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Workshop Report: Environmental NGOs Using Legal Means to Promote Better Environmental Governance

25 – 27 April 2007

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Venue: Beijing Zhongshu Huiyuan Hotel

Participants: 39 NGO representatives, five media representatives, five lawyers from 17 provinces and one government official (See Appendix II for the full list of participants)

Workshop Organizer: The Center for Legal Assistance to Pollution Victims (CLAPV), China University of Political Science and Law

Topics discussed:

- The capacity of environmental NGOs (ENGOS) for pursuing legal actions;
- The space for ENGOS to use legal means;
- The necessity for ENGOS to promote better environmental governance through legal means;
- ENGOS' predicament in using legal means;
- Which legal assistance can lawyers and legal experts provide for ENGOS;
- Common action plan of ENGOS to promote better environmental governance through legal means.

1. Capacity of ENGOs to use legal means

1.1 Perfecting NGO internal management

Participants agree that good internal management is essential to ENGOs' healthy development. Only NGOs with a sound management system can gain public trust. Mr. Li Yong, deputy director of the NGO Management Bureau, Ministry of Civil Affairs, urged NGOs to establish clear processes of decision-making, decision implementation, and supervision.

Mr. Bai Hongbao from Green Eyes Environment and Culture Center said, "Establishing a clear and comprehensive set of rules is crucial to NGOs' sustainable development. Currently, many NGOs, especially grassroots NGOs, are dominated by personal opinions and decisions of their leaders. It's time to replace the supremacy of individual leaders with that of a good management system." Associate professor Ma Yan from CLAPV said, "Every NGO should have a self-regulatory mechanism which can control behaviour of individual members. This is beneficial to both the organization and individual members. Once their behaviour is regulated by clear rules, members can genuinely claim to be acting on behalf of their organizations rather than themselves, which reduces the risk to themselves..."

To establish a sound management system NGOs need to come under legal regulations. Current government regulations require NGOs to have charters. These should be detailed and include its vision, goals and management structures. Only by establishing clear rules can NGOs achieve stable development and prove itself capable and accountable to the public.

1.2 Efforts should be made to enhance NGOs' knowledge and awareness of laws

Every Chinese civil society organisation needs to act in accordance with

Chinese laws. NGOs' environmental protection activities are no exception. NGOs must know which activities are permitted by law and which legal procedures must be followed when they engage in activities to protect the environment. The director of CLAPV, Prof. Wang Canfa, said, "According to our research, few NGOs have professional legal staff. Without professional advice, how can NGOs challenge the government and polluting enterprises legally? If you don't know the law yourself, how can you ask others to abide by it? Therefore, every NGO should try to arm itself with legal knowledge." Mr. Haoming Huang, the general secretary of CANGO, also stressed the importance for NGOs to strictly abide by the law. As an example, he said before organizing any forum, CANGO knew it had to register with the Beijing Municipal Bureau of Press and Publication to ensure the forum would be legal.

2. The space for ENGOs to use legal means

2.1 Definition of "legal means"

Chinese ENGOs are just beginning to consider promoting better environmental governance through legal means. They have a narrow understanding of 'legal means', equating it to filing lawsuits. Ms. Xu Kezhu of CLAPV explains that 'legal means' refer to not only lawsuits but also to non-litigious activities such as providing legal advice, publicizing legal information and conducting legal education. Requesting for an administrative review of particular government decisions or actions also constitutes "legal means", as does participation in the legislative process. Participating in the drafting of environmental laws is particularly important, good laws are central to improving the environment. In short, we should have a broad understanding of 'legal means'. According to Ms. Xu, Chinese NGOs already possess the foundation and capacity to use legal means. Lacking is the awareness of how to use legal means. Therefore, in order to exert influence on environmental governance, Chinese NGOs need to have a correct understanding of the concept of 'legal means' and learn how to apply legal knowledge in routine work.

During group discussion, Ms. Jian Hua from the All-China Environment Federation said, "Whether we target legislation, law enforcement, the judicial process or the appeals system, our activities are all within the perimeters of 'legal means'." Ms. Lu Yiyi of Chatham House said, "Having a clear understanding of legal means is crucial for NGOs. We need to use training and publicity to help NGOs understand that legal knowledge can help in efforts to protect the environment, whether they go to court or not."

2.2 Actively applying administrative means

Seeking administrative intervention from higher levels of the government is often the easiest and most effective way when handling environmental protection cases. Ms. Xu suggests that when ENGOs discover a problem, they can identify the relevant government agency responsible for the issues involved. They can then formally request the agency to intervene to solve the problem. If an agency takes no action within 60 days, NGOs can take the agencies to court for administrative inaction. As government agencies are aware of this, when NGOs send formal written requests, with the help of people with legal knowledge, pointing out the legal consequences if agencies fail to take action, agencies are keen to respond, particularly to avoid being taken to court. Therefore, using administrative means can be effective in solving environmental problems. Legal knowledge is essential in applying administrative means, as NGOs need to word requests to government in such a way that demonstrates familiarity with the law, e.g., by citing relevant legal provisions. NGOs also need to warn government agencies of the legal consequences of their inaction. Government agencies will take such requests more seriously than those written without input from legal experts.

2.3 The role of laws in environmental protection

Many NGO representatives pointed out in discussions that the usefulness of laws in environmental protection was still limited as some laws are vague and difficult to apply in practice. In some cases laws have been ignored. There was heated debate on this issue at the workshop. Though the disregard of laws under some circumstances hampered NGOs' environmental protection activities, workshop participants agreed that the rule of law would gradually be strengthened in China, therefore laws will play a more important part in environmental protection in the future. NGOs should not be discouraged by current shortcomings of the legal system but should take a long-term view. As Mr. Huang summarized, "An ideal legal environment cannot be created in one stroke. It is a long process which should be accomplished step by step. Creating laws which guarantee the right of the public and NGOs to participate in environmental governance is a step in the right direction and will get us closer to our final destination."

3. The necessity to promote better environmental governance through legal means

The need for ENGOs to promote better environmental governance through legal means can be demonstrated in the following aspects:

3.1 Increased public awareness of environmental laws

By using legal means, ENGOs can help increase public awareness of environmental laws. An example is CLAPV's work. The goal of CLAPV is to push for better enforcement of Chinese environmental laws through litigation and to raise public awareness of environmental and rights protection. CLAPV has actively participated in national environmental legislation, provided environmental legal advice to the public, and publicized information on environmental laws.

3.2 Increased importance of NGOs

ENGOs actively seeking to influence government decision-making and increase public attention to the environmental implications of industrial projects should demonstrate good knowledge of the legal system. NGOs should be able to support demands on government agencies, or polluting enterprises, by citing relevant laws and regulations. By doing so they will be taken more seriously by the government and will overall, receive more attention.

3.3 Greater influence on environmental governance

CLAPV's research shows that many NGOs have used the media and publicity channels to influence environmental governance. Although these means are useful, without the support of the legal system, challenges to environmentally damaging policies and practices have limited success. For work to be more effective, NGOs must increase the use of legal means.

4. ENGOs' predicament in using legal means

Lawyer Gao Shangtao from the Zhongzhe Law Firm gave a presentation on this issue and his views were widely shared at the workshop. Difficulties encountered by Chinese ENGOs when using the legal system to promote better environmental governance include:

4.1 Gaps in legislation

It is widely known that there is a contradiction between article 124 of the Civil Law and article 41 of the Environmental Protection Law. The former upholds the responsibility principle while the latter insists on the non-responsibility principle, which makes it difficult for courts to judge environmental lawsuits. This is an example of gaps which remain in legislation and which create difficulties for NGOs and lawyers.

4.2 Difficulty in enforcing court rulings

The imperfect legal environment in China means that court rulings are not always enforced. The enforcement of court rulings on environmental lawsuits is often more difficult than some other types of lawsuits.

4.3 The lack of a public interest litigation system

Because of the lack of a public interest litigation system in China, lawyers and NGOs have to rely on people who are directly affected by environmental problems to file environmental lawsuits rather than filing public interest lawsuits on behalf of those directly affected. However, many directly affected parties are reluctant to resort to litigation because they fear being tied up in drawn-out lawsuits and because of intimidation by local governments or enterprises. This is a significant impediment to using the law to solve environmental problems.

4.4 Restrictions on group lawsuit

When pollution accidents occur, they tend to affect a large number of people. However, under current Chinese laws, group lawsuits are not encouraged. Many group lawsuits face obstacles from the court or local government. For example, in Beichen District, Tianjin, pollution by more than 130 chemical factories caused many local residents to develop cancer. CLAPV has been working on this case for more than three years. The case has received attention from the media and central government, but legal proceedings have still stalled because of the difficulty to persuade the court to accept group lawsuits.

4.5 Local government interference in legal processes

Regional protectionism is very strong in some places in China. Since enterprises contribute large sums to local tax revenues, local governments tend to protect

them, despite environmental pollution and damages caused. Because of this, legal actions to challenge polluters are often met with considerable resistance. Local governments may make it difficult for NGOs to collect evidence and they may interfere in legal processes.

5. Which legal assistance can lawyers and legal experts provide for NGOs

Based on the above discussion, lawyers and legal experts came up with several suggestions about how they could provide legal assistance to NGOs.

5.1 At the legislation level

Lawyers can contribute to legislations. In recent years, Chinese lawyers have actively participated in the revision of some laws, including the law of environmental impact assessment, the law of prevention and control of pollution by solid waste and the renewable energy law. Lawyers have also taken part in drafting the temporary measures on public participation in environmental impact assessment. Lawyers have also discovered problems in law enforcement and defects in legislation in their legal practice. Problems have been reported to the legislature with suggestions for solutions. Lawyers can also work together with NGOs to influence legislation.

5.2 At the government level

Lawyers can help NGOs put forward suggestions to the government to improve law enforcement capacity and understanding of environmental laws, hence increasing decision-making capability with regard to environmental protection.

5.3 At the enterprise level

Lawyers who advise enterprises can persuade them to fulfil their environmental protection responsibilities and urge them to take corporate social responsibility seriously, in particular to adopt energy saving and pollution reduction measures.

5.4 With regard to ENGO capacity enhancement

Lawyers can provide legal training for ENGOs. Currently, lack of legal knowledge is common among ENGOs. This negatively affects NGOs' legal status and reduces the efficiency and validity of protection activities. Legal capacity must be increased.

5.5 With regard to ENGOs' internal management

Lawyers can help ENGOs draft, revise and improve charters. They can help ENGOs establish a sound management system and set up mechanisms to ensure democratic decision-making. Lawyers can also help NGOs establish environmental litigation information platforms to allow ENGOs to share information with each other.

5.6 Lawyers' participation in ENGOs' work

Lawyers can take part in ENGOs' work, for example, helping ENGOs establish legal affairs departments, reducing or waiving fees charged for providing ENGOs with legal advice, or helping NGOs communicate with the government, enterprises, the public and environmental pollution victims. Lawyers can also collaborate with ENGOs to provide legal aid to victims of environmental pollution.

Many lawyers have already provided legal advice to ENGOs and have conducted joint investigations of environmental problems with ENGOs. A successful case is the cooperation between Hubei Jianqiu Law Firm and Green Han River. They carried out a joint investigation of the pollution of the Bai River.

6. Common action plan of ENGOs to promote better environmental governance through legal means

To develop an ENGO common action plan is a key objective of the workshop. Participants held in-depth discussions on a possible action plan and put forward many constructive suggestions.

6.1 Compiling collections of environmental rights defense cases and legal information handbooks for ENGOs

Collecting and publishing cases of both successful and failed attempts by NGOs and citizens to influence environmental governance through legal means is a good way for NGOs to learn from past experience. At the workshop CLAPV said it would be willing to undertake the task of collecting such case studies.

Participants also agreed on the need to compile a handbook for ENGOs containing the most essential information on using legal means. For example, the handbook can include information on the procedures for formally requesting government agencies to take actions. It is important for ENGOs to possess basic information such as the relevant government departments with environmental protection responsibilities and what the specific responsibilities of each department are. Without such information, it would be difficult for ENGOs to challenge the government for neglecting its duties.

6.2 Making full use of the internet to facilitate resource sharing

Online websites would be very useful for popularizing legal information. A website dedicated to publicizing legal information established jointly by CLAPV and China Environmental Culture Promotion Association will open soon. "The

website introduces legal knowledge about relief and public participation to the public in a simple way, which helps promote legal knowledge distribution.”

6.3 Establishing an environmental legal resources database

This proposal gained wide acceptance at the workshop. Zhao Chen from Shaanxi pointed out that more efforts should be made in this respect, “Establishing a database of environmental legal resources will enable NGOs to find legal assistance quickly and it will connect us to volunteer lawyers.” Other representatives said, “It would be highly appreciated if CLAPV could share with other NGOs the contact details of lawyers who have participated in the legal workshops it organized so that NGOs can approach these lawyers when they need legal advice.”

Dr. Lu Yiyi of Chatham House said, “the database should contain more than a simple list of names. The content of the database can be enriched with detailed information on the volunteer lawyers, e.g., when and where they are available; the types of cases they can handle; indication whether they will charge fees or whether they can provide free service, what types of NGOs they prefer to work with, etc.. With such information, the database will become more distinctive. When using the database, NGOs can obtain detailed information about volunteer lawyers and will be able to choose the most suitable lawyers. This will make ENGOS’ cooperation with legal experts more efficient.”

6.4 Effective ways for ENGOS to participate in environmental governance

Five effective ways were proposed:

- To enhance their research on macro governance issues;
- To create an advocacy model suitable for the Chinese situation;
- Collecting and analysing past cases of both successful and failed

- attempts to influence environmental governance;
- To improve NGOs' capacity and specialization;
- To influence various stakeholders through scientific and legal means in a peaceful and rational manner.

7. Other workshop outputs

7.1 The signing of a joint proposal

The workshop ended with the signing of a joint proposal from Chinese ENGOs and lawyers entitled *We Believe in Law*. The proposal called on ENGOs to strengthen capacity to use legal means to promote better environmental governance. It also advocates the construction of a platform to enable cooperation between ENGOs and legal scholars and practitioners (See Appendix III for the full text of the proposal).

7.2 Cooperation between Hebei Environment Federation and Hebei Lion Law Firm

Wang Xianqiang, chairman of Hebei Environment Federation, said that they gained many good ideas from the workshop. They intend to establish a legal affairs and rights defense centre. The centre cannot operate without support from legal experts. Mr. Ma Beizhan from Hebei Lion Law Firm is a council member of the Hebei Environment Federation. He will help with the proposed centre. The centre will also cooperate with legal experts in local universities and two local law firms.

Mr. Ma Beizhan said, "After returning home, we plan to set up an environmental law department in our Law Firm to implement the proposals of the workshop. We will also contact ENGOs in Hebei to offer free legal services. Thirdly, our

firm will try to set up an environmental rights protection network in Hebei. Fourthly, we will cooperate with Hebei Environmental Federation to help it establish a professional legal centre.”

Appendix I Workshop Agenda

Morning, 25th April

Time	Activities	Chair/ Speaker
8.30-9.15	Registration	
9.30-9.40		Ms. Xu Kezhu, Vice Director of CLAPV
	Welcome remarks	Mr. Wang Canfa, Director of CLAPV
9.40-9.50	Welcome remarks	Mr. Deng Yongzheng, DFID
9.50-10.00	Background and objectives of the Civil Society and Environmental Governance project	Dr. Lu Yiyi, Chatham House
10.00-10.20	Speech	Mr. Li Yong, NGO Management Bureau, Ministry of Civil Affairs
10.20-10.40	Tea break and group photo	
10.40-11.10	Presenting the research report	Ms. Xu Kezhu
11.10-11.20	Speech	Mr. Gao Shangtao, representing lawyers at the workshop
11.20-12.00	Q&A on the research report	
12.00-12.10	Summing up	
12.10-13.30	Lunch	

Afternoon, 25th April

Time	Activities	Chair/ Speaker
14.10-14.30	Speech: The Role of NGOs in Environmental Governance	Mr. Haoming Huang, China Association for NGO Cooperation (CANGO)
14.30-14.40	Q&A	
14.40-15.40	Group Discussion to: 1) Further discuss the research report 2) Collect questions from NGOs on using the legal system to promote better environmental governance 3) Discuss the possibility of using the legal system to promote better environmental governance	Dr. Lu Yiyi, Chatham House
15.40-16.00	Tea break	
16.00-17.00	Groups report back to the plenary session, 15 minutes for each group	

17.00-17.10	Summing up
17.30-19.00	Dinner
19.00-20.00	NGO representatives and lawyers discuss the NGO common action plan

Morning, 26th April

Time	Activities	Chair/ Speaker
9.10-9.30	How do American NGOs use legal means to promote better environmental governance?	Dr. Alex Wang, The Natural Resources Defense Council (NRDC)
9.30-9.50	Experience sharing: CLAPV's promotion of better environmental governance through legal means	
9.50-10.10	Q&A	
10.10-10.30	Tea break	
10.30-11.30	Group Discussion on the NGO common action plan to promote better environmental governance through legal means	
11.30-12.00	Groups report back to the plenary session, 10 minutes for each group	
12.00-12.10	Summing up	
12.10-13.30	Lunch	

Afternoon, 26th April

Time	Activities	Chair/ Speaker
14.00-14.20	Investigation of water pollution in Beijing	Mr. Zhang Junfeng, Green Earth Volunteers (GEV)
14.20-14.50	Lawyers answer questions from NGOs on how to use the legal system to tackle environmental issues	
14.50-15.10	Experience sharing: Presentation by Green Han River	Ms. Yun Jianli, Green Han River
15.10-15.30	Three or four ENGOs describe the problems they have encountered	
15.30-16.00	Lawyers advise the ENGOs on how to use legal means to address the problems	
16.00-16.10	Tea break	
16.10-16.30	Group Discussion on the NGO common action plan to promote better	

	environmental governance through legal means
16.30-16.50	Groups report back to the plenary session, 10 minutes for each group
16.50-17.00	Summing up: 1) Summarize the main issues addressed at the workshop 2) Agree on a common action plan 3) Discuss the establishment of a platform for communication, information sharing and cooperation between ENGOs and legal professionals
17.00-17.20	Signing a proposal from ENGOs on using the legal system to promote better environmental governance
17.30-19.00	Dinner

Morning, 27th April

Time	Activities
9.00-10.30	Visit the Cuidi Chunxiao community, where residents are trying to prevent the installation of high voltage power transmission lines.
12.00-13.00	Lunch Workshop participants depart in the afternoon

Appendix II Participant List

No.	Name	Organization	Title
1	Lu Yiyi	Chatham House	Dr.
2	Deng Yongzheng	Defra	Mr.
3	Wang Lide	The Natural Resources Defense Council (NRDC)	Dr.
4	Li Yong	NGO Management Bureau, Ministry of Civil Affairs	Deputy Director
5	Wang Canfa	CLAPV	Director
6	Xu Kezhu	CLAPV	Deputy Director
7	Ma Yan	CLAPV	Consultation Department Manager
8	Huang Haoming	China Association for NGO Cooperation (CANGO)	General Secretary
9	Zhang Junfeng	Green Earth Volunteers (GEV)	Mr.
10	Huang Zhen	Fuping Development Institute	Ms.
11	Zhang Xin	Fuping Development Institute	
12	Jiang Hongyan	NGO Research Center, Tsinghua University	Ms.
13	Chen Xuqing	NGO Research Center, Tsinghua University	Researcher
14	Zhang Jingjing	CLAPV	Lawyer
15	Gao Shangtao	Beijing Zhongzhe Law Firm	Lawyer
16	Wei Aimin	Beijing Dangdai Law Firm	Lawyer
17	Liu Shangjie	Hubei Jewei Law Firm	Lawyer
18	Liu Xiang	Liuxiang, Shanghai Golden Diamond Law Firm	Lawyer
19	Jian Hua	All-China Environment Federation	Legal Department
20	Zhang Boju	Friends of Nature	Project Manager
21	Zhou Ling	Green Beijing	Volunteer
22	Li Xueyu	Global Village Beijing	Project Coordinator
23	Ge Yun	Xinjiang Conservation Fund	Chief Secretary
24	Wang Xianqiang	Hebei Environment Fedration	Permanent Deputy Secretary
25	Ma Beizhan	Hebei Lion Law Firm	Lawyer
26	Liu Jiafen	Hebei Hamony Law Firm	Lawyer
27	Liu Guanghua	Nanjing Zjin Mountain Ecology and Environment Protection Volunteer Group	Director
28	Zhang Zhongmin	Green Friend Association of Hebei	Director

29	Bai Hongbao	Green Eyes Environment and Culture Center of Wenzhou	Project Manager
30	Wang Fengjun	Gansu Green Camel Bell	Volunteer and lawyer
31	Yun Jianli	Green Han River	Director
32	Tang Xuhan	Dazu County Eco-friendly Faming Association	Director
33	Zhao Chen	Shaanxi West Development Foundation	Director
34	Chen Yue	Center for Biodiversity and Indigenous Knowledge (CBIK)	Communication Department
35	Zhang Changjian	Green Friends of Pingnan	Director
36	Song Lingui	Green Friends of Pingnan	Volunteer
37	Cai Zhiming	The Green Volunteer League of Chongqing	Volunteer
38	Chen Daoping	The Green Volunteer League of Chongqing	Volunteer
39	Yu Xiaoyong	Tianjin Friends of Green	Director
40	Ma Yue	Liaoning Hongdu Law Firm	Lawyer
41	An Weizhong	Ningxia Environment Federation	Chief Secretary
42	Situ Lei	Visiting scholar and researcher, Law School, Tsinghua University	Foreign student
43	Xi Jianrong	The Legal Daily	Journalist
44	Yang Liangqing	China Youth Daily	Journalist
45	Huang Jijun	Chinese Environment News	Journalist
46	Dou Lili	Green Leaf Magazine	Journalist
47	Huo Daishan	Guard of Huai River	Director
48	Wang Jingjing	Institute of Public and Environmental Affairs	Volunteer

Appendix III

We Believe in Law

Creating a pleasant environment with green mountains and blue sky is the dream of all mankind. It is our responsibility to realize this dream for future generations. To restore the environment and protect it from drought, pollution and sandstorms, we ENGO representatives, lawyers and environmental law scholars who care about environmental governance gathered here to work on a common strategy of using legal means to promote better environmental governance. We advocate the strengthening of ENGOs' legal capacity and the construction of a platform for cooperation between ENGOs and legal scholars and practitioners.

Workshop participants
April 26, 2008

Signed by:

No.	Name	Institution
1	Lu Yiyi	Chatham House
2	Deng Yongzheng	Defra
3	Xu Kezhu	CLAPV
4	Huang Zhen	Fuping Development Institute
5	Gao Shangtao	Beijing Zhongzhe Law Firm
6	Wang Xianqiang	Hebei Environment Federation
7	Zhang Changjian	Green Friends of Pingnan
8	Song Lingui	Green Friends of Pingnan
9	Li Xueyu	Global Village Beijing
10	Chen Yue	CBIK
11	Yun Jianli	Green Han River
12	Liu Guanghua	Nanjing Zijin Mountain Ecology and Environment Protection Volunteer Group
13	Wang Fengjun	Gansu Green Camel Bell
14	Zhang Zhongmin	Green Friend Association of Hebei
15	Ma Yue	Liaoning Hongdu Law Firm
16	Liu Shangjie	Hubei Jiewei Law Firm
17	Bai Hongbao	Green Eyes Environment and Culture Center of Wenzhou
18	Liu Xiang	Shanghai Golden Diamond Law Firm
19	Jian Hua	All-China Environment Federation
20	An Weizhong	Ningxia Environment Federation
21	Yu Xiaoyong	Tianjin Friends of Green

22	Zhang Junfeng	Green Earth Volunteers (GEV)
23	Huo Daishan	Guard of Huai River
24	Ma Beizhan	Hebei Lion Law Firm
25	Cai Zhiming	The Green Volunteer League of Chongqing
26	Chen Daoping	The Green Volunteer League of Chongqing
27	Tang Xuhan	Dazu County Eco-friendly Farming Association
28	Liu Jafen	Hebei Harmony Law Firm
29	Zhang Boju	Friends of Nature
30	Wang Peipei	CLAPV
31	Huo Pengyan	CLAPV
32	Si Xiaohu	CLAPV
33	Song Wanzhong	CLAPV
34	Peng Yuanyi	CLAPV
35	Hao Bing	CLAPV