524/1322524.htm> accessed 20 September 2013.

⁹ The Strategy and Action Plan for Biodiversity Preservation in China (2011-2030), issued by the Ministry of Environmental Protection of the People's Republic of China on 17 September 2010, http://www.mep.gov.cn/gkml/hbb/bwj/201009/t20100921_194841.htm, in Chinese, accessed 13 December 2012.

¹⁰ Supra No.8, Paragraph 3.

been built. New environmental agencies, such as new water resource protection agencies in seven major river basins have also been established and by the end of 2011, there were 144 environmental assessment agencies with about 2,000 professionals in China.

Progress, Problems and Prospects in China

This white paper 'Progress in China's Human Rights in 2012' provides a lot of statistics and facts to introduce and explain the new progress on human rights in China from the economic, political, cultural, social and ecological perspectives, supplemented with international communication and cooperation in the human rights' field. Compared with the previous 9 white papers, which have been issued respectively since 1991, this tenth white paper draws a broader picture to reflect on progress on human rights in China, especially from the ecological perspective.

It is fair to say that the chapter on 'Protection of Human Rights in Ecological Improvement' in the white paper demonstrates progress in several aspects. It is the first time that there has been a formal introduction and explanation as to what Chinese governments from different levels have done in order to protect the environment and human rights. Secondly, China has established a rather complete legal framework for environmental conservation from several aspects. Thirdly, in order to improve the citizens' living environment, Chinese governments from different levels have offered a large amount of money for environmental protection projects. For instance, the fund from central and local governments was 293.2 billion in 2012, which was more than 1.5 times in 2009. Fourth, from 2008 to 2012, energy saving and emissions reduction has made significant progress, especially in relation to energy consumption per unit of GDP which fell by 17.2 per cent and in relation to sulfur dioxide emission which was reduced nationwide by 14.29 per cent. Fifth, the standards guaranteed as part of the right to live in a clean and healthy environment have been greatly improved. For instance, about 5,333 km² of wetlands have been restored and about 10,667 km² of forest-covered area have been created, effectively improving the water quality and self-recovery capability of these lakes. Sixth, regional ecological treatment and protection has been increasingly intensified. Notably among the 2640 protected areas, there are 363 national protected areas (94.15 million km²).

Besides detailing impressive progress in relation to addressing various sources of pollution as well as establishing new laws and administrative bodies, the white paper also points out that as a developing country with a huge population, and limited natural resources under serious ecological strain, as well as problems posed by unbalanced and unsustainable

development, China is still facing many challenges. For example, there is no definition of 'a clean and healthy environment'. There is little international consensus on the correct terminology about 'a healthy environment'.¹¹ Because of the vaguely defined term 'clean and healthy', it is not easy to give the same standards for 'a clean and healthy environment' in different regions in China. We could however make similar levels of improvement towards a clean and healthy environment based on the different original levels.

Secondly, how should the established legal and policy framework be put into practice? Laws are present but not enforced, which is especially true at the local level where economic growth is what matters the most.¹² Some Chinese legal scholars pointed out that it is difficult to find a specific provision from the existing environmental laws and regulations to solve a specific environmental issue in practice.¹³ In addition, in 2008 the State Environmental Protection Administration (SEPA) was upgraded to ministerial level under the name Ministry of Environmental Protection (MEP) emphasizing the increased prioritization of the environment as issued by the central government.¹⁴ This is indeed a good sign, however, the MEP is understaffed and the budget destined to these people is low.¹⁵ This would also negatively affect the supervision for implementing the relevant laws and regulations.

Thirdly, this chapter in the white paper emphasizes the various measures taken by governments from different levels to protect the environment, but pays less attention to the roles of citizens and NGOs. NGOs are the vanguard of the growing non-governmental activity in China today. The question is not only whether non-governmental actors can shape the future of environmental protection in China, but also whether they can play a role in effecting broader change in the context of the on-going transformation of state-society relations in China.¹⁶ The role of public participation is mentioned several times throughout the Chapter, however there is not as much information about how this can be achieved procedurally. Lessons could, however, be drawn from other areas. For instance, Article 13

¹¹ Alan Boyle and Ben Boer, *Human Rights and the Environment*, 13th Informal ASEM Seminar on Human Rights, 21-23 October 2013, Copenhagen, Denmark, <http://asef.org/images/docs/13th%20Informal%20ASEM%20Seminar%20-%20Background%20paper%20%28FINAL%29.pdf> accessed 1 November 2013, p. 16.

¹² Simona Alba Grano, 2008, *China's Environmental Crisis: Why Should We Care?*, Working Paper No.28, Centre for East and South-East Asian Studies, Lund University, Sweden, <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=3128517&fileId=3128730> accessed 23 August 2011.

¹³ For example, Jing Wang, 2009, "Thirty Years' Rule of Environmental Law in China: Retrospect and Reassessment", *Journal of China University of Geosciences (Social Sciences Edition)*, no.5.

¹⁴ Elizabeth C. Economy, "The Great Leap Backward?" (2007) 86 *Foreign Affairs*, 38.

¹⁵ Sitamaran Srin, "Regulating the Environment: Assessing China's Domestic Environmental Law and Participation in International Treaties", 92006) 6 *The China Review*, 183.

¹⁶ Elizabeth C. Economy, "The River Runs Black", *The Environmental Challenge to China's Future*, (Ithaca: Cornell University Press 2004).

of the *Special Marine Protected Areas Management Approach* (2010), Action 29 of the *China Biodiversity Conservation Strategy and Action Plan (2011-2030)* and the *National Human Rights Action Plan of China (2012-2015)* addressed the importance of public participation in environmental issues. Lessons may also be drawn from existing practice by NGOs. For example, in 2011, Friends of Nature,¹⁷ a Chinese Environmental NGO, sent an application to the Ministry of Environmental Protection to ask for more information about why the relevant department wants to reduce the area of the national protected areas for rare and endemic fish of the upper reaches of Yangtze River.¹⁸ And the first landmark case of environmental information disclosure administrative litigation was decided by Guizhou Qingzheng Environmental Court in January 2012.¹⁹ In addition, the draft Amendment of the Civil Procedural Law (submitted to the Standing Committee of the National People's Conference on 24 October 2011) proposed that "*the relevant agency, social groups can sue against the actions which harm social public interests, such as environmental pollution (...).*"²⁰

Although these are small steps forward, they do reflect the prospect of human rights protection in the form of ecological improvement in China.

Conclusions and Outlook

The Chapter on 'Protection of Human Rights in Ecological Improvement' in the white paper is a remarkable step forward for human rights protection and ecological conservation in China. As mentioned in the white paper, a large effort is still required to solve the numerous problems in China. Even though no other country in the world has experienced a growth rate as rapid as that of China (taking into consideration the size of its population), there still are many opportunities for it to learn from the rest of the world's decades of environmental and developmental experience.²¹ The key concern is how to balance potential conflicts regarding human rights protection and environmental conservation with the support of various parties.

¹⁷ "Friends of Nature" is the first Chinese environmental NGO approved by Chinese government in 1994, <http://zh.wikipedia.org/wiki/%E8%87%AA%E7%84%B6%E4%B9%8B%E5%8F%8B>, accessed 14 June 2013.

¹⁸ China Youth Daily, published on 13 May 2011, <http://env.people.com.cn/GB/14625045.html>, accessed 4 August 2011.

¹⁹ *The First Successful Environmental Information Disclosure Public Interest Litigation in China* (ACEF website) <http://www.acef.com.cn/html/xwdt/11057.html> accessed 16 October 2012. See also Shouqiu Cai, Lizhao Wen, 2013, "The Latest Development of Environmental NGOs In China", 4 *IUCN Academy of Environmental Law eJournal*, <http://www.iucnael.org/e-journal/current-issue-.html#sthash.ASc7fKos.dpuf> accessed 23 April 2014.

²⁰ Detail information see <http://roll.sohu.com/20120613/n345438748.shtml> accessed 23 September 2013.

²¹ Supra No.12.

That is to say, how do we deal with potential conflicts among various interests? A rights-based approach to conservation, as a relatively new and comprehensive approach, would help to solve these issues. We cannot expect China to solve all of its problems in one day, but it is worth expecting it to find a better way to achieve harmony between human rights protection and ecological conservation in China. Broadly speaking, nature conservation and human rights protection can be achieved at a relatively high level at the same time.²²

²² Miao He, An Cliquet, 2013, "Sustainable Development through a Rights-based Approach to Conserve Protected Areas in China", *China-EU Law Journal*, DOI: 10.1007/S12689-013-0031-7, <http://link.springer.com/article/10.1007%2Fs12689-013-0031-7> accessed 4 November 2013.