

COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA
Access to Justice under the Newly Revised Environmental Protection
Law in China: When Theory Meets Practice

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Introduction

After more than 10 years' research and more than 3 years' practical investigation undertaken by the relevant environmental authorities, as well as more than 14,000 suggestions from the public,¹ the Standing Committee of the National Peoples' Congress in China promulgated the newly revised "*Environmental Protection Law of the People's Republic of China*" (2014 version) (hereinafter the "newly revised environmental law") on 24 April 2014, which will enter into force from 1 January 2015. Compared with the "Environmental Protection Law of the People's Republic of China" (1989 version), there are some valuable improvements. Firstly, from the point of view of the content, some innovations were made for practical issues such as institutions and mechanisms for protecting the environment.² The newly revised environmental law also provides for more stringent environmental control measures and penalties.³

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¹ The Standing Committee of the National Peoples' Congress called for suggestions and comments on how to revise the "Environmental Protection Law of the People's Republic of China" (1989 version) twice. In the first round, it received more than 12,000 suggestions from the public. In the second round, more than 2,000 suggestions were received. See Ministry of Environmental Protection. The newly revised environmental law supported by the consensus from various parties. Published on 27 April 2014, http://www.mep.gov.cn/gkml/hbb/qt/201404/t20140427_271054.htm accessed 22 August 2014.

² Jiwen Chang, 'The Newly Revised Environmental Law: the Most Strict Law but the Most Difficult to Implement in the History' (Law Online, 6 June 2014),

Amongst the most remarkable innovations is the fact that the newly revised environmental law expands on the notion of public interest litigation and empowers the public with more operable rights,⁴ such as the right to access to environmental information and the right to access to justice. Respect and protection of human rights can only be guaranteed when citizens have access to effective judicial remedies including a fair trial.⁵

This country report focuses on access to justice in the newly revised environmental protection law. It provides details about the content, its progress and problems in theory and its challenges in practice in China.

Access to Justice in the Newly Revised Environmental Protection Law: Progress and Problems

There is no provision explicitly referring to the right to access justice in environmental matters in *the Chinese Constitution*. However, Article 41 of *the Constitution*⁶ points out that “Citizens have the right to appeal or sue or report the actions of any State authority or any official staff that violate the law or neglect their duty (...)”. This is the basis for the right to access justice in China.

In addition, various provisions of the relevant environmental law and regulations provide for some level of environmental activism in the courts. For instance, Article 41 of *the Environmental Protection Law of the People’s Republic of China* (1989 version) provided that “A natural or juristic person that has caused an environmental pollution hazard shall

<http://www.chinalawinfo.com/LawOnline/ArticleFullText.aspx?ArticleId=83832> accessed 22 August 2014.

³ Ibid.

⁴ Renmin Net (人民网), ‘It was the First Time to Fundamentally Revise the Environmental Law in the Past 25 Years, More Than 300 Organizations Meet the Requirements for being Plaintiffs in the Public Interest Litigation. (□保法 25 年来迎首次大修, 合格公益□□原告超 300 家), (24 April 2014), <http://sn.people.com.cn/n/2014/0424/c356442-21070239.html> accessed 22 August 2014.

⁵ The Rights Practice: Partnerships for Rights and Justice, ‘Improving Access to Justice’, <http://www.rights-practice.org/en/programmes/access.html> accessed 22 August 2014.

⁶ The “Constitution of the People’s Republic of China” was adopted in 1982 and newly amended on 14 March 2004, <http://www.for68.com/new/201007/he60492159127010212383.shtml> in both Chinese and English, accessed 3 September 2014.

*have the obligation to eliminate it and make compensation to the natural or juristic person or individual that suffered direct losses. A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to accept the decision on the settlement, it may bring a lawsuit in a People's Court. The party may also directly bring a lawsuit in a People's Court (...)."*⁷

The "Water Pollution Prevention and Control Law of the People's Republic of China"⁸ also provides some similar provisions. For instance, Article 86 advocates that "For a dispute over liability for damage or amount of compensation in a water pollution accident, (...) the parties concerned may also file a lawsuit with the People's Court directly without going through the mediation procedure."⁹ Besides these, Article 87, Article 88 and Article 89 provide some detailed information on the burden of proof, the number of parties, liability for damage and the amount of compensation if litigation happens. Article 84 of the "Law of People's Republic of China on Prevention and Control of Environmental Pollution by Solid Waste Law"¹⁰ states that "Natural or juristic persons and individuals that have suffered damage from solid waste pollution shall have the right to claim compensation according to law (...)." All these provisions provide to some extent for access to justice in environmental matters; however, these provisions do not clearly address the issue of legal standing.

⁷ Article 41 of the "Environmental Protection Law of the People's Republic of China" (1989 version) is similar to Article 64 of the "Environmental Protection Law of the People's Republic of China" (2014 version). The Article 64 says "Those who cause damages due to environmental pollution and ecological destruction shall bear tort liability in accordance with provisions of Tort Liability Law of the People's Republic of China." The "Environmental Protection Law of the People's Republic of China" (2014 version) was newly modified based on the "Environmental Protection Law of the People's Republic of China" (1989 version) on 24 April 2014 and shall enter into force since 1 January 2015, <http://edu.sina.com.cn/en/2014-05-20/144680376.shtml> accessed 30 June 2014.

⁸ The "Water Pollution Prevention and Control Law of the People's Republic of China" was issued on 28 February 2008 and entered into force on 1 June 2008, <http://www.lawinfochina.com/display.aspx?lib=law&id=6722> accessed 11 August 2011.

⁹ Article 86, the "Water Pollution Prevention and Control Law of the People's Republic of China".

¹⁰ The "Law of the People's Republic of China on Prevention of Environmental Pollution Caused by Solid Waste" was issued in 1995 amended on 29 December 2004 and effective on 1 April 2005, <http://www.lawinfochina.com/display.aspx?lib=law&id=119> Accessed 3 December 2011.

Furthermore, access to justice in environmental matters is also discussed in civil and administrative law, for instance, Article 98 of the *“General Principles of the Civil Law of the People’s Republic of China”*¹¹ states *“Citizens shall enjoy the right of life and health.”*¹² Article 124 points out *“Any person who pollutes the environment and causes damage to others in violation of State provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law.”*¹³ Article 55 of the *“Civil Procedural Law of the People’s Republic of China”*¹⁴ proposed states that *“the relevant agency, or social groups can sue against the actions which harm social public interests, such as environmental pollution (...).”*¹⁵ Article 2 of the *“Administrative Procedural Law of the People’s Republic of China”*¹⁶ points out that *“If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit to a People’s Court in accordance with this law.”*¹⁷

A primary issue regarding access to justice in environmental matters relates to the legal standing of individuals or NGOs to enforce provisions aimed at environmental protection. However, the various laws mentioned above do not regulate this issue. The newly revised *“Environmental Protection Law of the People’s Republic of China”*¹⁸ addresses this important gap. For instance, Article 57 points out that *“Citizens, legal persons and other organizations shall be entitled to report and raise a complaint about environmental pollution and ecological*

¹¹ The *“General Principles of the Civil Law of the People’s Republic of China”* was adopted in 1986 and entered into force on 1 January 1987, http://www.china.com.cn/policy/txt/2012-01/14/content_24405953.htm accessed 22 November 2013.

¹² Article 98, the *“General Principles of the Civil Law of the People’s Republic of China”*.

¹³ Article 124, the *“General Principles of the Civil Law of the People’s Republic of China”*.

¹⁴ The *“Civil Procedural Law of the People’s Republic of China”* was adopted on 9 April 1991 and amended on 31 August 2012, <http://www.kd325.com/ShowArticle.shtml?ID=201051016355390786.htm> accessed 22 August 2014.

¹⁵ Article 55, the *“Civil Procedural Law of the People’s Republic of China”*.

¹⁶ The *“Administrative Procedural Law of the People’s Republic of China”* was adopted on 4 April 1989 and entered into effective on 1 October 1990, http://www.law-lib.com/law/law_view.asp?id=5641 accessed 22 November 2013.

¹⁷ Article 2, the *“Administrative Procedural Law of the People’s Republic of China”*.

¹⁸ The *“Environmental Protection Law of the People’s Republic of China”* was promulgated by Order No. 22 of the President of the People’s Republic of China on December 26, 1989, and was effective on the date of promulgation; it was newly modified on 24 April 2014 and shall enter into force since 1 January 2015, <http://edu.sina.com.cn/en/2014-05-20/144680376.shtml> accessed 30 August 2014.

damage activities of any natural or juristic persons and individuals to competent environmental protection administrations or other departments with environmental supervision responsibilities. In the event that the local people's government and its environmental protection administrations or any other relevant departments fail to fulfill their responsibilities in accordance with the law, any citizen, legal person or other organizations has the right to report it to the competent higher level governments or the supervisory department according to law (...)."

Furthermore, Article 58 provides that *"For activities that cause environmental pollution, ecological damage and public interest harm, social organizations that meet the following conditions may file litigation to the people's Courts: (1) having been registered at the civil affair department of people's governments at or above municipal level with sub-districts in accordance with the law; (2) specializing in environmental protection and public interest activities for five consecutive years or more without any record of breaking the law. Courts shall accept the litigation filed by social organizations that meet the above criteria. The social organizations that file the litigation shall not seek economic benefits from the litigation."*¹⁹

The newly revised environmental law makes remarkable progress on access to justice in environmental matters in China. Firstly, the above Articles provide the legal basis for public interest litigation. Secondly, although environmental issues cannot be solved only by public interest litigation, litigation can function as a powerful tool for individuals and NGOs to supervise and prevent some illegal actions. These Articles substantially enhance the enforcement of environmental law and regulations. Thirdly, the legal standing for public interest litigation will be expanded for NGOs on 1 January 2015 when the law enters into force. It has been reported that in April 2014, among more than 3,000 social organizations, more than 300 would meet the requirements set out in the law for plaintiffs in public interest litigation,²⁰ as proposed in Article 58. This is a good sign which reflects the progressive development of public interest litigation in China.

¹⁹ Article 58, the "Environmental Protection Law of the People's Republic of China" was promulgated by Order No. 22 of the President of the People's Republic of China on December 26, 1989, and was effective on the date of promulgation; it was newly modified on 24 April 2014 and shall enter into force since 1 January 2015, <http://edu.sina.com.cn/en/2014-05-20/144680376.shtml> accessed 30 August 2014.

²⁰ Supra No. 4.

Notwithstanding this progress, judicial guidance is needed to explain two key unresolved problems of interpretation regarding the criteria for identifying qualified public interest organizations. Firstly, how does one count the “five consecutive years” for “specializing in environmental protection public interest activities” for social organizations in practice? Secondly, how should one judge the requirement that the organization is “without any record of breaking the law” for social organizations?

Progress and Challenges for Access to Justice in Practice

It is interesting to examine the position regarding access to justice through a practical example. The Minister of the department of supervision and litigation from the All-China Environmental Federation (ACEF),²¹ Yong Ma, reported that in 2013 as plaintiff, the ACEF pursued 8 different environmental public interest cases in China’s courts, collectively seeking more than 100 million Yuan in compensation.²² However, the People’s Court did not accept jurisdiction to hear any of the cases for the reason that the Court thought the ACEF did not have legal standing to bring the cases (despite the ACEF having had some successful previous experience with public interest litigation). The provisions of the newly revised environmental law have filled this gap in practice. With the new Articles, there are now clearer guidelines regarding the legal standing of social organizations to bring such cases. This combined with the increase in tribunals (since the establishment of the first environmental tribunal in China was established at Qiaokou Area of Wuhan city in 1989, the number has grown steadily and as of 2013 there are 134 permanent environmental tribunals in different courts in China)²³ will make public interest litigation more feasible. It is noted that the environment and resource tribunal was newly established at the supreme level in June 2014.²⁴ These environmental tribunals will undoubtedly also play a great role in realizing the right of access to justice in environmental matters in China.

²¹ The All-China Environmental Federation (hereinafter, as “ACEF”), established in 2005, is a nationwide non-profit civil society organization in the field of the environment. Although it is regarded as a NGO in China, its budget is supported by the Ministry of Environmental Protection.

²² The “Civil Procedural Law of the People’s Republic of China” was adopted on 9 April 1991 and amended on 31 August 2012, accessed 22 August 2014.

²³ Xiazichengqi, ‘Why Is There No Case in Environmental Court in China?’ (14 August 2013), <http://toutiao.baik.com/article-1264543.html> accessed 18 September 2013.

²⁴ Wangyi News, ‘The Environment and Resource Tribunal was Newly Established at the Supreme of People’s Court: Its Name Has Been Changed Several Times’ (30 June 2014), <http://news.163.com/14/0630/09/9VVQHKB600014AED.html> accessed 30 June 2014.

However, challenges regarding access to justice remain. Firstly, those who live in poverty – mostly in rural areas – have limited access to legal services.²⁵ The concentration of financial and human resources in urban areas has excluded much of the rural population from access to lawyers and the courts,²⁶ even though in many instances serious environmental damage occurs in rural areas. Secondly, due to the short history of the research and education on environmental law, capacity-building is a critical problem not only for a potential plaintiff, such as individuals or NGOs, but also for lawyers and judges. The realization of public interest litigation requires some specialized skills from the plaintiff in the litigation, for instance the skill to collect environmental information required as evidence in the litigation. It will take some time for lawyers and judges to acquire relevant knowledge and practical experience in public interest litigation. Thirdly, a Court or a judge may lack the necessary ability to solve a particular environmental dispute because of the disputes' characteristics. For instance, environmental pollution may damage a person or an ecological system over a long period of time, creating challenges for assessing the quantum of damage.²⁷

Conclusion

The Articles on access to justice in the newly revised environmental law address a major gap by providing invaluable guidelines on legal standing for access to justice in environmental matters in China. These provisions could be regarded as remarkable progress in safeguarding the people's environmental interests. However, courts remain inaccessible in many instances due to lack of capacity of individuals, NGOs, judges and lawyers, and a lack of resources. In addition, some judges might be unwilling to accept a case. How to overcome the challenges in practice is the next key issue for realizing access to environmental justice in China.

²⁵The Rights Practice: Partnerships for Rights and Justice. Improving Access to Justice.' <http://www.rights-practice.org/en/programmes/access.html> accessed 22 August 2014.

²⁶ Ibid.

²⁷ Rui Zeng, 'The Real Obstacle and Practical Path for Chinese Environmental Judicial Activism'. (2014) *Journal of Henan University of Economics and Law*, 3.