

## On the Contemporary State of Environment and Environmental Governance in China

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### Introduction

The importance of protecting the global environment has become the common understanding of people all over the world. China is the most populous developing country in the world. Since the late 1970s, China's economy has developed rapidly and continuously. During the process, many environmental problems that have haunted developed countries in different phases of their 100-year-long industrialization have occurred in China all at the same time. The conflict between environment and development is becoming ever more prominent. Solving China's environmental problems is in keeping with China's development goals. It will contribute to the wellbeing of the 1.3 billion Chinese people, and it is also an important manifestation of the shared interest of mankind.

Despite the serious environmental challenges, the Chinese government is increasingly emphasizing its efforts to control depletion of the national environment. Both of the environmental challenges and opportunities in china are existing at the same time. Comparing with earlier studies, this article explores these questions by focusing on the latest environmental issues in china. Several reasons make a concentration on the contemporary state of environment and environmental governance in china. First, China had failed to meet targets to reduce pollution and conserve energy in 2006. Second, the national environmental watchdog was taking the most notable move in enforcing environmental law. For instance, the State Environmental Protection Administration (SEPA) halted approval of all projects by major power plants and four cities for their poor environmental performance at the beginning of 2007. Third, some concerted actions, such as the green procurement policy and green scheme, also launched by other ministries at the beginning of 2007. These issues have profound implications for making a fresh review of china's environmental state and governance both timely and useful.

The remainder of this article is structured as follows. The next section analyses the contemporary state of environment in China. Subsequently, a review of the evolution of China's

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environmental governance is provided. The following sections explore the major reasons of environmental gaps and briefly introduce the emerging concerted actions launched by other ministries.

## 1. The Contemporary State of Environment in China

### 1.1. *The Environmental Pollution is Continuously Increasing*

It was reported that China had failed to reach the first-year target of its five-year energy efficiency plan.<sup>1</sup> China's target for 2006 was to cut energy consumption by four percent and emissions of major pollutants by two percent.

As a developing country, China is taking steps to develop economic prosperity and improve standards of living. Rapid economic development in the past thirty years overly exploited natural resources and speeded energy consumption at the expense of the environment. As a

*Table 1: Comparisons on Major Pollutants of Waste Water Discharged between 1998 and 2005<sup>2</sup>*

Item Year	Waste Water ( hundred million ton )			COD ( ten thousand ton)			Ammonia and Nitrogen ( ten thousand ton)		
	Total	Industry	Living	Total	Industry	Living	Total	Industry	Living
1998	395.3	200.5	194.8	1495.6	800.6	695.0	-	-	-
1999	401.1	197.3	203.8	1388.9	691.7	697.2	-	-	-
2000	415.2	194.3	220.9	1445.0	704.5	740.5	-	-	-
2001	433.0	202.7	230.3	1404.8	607.5	797.3	125.2	41.3	83.9
2002	439.5	207.2	232.3	1366.9	584.0	782.9	128.8	42.1	86.7
2003	460.0	212.4	247.6	1333.6	511.9	821.7	129.7	40.4	89.3
2004	482.4	221.1	261.3	1339.2	509.7	829.5	133.0	42.2	90.8
2005	524.5	243.1	281.4	1414.2	554.8	859.4	149.8	52.5	97.3

<sup>1</sup> Jia, Heping, China misses energy efficiency targets, available at <http://www.scidev.net/dossiers/index.cfm?fuseaction=dossierReadItem&type=1&itemid=3338&language=1&dossier=16> (accessed 25-01-2007).

<sup>2</sup> Source: *State Environmental Protection Administration*, China Environmental Annual Report 2004 [in Chinese], available at <http://www.sepa.gov.cn/news/xz/> (accessed 09-12-2006); *State Environmental Protection Administration*, China Environmental Annual Report 2005 [in Chinese], available at <http://www.sepa.gov.cn/news/xz/> (accessed 09-12-2006). Revised by author.

Table 2: Major Air Pollutants Emitted in China between 1998 and 2005<sup>3</sup>

Year \ Item	Sulfur Dioxide(ten thousand ton)			Soot(ten thousand ton)			Particulate (ten thousand ton)
	Total	Industry	Living	Total	Industry	Living	
1998	2091.4	1594.4	497.0	1455.1	1178.5	276.6	1321.2
1999	1857.5	1460.1	397.4	1159.0	953.4	205.6	1175.3
2000	1995.1	1612.5	382.6	1165.4	953.3	212.1	1092.0
2001	1947.8	1566.6	381.2	1069.8	851.9	217.9	990.6
2002	1926.6	1562.0	364.6	1012.7	804.2	208.5	941.0
2003	2158.7	1791.4	367.3	1048.7	846.2	202.5	1021.0
2004	2254.9	1891.4	363.5	1094.9	886.5	208.4	904.8
2005	2549.3	2168.4	380.9	1182.5	948.9	233.6	911.2

result, the pressure on the environment is growing rapidly and to manage its environmental problems become a tremendous challenge.

The nation's effort to abate pollution has slowed, but not stopped, the deterioration of environment quality. In some regions, environmental degradation and pollution constrain economic growth, contribute to large-scale migration, harm public health, and engender social unrest<sup>4</sup>. Table 1 and Table 2 reveal some aspect of these growing problems.

### 1.2 The Major Problems of Environment in China

China's major environmental problems lie in five areas:

(1) China is the most populous developing country in the world. The total population in China is 1307.56 million till the end of 2005. It is expected to rise to 13.7 hundred million by 2010, and 14.6 hundred million by 2020<sup>5</sup>. The population base is so large that it causes an excessive net increase in population. Overpopulation poses burdens to the ecological environment.

(2) Public awareness of environmental protection is not high enough. The Measures for Public Participation in Environmental Protection is in the process of drafting. More efforts should be made to perfect integrated decision-making mechanisms.

<sup>3</sup> Ibid.

<sup>4</sup> *Economy, Elizabeth C.*, *The River Runs Black: The Environmental Challenge to China's Future*, New York, 2004, p. 24.

<sup>5</sup> *The Central People's Government of P. R. China*, *The actualities of population in China*, available at [http://www.gov.cn/test/2005-07/26/content\\_17363.htm](http://www.gov.cn/test/2005-07/26/content_17363.htm) (accessed 05-01-2007).

(3) The process of urbanization is rapid. Urbanization has become the common trend of development of all countries of the world, irrespective of historical background and social system. The urban population in China increased to 543 million till the end of 2004, accounting for 41.76 per cent of total population, and there is a further 140 million floating population coming in from the countryside in 2004<sup>6</sup>. Rapid urbanization causes large concentrations of cars, waste water, refuse, and so on. With the advances of China's economy, urban construction which includes infrastructures and public facilities such as housing, transportation, communications, water supply, drainage, heating and gas supply, cause strains to the environment.

(4) Economic growth is fast, while economic structure is arbitrary. The ratio of heavy industry and chemical industry is too large to total industry, leading to larger energy consumption and more polluted emissions; besides, energy consumption mainly depends on coal. Coal is the chief source of energy, which provides 73% of the total commercial energy consumption. China is the world's largest consumer of coal, the second largest consumer of oil, and the second largest emitter of the greenhouse gas carbon dioxide in 2002<sup>7</sup>. In the absence of major breakthroughs in combustion technology and conversion of coal, air pollution can be expected to deteriorate with advances in urbanization, industrialization and growing household energy consumption. As coal continues to be a primary source of energy, air pollution from coal combustion will be a persistent problem. Structural pollution is a difficult environmental problem to overcome.

(5) Investment for environmental protection is inadequate. Funds for construction and operation of infrastructure can not be guaranteed.

## **2. The Evolution of China's Environmental Governance**

### *2.1 The Evolution of China's Environmental Law and Policies*

(1) Beginning: In 1973, after the Stockholm Conference, the Leading Group of Environmental Protection under the State Council and its office was established. After that, local environmental protection bureaus were gradually set up.

(2) Legislation: In 1979, Environmental Protection Law (Trial) was promulgated, which embraced the provision that an environmental impact report must be submitted prior to any project being built, transformed or expanded. The Act established the Emissions Levy System: According to quantity and concentration of the pollutant emitted, the emissions exceeding national standards must be charged. The Act also established the system of

<sup>6</sup> Ibid.

<sup>7</sup> *International Energy Agency, Energy Statistics of Non-OECD Countries*, Paris, 2004, p. 26.

“there synchronization” and introduced the system of Environmental Impact Assessment (EIA) and the Polluters Pay principle to China in time. The following illustrates laws on ocean, water and air pollution prevention and control were gradually promulgated. In the passed decades, the speed of legislation on environment and resources has been greatly expedited, and a general legal framework has emerged (see Table 3).

Table 3: Environmental Legal Framework in China <sup>8</sup>

Type	Total	Content
Laws formulated by National People's Congress (NPC) Total 24	9 Laws on environmental pollution:	Environmental Protection Law
		Air Pollution Prevention and Control Law
		Water Pollution Prevention and Control Law
		Solid Waste Pollution Prevention and Control Law
		Marine Environmental Protection Law
		Noise Pollution Prevention and Control Law
		Environmental Impact Assessment Law
		Cleaner Production Law
		Radioactivity Pollution Prevention and Control Law
	15 Law on natural resource:	Wild Animal Protection Law
		Water and Soil Conservation Law
		Grassland Law
		Fishery Law
		Mine Resource Law
		Coal Law
		Forest Law
		Agriculture Law
		Water Resource Law
		Energy Resource Saving Law
		Law on Earthquake Prevention and Disaster Mitigation
		Land Administration Law
		Cultural Relic Conservation Law
		Urban Planning Law
		Flood Prevention and Control Law,
Administrative Regulations formulated by State Council	Over 50	Provisional Regulation on Water Pollution, Prevention and Control for Huai River Basin, Highway Law, Regulation on Natural Reserves Administration, etc.
Ministry Regulations by SEPA 70	Over 70	Rules on Management of Environmental Protection Programme, Interim Rule on Management of Forestation Fund, etc.
Local Regulations and relative Ministry Regulations	Over 660	Regulation of Shanghai on Environmental Protection, Provisional Rule on Rare Plants Conservation for Yunnan Province, etc.
State Environment Standards	Over 800	Air Environmental Quality Standard, etc.

<sup>8</sup> Source: *The State Council Information Office, Environmental Protection in China (1996-2005)*, Beijing, 2006, p.5-10. Revised by author.

(3) Basic national policy: At the end of 1983, the State Council declare that Environmental Protection is one of China's basic national policies, and requested support to carry out the guideline of synchronizing the planning, implementation and development of economic construction, urban and rural construction, and environmental construction.

(4) Three policies and eight institutions: From the 1980s, there policies and eight institution on environment management were gradually constituted. The three policies are: (1) prevention is the priority, combining prevention and control; (2) polluters pay principle; and (3) enforcing environmental management. The eight institutions are as follows: (1) environmental impact assessment; (2) three synchronization; (3) pollution levy; (4) responsibility for environmental protection goals; (5) quantitative examination of comprehensive improvement of urban environment; (6) pollution discharge permits; (7) mandatory pollution control; and (8) centralized pollution control.

## 2.2 *The Existing Enforcement Tools*

Environmental protection agencies, both national and local environmental bureaus, are delegated authorities to take action when the regulated community fails to comply with environmental laws. They also can call upon enforcement actions in associating with other agencies. The enforcement tools include administrative actions, judicial actions and criminal prosecutions.

### 2.2.1 *Administrative tools*

Administrative tools ensure the environmental agency's ability to order regulated community to comply with laws or to take necessary measures to protect the environment. Administrative orders are broadly used to deal with environmental matters in China. Local Environmental Protection Bureaus mainly undertake the enforcement tasks in their jurisdiction.

The environmental bureau has to decide whether to bring an action within 10 days after disclosing the violation or after citizen complaints. At least two officials work on the case, examining the severity of the violation, and providing suggestions which will be subject to approval by the Review Committee of the bureau. It is required that an order state the nature of the violation, valid evidence, related regulations and the decision. The regulated party can appeal to the environmental bureau at one level higher than it for rejudging or it may bring a law suit before a court against the environmental bureau within 15 days of receiving the order directly. It is at the violator's discretion to select either administrative appeals or judicial review. This is different from the procedure in the U.S.A. which requires violators to exhaust their administrative appeals before seeking judicial review. Administrative orders are not self-enforcing, in that the environmental bureau shall apply to the courts for compulsory enforcement in the event of noncompliance. In order to promote the role of judicial in protection of the environment, some local environmental bureaus work

closely with the courts. Some have even established a courtroom to specially deal with environmental cases.

### 2.2.2 *Warning*

The environmental bureaus can issue warning letters for light violations. The purpose is to notice the party not to let its action lead to worse pollution in order to avoid penalties. It can be applied separately or adjunct to other tools.

### 2.2.3 *Fines*

Environmental laws generally authorize administrative penalties for most violations. The penalties are assessed based on severity, per violation, which can be any amount but not exceeding the statutory limit. The fine is the most significant enforcement tool in China. Environmental bureaus at different levels have different limitations on fines.

### 2.2.4 *Compliance deadline*

If a company emits pollutants exceeding the standards and causes severe pollution, it is required under environmental laws to take actions to eliminate and control the pollution, and achieve full compliance within a certain date. The decision for such a deadline is issued by the government where the company is located. The environmental bureau sets the requirements, inspects, and ensures its enforcement. Non-achievement within the deadline will subject the violator to penalties including additional charges for emission fees, fines, and even shut down. The environmental bureau has the authority for the first two penalties. Because the shut down has an essential influence on the economy, any shut down is decided by the government.

### 2.2.5 *Injunction*

Typically, the environmental agency has authority to enjoin an enterprise temporarily from operation and the government orders the regulated party to shut down. The government applies its authority under two conditions. One relates to compliance deadlines, the government will shut down the facility if it can not fulfill the requirements within the deadline. The other is subjected to the polluting facilities located in a special protected area such as drinking water source or in residential areas due to wrong-design in the past. Under this circumstance, the government issues a decision that orders the facility to shut down its physical operation in this special area and relocate in another area.

### 2.2.6 *Permit revocation*

The Implementing Regulation on Water Pollution Control Law authorizes the environmental bureau to revoke permits under certain circumstances. When the permittee fails to comply with a permit condition, the environmental agency may first order it to achieve the requirement. Only when the permittee still severely violates the permit, will the environmental agency determine to terminate the permit.

### 2.3 *Judicial enforcement*

Courts in China include the People's Supreme Court, local courts at different levels and specific courts such as maritime court and railway communication courts. The system of courts consists of several branches: civil, criminal, commercial and administrative, plus an implementation branch. Courts assert their duty to handle environmental issues in the following respects: civil litigation which is claimed by plaintiff against the polluter, judicial review of administrative actions filed by the regulated party, and criminal sanctions to fight environmental damage. The courts' function in protecting the environment in China is not as strong as it is in the U.S. For example, there are no authorities to provide environmental agencies with recourse to the courts for enforcing environmental requirements, except the compulsory implementation of the administrative decisions by the courts at the request of the environmental agency.

#### 2.3.1 *Civil litigation*

Citizens or organizations may file actions before courts against firms whom they think pollute the environment and cause damage to their property or harm their health. The plaintiffs can be one person, one organization or a group. Courts handle the case according to the procedural requirements stated in the Civil Litigation Law. Courts can mediate the case based on the willingness of parties before final judgment. Parties may appeal to a higher level court once.

#### 2.3.2 *Administrative litigation*

The Administrative Procedure Law delegates to the regulated community the right to sue administrative agencies to protect their legal rights. Environmental laws restate these provisions. The environmental agencies are liable for their illegal activities. However, not every administrative activity is subject to judicial review but certain ones which relate to (1) environmental administrative penalties; (2) decisions on turning down an application for environmental permit or license; (3) not performing authorized duties; (4) illegally requesting a regulated party to conduct an environmental act; and (5) other activities stated in regulations. Regulations and rules issued by environmental agencies which have binding effects, and those activities which the environmental agencies have final judgment delegated by regulations are not subject to review by courts.

When courts hold that the environmental agencies don't properly perform their duties or violate the regulated parties' legal rights, they will revoke the agencies' decision and request them to reissue a new decision or act within a specified period of time. Normally, the courts only review whether the environmental agencies properly perform rather than the legitimacy of administrative activities themselves. It is the environmental agencies' discretionary activities to make the decision. However, the courts may make their own decision



on the environmental matter at hand when the courts find the administrative activities substantially lack fairness.

### *2.3.3 Criminal sanctions against environmental degradation*

In the battle against environmental degradation, one of the most effective weapons is the criminal sanction. In China, the public security authorities — police are to investigate the cases of environmental crimes, the prosecutor authorities are the legal supervisory body to exercise the power of prosecution on behalf of the state, and the courts exercise the power of judgment. Environmental agencies are consultant agencies to facilitate the investigation and provide information.

The legal rules on crimes against the environment can be found both in environmental laws and criminal laws. The Environmental Law states: If a violation of this Law caused a serious environmental pollution accident, leading to the grave consequences of heavy losses of public or private property or human injuries or deaths of persons, the persons directly responsible for such an accident shall be investigated for criminal responsibility according to law.

Water, air and solid waste laws also provide that violations of these requirements shall be imposed through criminal liabilities by referring to the related provisions of the Criminal Law. The Criminal Law has provisions prohibiting various types of environmental degradation, however, it has no special chapter or category of “crimes against the environment”, nor does it use that term. This makes it difficult for the courts to apply these provisions to judge environmental crimes. Also, current law is silent on such issues as liability of legal persons (corporate entities) which are the main part of environmental crimes, liability for activities which are potentially dangerous, and liability in the absence of either intent or negligence.

## **3. The Major Reasons of Environmental Enforcement Gap in China**

According to the situation of environment of China, there is general agreement that a wide enforcement gap is really exist in China.

In order to improve enforcement effectiveness, the authorities in Beijing have taken a number of measures to secure better compliance: First, the official adoption in 1992 of the concept of sustainable development as a long-term strategy for socialist modernization served to broaden the authorities commitment to environmental protection at the top. Second, the criminal code was revised in 1996 to impose criminal punishments for serious environmental violations. Third, the position of the Chief of the SEPA was upgraded in the 1998 to a ministerial rank in order to improve the holder’s bureaucratic status and adminis-

trative capacity. Fourth, government spending on environmental protection has increased from 0.73% of GDP (130 billion yuan) in the Eighth Five-Year Plan (1991–1995) to 0.93% (360 billion yuan) in the Ninth (1996–2000). Finally, about 84,000 heavily polluting enterprises have either been closed or forced to relocate in the Ninth Five-Year Plan. Unfortunately, in spite of all of these measures, there is general agreement that a wide enforcement gap persists.

### *3.1. The priority of economic growth causes the neglecting of the environment*

In many ways, it is understandable that the developing country would place a priority on economic development. However, at the same time such policies loot the country of precious stocks of natural capital that are necessary for improving the quality of life over the long run. Environmentalists have pointed out that the enforcement of environmental regulations is more difficult when the authorities believe that environmental protection and economic development conflict.

Prior to the reform era (initiated by Deng Xiaoping in 1978), the pervasive pro-growth orientation saw nature as something to be controlled in the interest of the socialist State. Consequently, this era was associated with numerous huge infrastructure projects and industrialization drives in the interest of self-sufficiency and economic development. This ideology has largely persisted unchanged through China's recent decades of unprecedented economic growth, with the result that "development" has been allowed to trump the environment at all levels. The legacy of this is that environmental problems have become so literally "in-your-face" that the tradeoffs between economic growth and the environment have become obvious. There are numerous examples where economic, planning, trade, and industry bureaus have collectively conspired to undermine regulatory enforcement, and the enormous economic externalities associated with air pollution are much better understood by the central government in that period.

Things seem to be changed in the last few years. Since President Hu Jintao and Premier Wen Jiabao took office in March 2003, the new Chinese government seems to have adopted a more balanced approach to economic development<sup>9</sup>. The so-called "scientific development" paradigm not only focuses on economic growth, but also takes more account of the impact of such developments on Chinese society and environment. Otherwise, the accession to the WTO and Chinese international image has further strengthened the resolve

<sup>9</sup> See *Hu, Jintao*, Address by President Hu Jintao of China at the opening ceremony of the 2005 Fortune Global Forum, available at [http://english.people.com.cn/200505/17/eng20050517\\_185302.html](http://english.people.com.cn/200505/17/eng20050517_185302.html) (accessed 5 April 2007); *Wen, Jiabao*, The government work report 2004 of China, available at [http://english.people.com.cn/200403/16/eng20040316\\_137651.shtml](http://english.people.com.cn/200403/16/eng20040316_137651.shtml) (accessed 5 April 2007).

of the nation's leaders to protect and improve the environment. In response, the central government authorities have made some genuine commitments to a more balanced policy of economic development. Manifestations of this include the concept of "scientific development" and the "Green Olympics" in 2008.

However, only the central government seems to be changing their pro-growth ideology and focuses on economic growth as well as the environmental impact, the local authorities have not changed their ideology in time and also pay more attention to economic growth. Because of changing such pervasive pro-growth orientation which exists for a long time is not a simple thing and economic growth relates to political achievement which all level officers are very interests in. Fortunately, in order to improve the awareness of environmental protection the central government is planning to add "Green GDP" to the examining system for officers' political achievement in the next few years.

### 3.2. *The agency alone is not powerful enough*

It was reported that the national environmental watchdog halts approval of all projects by major power plants and four cities for their poor environmental performance on January 10, 2007. The unprecedented move shows agency's muscle, but the agency alone will not be able to enforce its writ. This is the nut to crack in China's drive to clean up its environment.

The SEPA has become ever bolder in implementing the country's environmental policies, evinced by the "environmental storms" since the second half of 2004. Such boldness is what China urgently needs, as it strives to strike a balance between economic growth and environmental sustainability, a new way of development that must shake off the past environment-ignoring mode.

The SEPA has thus won support from both the public and the central leadership. But its limited power means it often has to depend on the concerted action of other departments to get its way.

In the latest move, the SEPA can put new projects by offending companies and cities on hold unless all industries operated by them have proper approval from the agency. But it does not mean the automatic stopping of relevant projects. The SEPA does not have the power to directly halt the continuation of those potentially polluting projects. Past experience shows that many such projects, which often involve the investment of billions of Yuan, manage to go ahead despite environmental orders to stop them. Companies have been known to install cleaning facilities to pass the environmental impact assessment then keep them shut to save costs. As steel prices were on the decline last year, industrial insiders said that steelmakers had suffered from slumping profits and that the costs saved from idling their environmental facilities had become meaningful.

The latest environmental figures show that the SEPA alone can no longer hold back the worsening situation. China missed its 2006 goals of reducing energy consumption by 4 percent and reducing emissions of pollutants by 2 percent. It is not because the SEPA failed in its duty. It is because the agency alone is not powerful enough.

### 3.3. *The lack of public participation*

Research findings on regulatory enforcement have also suggested that external forces in support of environmental protection can provide an additional bureaucratic push for the enforcement of environmental regulations, particularly at the local level<sup>10</sup>. Enforcement officials are more likely to be more strongly motivated to achieve effectiveness in enforcement and appeared to be more confident about controlling pollution in the area where local community and environmental groups actively support environmental protection. If Chinese citizens maintain a different culturally and historically defined outlook on participation in political and social affairs we should perhaps look for different forms and shapes of public participation from those commonly found in the West.

Although environmental issues have in recent years been sanctioned by the state as suitable for public debate--as opposed to, for example, China's unification policy--there remain limits to the openness of debates and to the room for societal action in this field. Especially in cases where environmental issues have close links with questions of human rights, ethnic tension or strategic economic decision-making the debates have remained under state censorship.

The promulgation of China's Environmental Impact Assessment (EIA) Law, effective from September 2003, promotes public involvement in decision-making on projects with potentially adverse environmental impacts. EIA was officially introduced in China in 1979 through the Provisional Environmental Protection Law. Yet the gap between the intent and actual performance of this instrument has remained large<sup>11</sup>. Article 5 of the Environmental Impact Assessment Law stipulates that "the State encourages relevant units, experts and the public to participate in environmental impact assessments in appropriate ways". It is further

<sup>10</sup> See *Kropp, Brian*, Environmental organizations: What makes them tick? in: *Yandle, Bruce*, The market meets the environment – Economic analysis of environmental policy, Oxford, 1999, p. 259–294; *Rawcliffe, Peter*, Environmental pressure groups in transition, Manchester, 1998, p.14; *Rock, Michael T.*, Pathways to industrial environmental improvement in the East Asian newly industrializing economies, *Business Strategy and the Environment* 2002 (11), p. 90-102.

<sup>11</sup> See *Swanson, Kate E., Kuhn, Richard G. & Xu, Wei*, Environmental policy implementation in rural China: a case study of Yuhang, Zhejiang, *Environmental Management* 2001 (4), p.481-491; *Mao, Wenfeng & Hills, Peter*, Impacts of the economic-political reform on environmental impact assessment implementation in China, *Impact Assessment and Project Appraisal* 2002 (2), p. 101-111.

stated in articles 11 and 21 that plans and construction projects — subject to an environmental impact assessment — cannot be submitted for approval before the opinions of the public have been solicited through evidentiary meetings, testimony hearings or in other ways. Although the EIA law can be considered a step forward in the institutionalisation of public participation several problems with respect to the inclusion of citizens remain. It is not stipulated how and when the involvement of citizens in evidentiary hearings or testimony meetings should be promoted, leaving this to the discretion of local governments. It remains difficult for citizens to attend public hearings, and even harder to join actively in the discussion.

Generally speaking, non-governmental environmental organizations (NGEOs) should play an important role in public participation in environmental protection. Since the Ministry of Civil Affairs (MCA) set strict rules for the establishment of social organizations, although NGOs are tolerated by the government, they are also kept very small in size, are poorly funded, tend to be focused on specific local issues, and have little involvement in the regulatory process.

Considering the existing implementation deficit in environmental regulation and the inability of the administrative system to monitor and guide environmental developments in all regions and sectors of this vast nation, one of the state's main concerns should be to promote and enable public participation in environmental management.

Public participation is a global trend among modern public administrations. Fortunately, Chinese government is taking steps to improve public participation in environmental protection. In February 2006, the Temporary Measures for Public Participation in Environmental Impact Assessment was promulgated. In August 2006, the SEPA held a workshop in Beijing to discuss the second draft of the Measures for Public Participation in Environmental Protection which will be promulgated soon. There is no doubt that the Measures, once launched, will become an important legal basis in China for full public participation in environmental protection.

#### **4. The Emerging Concerted Actions by Other Ministries**

When the constructions of some 30 big projects were suspended at a mandate from SEPA in December 2004, China was taking the most notable move in enforcing environmental law. With the awareness of the environment bureau is not power enough, the concerted actions of other ministries is emerging.

#### 4.1. *The People's Bank of China launches green scheme*

Enterprises that have poor environmental records risk being rejected for bank loans under a nationwide credit system that factors environmental information into loan applications.

The People's Bank of China (PBOC), the central bank, is working with the SEPA to push the initiative. This move will encourage enterprises to think more about the effect their operations have on the environment. The initiative combines legal, economic and administrative means to fight against pollution noting that the move would compliment the central government's efforts to protect the environment.

The concerted action by the two departments is also expected to reduce the risks borne by commercial banks. As China strives to strike a balance between economic growth and environmental protection, industrial projects that contravene State environmental policies will be halted, creating potential risks for the commercial banks that provided funds for the projects. If banks lend money to enterprises that are later ordered to close down for violating environmental rules, banks will suffer losses. Once the new credit system is in place, commercial banks will first check the environmental records of borrowing firms before lending them money.

It was reported by the SEPA, that the information collected on environment-related law enforcement since 2003 would be put into the central bank's credit database. The environmental records of enterprises are only part of the non-financial data that has been or will be included in the central bank's credit system to help strengthen commercial banks' lending security.

The central bank is also cooperating with the social security, customs, construction, commodity quality supervision, taxation and legal departments to bring stability to the country's corporate finance system.

#### 4.2. *The green procurement policy*

The Ministry of Finance and the State Environmental Protection Administration released the circular outlining the green procurement policy on November 22, 2006.

The circular said governments should try to purchase products that have been officially certified as environmentally-friendly. They should not purchase products that threaten the environment and public health.

The new policy came into effect on January 1, 2007. The policy will be further implemented in governments of all levels from 2008. China's central and provincial governments

will preferentially purchase environmentally-friendly products under the new green procurement policy to be implemented since 2007.

The policy has been put in place at a time when the Chinese people are growing increasingly aware of the environment. The State Environment Protection Administration recently conducted a survey that found 78.8% of Chinese people would be willing to spend more money to buy an environmentally-friendly product. Now the Chinese government has decided to formally recognize the need to factor environmental costs into its purchasing decisions with the green procurement policy.

Environmentalism says the new policy will promote environmentally-friendly manufacturing processes and consumption habits.

## **5. Conclusion**

The Chinese government and the Chinese people have made great efforts to protect the environment. But the Chinese government is fully aware of the grave situation of environmental protection in China, because the country is now at a stage of accelerated industrialization and urbanization when the contradiction between economic growth and environmental protection is particularly prominent. In some regions environmental pollution and ecological deterioration are still very serious. The discharge of major pollutants has surpassed the sustaining capacity of the environment. Water, land and soil pollution is serious, and pollution caused by solid wastes, motor vehicle emission and not easily degradable organic matter is increasing. In the first 20 years of the new century, China's population will keep growing, and its total economic volume will quadruple that of 2000. As the demand on resources from economic and social development is increasing, environmental protection is facing greater pressure than ever before.

## ABSTRACTS

### **The ambit of judicial review by the German Federal Constitutional Court in the examination of judicial decisions – a model for Georgian jurisdiction?**

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This paper presents the thesis that the introduction of a constitutional complaint against court judgments into the Georgian legal system will have multiple benign effects on the young democracy in the Caucasus. This applies in particular to improved of legal protection of the citizens, and also to lending substance, in the jurisprudence of lower-instance specialised courts, to the freedoms guaranteed by the constitution. In addition, there is a re-adjustment of the actual significance of the Georgian Constitutional Court. Although the Georgian constitution does provide for a constitutional complaint as a matter of principle, it is only admissible against so-called normative acts, which have been conclusively defined in a catalogue in the law concerning normative acts. This does not cover judicial decisions, although the motives of the constitution markers for this are not quite clear and for good reason give rise to the suggestions made here. The core of the argument is that the application of a three-phased scale of examination developed by the German Federal Constitutional Court achieves an effective ambit of control which respects the requirements of specialised jurisdiction and also guarantees that the working capacity of the Constitutional Court is not overburdened. This criteria for this are guided by the principle of proportionality: the more incisively a judgment by a specialist lower court affects the basic sphere of rights of the defeated party, the stricter the requirements to be made for the justification of this intervention and the wider the scope for subsequent review on grounds of constitutional law.

### **On the Contemporary State of Environment and Environmental Governance in China**

By *Wei Tan*, Berlin / Zhuzhou

China has missed targets to reduce pollution and conserve energy in 2006. The environmental pollution is continuously increasing in China. There are some major problems, such as overpopulation, accelerated industrialization and urbanization, which cause great pressure to environment in China. In the passed decades, the speed of legislation on environment and resources has been greatly expedited, and a general legal framework has emerged.



The Chinese government acknowledges the severity of China's environmental problems and has taken steps to curb pollution and environmental degradation. Unfortunately, in spite of all of efforts, there is general agreement that a wide enforcement gap persists. This article analyses the contemporary state of environment in China, reviews the evolution of China's environmental governance, explores the major reasons of environmental gaps and briefly introduces the emerging concerted actions for environment protection by other ministries.

### **The political dimensions of the phenomenon « Kirdi » in Northern Cameroon**

By *Houli Fendjongue*, Ngaoundéré

Cameroon, with its german-anglo-french colonial past, is divided by 24 major languages and hosts over 130 ethnic groups. They include the "Kirdi" (meaning "pagan"), a people residing in the North of the country since 200 years when fleeing the domination by the muslim-orientated Fulani/Fulbe to the hills and isolated villages of the Mandara Mountains, where they are still living. The article deals with some questions resulting from ethnic and religious tensions in the country between the muslim majority and the non-muslim minorities, focussing possibilities of how to strengthen political representation and economic influences of those minorities meliorating their position on the country's political chess-board.

### **The Lebanon Conflict of 2006 and the International Law**

By *Gerd Seidel*, Berlin

The article deals with the Lebanon war (from 13<sup>th</sup> July to 14<sup>th</sup> August, 2006) from the point of view of international law. The outbreak of the conflict is seen as a part of a series of border incidents at the frontier between Lebanon and Israel. The kidnapping of two and the killing of three Israeli soldiers by Hisbollah militiamen on Israeli territory had been an illegal act, but it did not constitute the case of „armed attack“ in the sense of article 51 of the UN Charter since this notion presupposes a certain severity of an armed action that was lacking here. So Israel is not entitled to refer to the right of self-defence according to article 51 of the UN Charter. Because of the legal consequences one must distinguish between „small“ and „severe“ force. Only the severe force as an armed attack is a justification for the right to self-defence. A smaller armed act like the border incident of the 12<sup>th</sup> July 2006 entitled Israel only to an immediate and proportionate countermeasure below the self-defence and to the right to punish the individual perpetrators. Moreover, the Israeli