Towards Sustainable Development: Chinese Environmental Law Enforcement Mechanism Research

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Abstract

Environmental degradation is one of the most important problems facing by Chinese people. This unsatisfactory situation majorly lies in the weak implementation of environmental laws. The essential reason causing the ineffective enforcement of Chinese environmental law is people’s distorted cognition about the relation between human being and the environment.

As an important principle of international environmental law, the sustainable development principle emphasizes intra-generational and intergenerational equality, aiming to realize a balance of environmental interest and socie-economic interest, which could become the guideline of the reformation of Chinese environmental law enforcement mechanism.

At last, this paper analyzes the solutions to appeared problems, which are underpinned by the sustainable development principle. The ultimate purpose is to promote rational policies and responsible conducts of governments, to foster enterprises’ voluntary compliance with environmental law and to foster citizens’ environmental awareness.
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Chapter 1

Introduction

1. Introduction

China is one of the most fast-growing major economies in the world, but a study by the Chinese Academy of Sciences shows that China’s environmental cost outweighed its economic growth in 2005, and same conclusions likely appeared for 2006 and 2007.\(^1\) The unsustainable growth model which relies on exploitation of natural resources, pollution to the environment and ecological degradation have brought serious crisis to Chinese ecological environment and people’s health. China’s major environmental problems include land degradation, deteriorating water quality and water scarcity, severe air pollution and declining natural forest cover.\(^2\) Many facts and data manifest the seriousness of China’s environmental crisis, such as only 65% headwaters in 113 key cities reach the drinking water standard,\(^3\) and China becomes one of the countries with the most notable global climate warming features.\(^4\) In 2007, the World Health Organization (WHO) estimated that air pollution kills 656,000 Chinese annually, a third of all deaths worldwide from air pollution. WHO also estimated that polluted drinking water kills nearly 100,000 Chinese every year.\(^5\) There was a pollution accident once almost every two days in China in 2006, with authorities receiving 600,000 environmental complaints.\(^6\) The Report of China’s Ecological Problem concludes that: “The situation of ecological environment is extremely critical; the government’s unilateral effort in environmental rectification can not

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\(^6\) China has pollution accident almost every two days (12 January 2007), online: China Dialogue http://www.chinadialogue.net/blog/show/single/en/688-China-has-pollution-accident-almost-every-two-days
keep up the increasing environmental problems done by uncountable polluters. In general, the scope of ecological damage is expanding, the extent is growing and the seriousness is increasing. China's ecological environment has entered into the high-risk status and a period of high incidence of accidents.”

China’s unsustainable development pattern not only seriously damage the environment and people’s health, but also seriously hinder China’s future economic development and social progress, undermining the sustainability of long-term growth.

Stimulated by adverse effects of environmental degradation and the growing concerns from international community, China has responded to the environmental crisis through establishing a whole set of environmental laws. Chinese environmental legal regime includes at least eight statutes addressing pollution prevention and ten statutes concerning natural resources protection. There are more than fifty administrative regulations promulgated by the State

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8 The cost of remediation (COR) is the cost of moving the present state of the environment to an acceptable level based on a set of predetermined standards. It is a measure of environmental losses in economic terms. ADB has used a cost remediation process in assessing the environment for several of its developing member countries since 1994. PRC, annualized cost of remediation (COR) ($million in 1990 US$): water: 1,430.13 air: 3,166.07 land: 12,6457.97 ecosystem: 299.79 total: 17,533.96. Each item nearly equals to half of total COR of 20 Asian developing countries. Rogers, Peter P, An Introduction to Sustainable Development, 2005 Pilot Ed. (Boston: Harvard University Press, 2006), at 125.

9 Main environmental laws concerning pollution control or pollution prevention:


- Main natural resources protection laws:


- There are also environmental regulations in other administrative laws, such as Highway Law of the People’s Republic of China (1997), City Planning Law of the People’s Republic of China (1989), Law of the People’s Republic of China on the Protection of Cultural Relics (1982), Construction Law of the People’s
Council, 660 local and sectoral regulations and over 800 national standards as of spring 2008. The creation of the Ministry of Environmental Protection (MEP) last year enhances the capacity of central government in environmental management. At last, the financial investment of Chinese authority in environmental protection is also impressive. The investment in pollution control hit a record 256.78 billion yuan in 2006. In China’s 4 trillion Yuan investment plan this year, 210 billion yuan is for the construction of environmental and ecological protection. After all these efforts, there are some encouraging improvements in environmental conditions. However, these measures and successes by stages have not play decisive impact on the trend of overall environmental degradation. The most prominent problems occur in the enforcement of environmental law.

10 Robert, supra note 5.
Chapter 2

An Introduction of the Sustainable Development Principle

2. An Introduction of the Sustainable Development Principle

2.1 The Origin and Development of the Sustainable Development Principle

Begin at the 1972 United Nations (UN) Conference on the Human Environment in Stockholm that the international community first confirmed that protection of the human environment is a crucial element in the development agenda. In 1987, the World Commission on Environment and Development (WCED), chaired by the Prime Minister of Norway Gro Harlem Brundtland, issued a report entitled Our Common Future, Also known as the Brundtland Report. This landmark document first defined the sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their needs.’

Twenty years after the Stockholm Conference, the Rio Declaration and the Agenda 21 adopted at 1992 UN Conference of Environment and Development restated the sustainable development goal proposed in the Brundtland Report. In the UN Millennium Goal, all 191 UN member states have pledged to meet the goal of ensuring environmental sustainability by the year of 2015. Target 1 of this goal is to integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources. At the 2002 World Summit on Sustainable Development held in Johannesburg, the largest gathering of heads of state and world leaders again committed to implement the Agenda 21 and they adopted the Johannesburg Declaration on Sustainable Development, making a commitment to
the achievement of sustainable development. Promoting sustainable development has become a consensus of the international community. International laws appeal states to take account of the objective of sustainable development in terms of environmental protection and resources conservation, and to establish appropriate environmental law for doing so.\textsuperscript{13}

2.2 The Concepts, Principles and Legal Status of the Sustainable Development Principle

The rapid development of the sustainable development principle produces various meanings and approaches to meet its end.\textsuperscript{14} From the perspective of neo-classical economics which is the economic theory of the sustainable development ideology, resources and the environment compared to economic interests are more important as they are the developmental basis of human beings in the long run, so environmental interests are long-term and invaluable interests.\textsuperscript{15} The philosophic thinking underlying the sustainable development principle is the ‘Trust for Future Generation’\textsuperscript{16} theory or inter-generation equity which means that the present generation must conserve the natural and cultural diversity to satisfy future generation’s choice and need, making sure that every generation has the right to inherit legacies from ancestors,\textsuperscript{17} the needs of future generations should not be unduly undermined. The inter-generation equity


\textsuperscript{14} Now, there are 57 definitions, 19 principles, 12 criteria, 4 conceptual frameworks and 28 sets of indicators of sustainable development cited in Rogers, \textit{supra} note 8, at 57.http://www.sustainableliving.org/.

\textsuperscript{15} Li Huifeng, “The Comment on Western Economic Theories of Resources and Environment” (2006)12 Commercial Time, at 12 [translated by author].

\textsuperscript{16} The notion comes from the preface of \textit{The Outline of Global Natural Resources Protection} (1980), ‘For the survival of us and as the trustee of natural resources for the future generation, there are equal necessity in develop and conserve resources.’

\textsuperscript{17} Rogers, \textit{supra} note 8, at 45, 46.
concept has become an essential foundation of the environmental law relating to the sustainable development principle in many countries.\textsuperscript{18} In a word, the sustainable development principle fundamentally encourages people to ponder over the intergenerational equity as it requires the fair distribution of environmental costs and environmental benefits between generations. Sustainable development does represent a goal which can influence the outcome of legislation and enforcement of environmental law; however tougher task come along to formulate criteria of sustainable development and concretize them in implementation than to identify this concept.

The principles relates to the sustainable development in international environmental laws includes: Intergeneration Equity,\textsuperscript{19} Intragenerational Equity,\textsuperscript{20} Environmental Impact Assessment,\textsuperscript{21} Environment Protection must be an Integral Part of Development Policies,\textsuperscript{22} Common but Differentiate Responsibility,\textsuperscript{23} Common Concern,\textsuperscript{24} Precautionary

\textsuperscript{18} There are references of the inter-generation equity concept in many countries’ constitutions or other regulations have implication guaranteeing a safe and healthy environment, such as in Albania, Australia, Brazil, Ecuador, Guyana, India, Iran, Japan, Namibia, Seychelles etc. Donald Kaniaru, “Lecture Outline on Principles of Sustainability” in UNEP Environmental Law Training Series Vol.2 (Nairobi: UNEP, 1996) 53 at 57.


\textsuperscript{20} People within the present generation have the right to benefit equally from the exploitation of resources, and that they have an equal right to a clean and healthy environment. Ibid.

\textsuperscript{21} Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority. (Principle 17 of the Rio Declaration), supra note 19.

\textsuperscript{22} In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. (Principle 4of the Rio Declaration) Peace, development and environmental protection are interdependent and indivisible. (Principle 25 of the Rio Declaration), supra note 19.

\textsuperscript{23} State shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.(Principle 7 of Rio), supra note 19.

\textsuperscript{24} The concept of common concern has been used in a series of declarations and instruments including the context of climate change and natural resources management. For example, the Article 4 of the Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources: The global environment, including areas beyond the limits of national jurisdiction, is a common concern of humanity, which the present generations hold in trust for the future generations. Jutta Brunnee, “A Conceptual
Principle,\textsuperscript{25} No Harm Principle.\textsuperscript{26} In addition, the No Appreciable Harm Principle in the Trail Smelter case has been held by the ICJ.\textsuperscript{27} The sustainable development principle is not a binding international obligation, but can be proved as international customary law. By incorporating the sustainable development principle into domestic legal system, it acquires the legal effect within states.

### 2.3 Three Components of Sustainable Development

The concept of sustainable development explores the relationship among economic development, environmental quality, and social equity. Only when a conduct would not increase the benefit of one aspect at the cost of the other two aspects could the goal of sustainable development be realized. The sustainable development principle is a view leading people achieving the integral development of economy, environment and society. From the Principle 4\&25 of the Rio Declaration, it clearly shows that the intended reinforcement of the three important pillars of sustainable development in international community. The three elements are essentially interdependent and mutually reinforced to pursue the maximum benefits of human society. Although, in reality, conflicts may appear among productive economy, a healthy environment and a just society, there is no country can claim that it has attained sustainable development. In this regard, it seems to me that the essential meaning or contribution of the sustainable development principle is that it underlines the importance and


\textsuperscript{26} States have…the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. (Principle 2 of the Rio Declaration), supra note 19.

\textsuperscript{27} In the conclusion of ICJ reads that: ‘…No state has the right to use or permit use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence…’, supra note 25.
complexity of accomplishing balanced solutions taking account of both developmental and environmental factors for various issues.

2.4 The Sustainable Development Principle and Environmental Law

The ultimate goal of sustainable development is to achieve balanced progress in environmental, social and economical areas. Nevertheless, this principle firstly came up to tackle the conflict between the need of environmental protection and economic development. The term ‘Environmental law’ began to be used in 1969. The rise of environmental law is to retard the degradation of the environment and extinction of species emerges along with the rapid development of modern society. Environmental law can provide mechanisms for regulating use of natural resources, negotiating the necessary accommodation, settling disputes, supervising implementation of treaties, embodying the necessary protective measures and techniques in conventions, codes and standards. It is fair to say that environmental law plays a crucial role in preventing pollution, rational exploitation and conservation of natural resources and in restore the damaged environment, thus environmental law is requisite for the realization of sustainable development.

The sustainable development provides inherent ideology for environment law, which consistent with the new understanding about the relationship between human race and the environment.

It fortifies the orientation of value advocated by environmental law. Environmental law do not

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29 Donald, *supra* note 18, at 54.
30 The evolving recognition of the relationship between human beings and the ecological environment is more than important to affect people’s behaviors. It is true that human beings experienced three stages in terms of environmental viewpoint along with the development of productive forces and science and technology: the first stage is fear and worship to nature; the second stage is to conquer and ignore the nature; then the third stage is today's emphasis on nature, and initiate harmonious relationship with nature. Wang Chunlei, *Legal Protection of Environmental Interest (Environmental Law, Master of Laws Thesis, China University of Political Science and Law, 2005)* at 13[unpublished] [translated by author].
only has the universal value of law, that is, the pursuit of ‘fairness and justice’; it also has its own unique value that is the realization of the sustainable development of human society.\textsuperscript{31} It is the highest level of legal awareness and the ideological existence transcending the phenomenon, rules and techniques of environmental law.

The sustainable development principle can improve the legislative techniques of states. This has been verified by positives examples in both domestic cities and countries abroad.\textsuperscript{32} The merit of sustainable development principle lies in that it emphasizes the overall consideration of multiple interests between individuals, organizations and states. To better explain the balance of multiple interests and the self-binding power brought by the sustainable development principle, we need to advance with the analysis of environmental interests, economic interests and social interests. Environmental interests provided by the ecological system and living environment can be divided into economic interests and ecological interests. The former can be valued by prices such as energy resources, food and articles for livelihood. The latter includes the health of the ecological environment and living beings depending on it, and its aesthetic benefits to humans. Ecological interests are non-competitive and non-exclusive, compare to the competitiveness and exclusiveness of economical interests. Environment interest is both individual interest and collective interest, therefore state has the right and obligation to manage national environment on behalf of the public. Economic interests include public economic interest and personal economic interest. Public economic interest normally contains the consideration of local economy, maintaining regional economic strength and governmental revenue. Personal economic interests include the economic interests of citizens, enterprises and in some circumstance, the illicit income of corrupt officials. Social interests consist of the social stability, enough employment and other factors. Environmental law has particular complex situation when it comes to the different interests, because to protect

\textsuperscript{31} Wang, ibid, at 25.
the environmental interests some economical and social cost will occur in the short term. It happens that the environment tend to be sacrificed in the name of development. To balance the colliding interests firstly require that all stakeholders must have their rights and opportunities to participate and negotiate in the environmental law-making process. It is an indispensable course to endow the rightfulness and legitimacy of environmental law. The law eventually adopted should be an outcome of compromise between all parties and thus possesses binding force to all parties. Especially the environmental interest deserves having appropriate groups and channels to be represented, enabling it to bargain with other interests. The necessity of the application of the sustainable development in environmental law is determined by the property of environmental law. First of all, specific environmental law and policy always involves the redistribution of resources and interests.\(^{33}\) The pluralism and differentiation of interest groups in modern society become more and more evident. Environmental law redistributes these interests to keep them in a status of equilibrium; this is also the spirit of sustainable development principle. In the context of environmental law, it is not rational to overprotect the environment as it restricts the developmental ability of present generation, enterprises may suffer economic loss, and the government has to ponder on the social impacts that brought by the overly strict environmental law. By contrast, if states over-stress the economic and social interest, environmental interest may be sacrificed and cause irreversible harm. In a word, the sustainable development principle can keep the environmental law on the right track.

Moreover, the sustainable development principle can promote the compliance of environmental laws. As this principle let people thinks the present generation and future generations as a whole, making the present generation to take into account their heirs’ rights and interest, thus motivate people to be prudent with their behaviors, and always think of the impacts of their

\(^{33}\) Law is a special mean of social management, not an end. Originated in the division of interests, law is fundamentally a tool for adjustment of interests. So the regulation of interests or redistribution of interests is one of the major functions of law. Therefore, awareness of the various interests is the initial point of law-making, the realization of interest is both the motivation and the result of the implementation of law. , Wang, *supra* note 30, at 1. [translated by author]
behaviors to the future generation. It produces moral constraints upon the environmental rules thus effectively constrain behaviors with environmental harms. In this way, the effectiveness of environmental law can be improved.

To sum up, the sustainable development principle in the first place identify the three distinct interests---social, economic and environmental interests, acknowledge their respective importance to the survival and development of human beings. On this basis, sustainable development principle develops its theory from a stand that weakening the clash between environmental interests and developmental interests, instead uniting them together and pursuing a balanced status among the interests. As a result of the application of this principle, people can avoid viewing the cost and inconvenience in the course of environmental protection as a burden, instead seeing it as investment for the future development of both present generation and future generation. It is accordingly beneficial to the transformation of people’s cognition and attitude in viewing the relationship of the environment and human beings’ development. Beside, as the sustainable development principle advocates balanced relationship of economic, social and environmental interests, thus its embedment in legislation and enforcement of environmental law can provide methodology for people solving conflicts between environmental interests and developmental interests, such as adopting negotiation and other mechanisms. So the sustainable development principle can fundamentally increase the effectiveness of environmental law.

2.5 The Sustainable Development Principle of the Environmental Law in China

As the first country formulated its national strategy on sustainable development after the UNCED Conference, China issued the Agenda 21 of China---the White Book of China on Population, Environment and Development in the 21st Century (China’s Agenda 21) based on Agenda 21 in March 1994. The objective of this white paper is to achieve progress in the
sphere of economy, society and the environment, and produce harmonious relationship among
them. In 1996, the Fourth Session of the Eighth National People’s Congress passed the Ninth
Five-Year Plan and the 2010 Long-Range Goal. This document again stresses the sustainable
development principle and demonstrates that the Chinese government attaches great
importance to the sustainable development principle. Each province also encouraged to
develop its own Five-Year Plan with sustainable development as an underlying theme. In
addition, The Central Committee of the Communist Party of China formulated China’s Tenth
Five-Year Plan 2001-2005 for National Economic and Social Development, which again
addresses sustainable development. In the Tenth Five-Year Plan, sustainable development is a
major theme specifically in national water conservation, clean energy, sustainable agriculture,
waste and pollution reduction, innovation and development of technology, and improved
environment and production in the western region. It is fair to say that the trend towards
sustainable development has started in China. China has made some progress in promoting
sustainable development such as developing circular economy and environmental-friendly
energy.

Nevertheless, the sustainable development principle has not been adopted by the authority in
the context of environmental law, instead is the ‘principle of coordination of environmental
protection and economic and social development’. Although this principle also aims to

34 Xin Hua News Agency, “GuanYu GuoMin Jing Ji He SheHui FaZhan ‘JiuWu’ JiHua He 2010 Nian
YuanJing MuBiao GangYao De BaoGao” (Report of National Economic and Social Development 9th
http://www.gov.cn/test/2008-04/21/content_950407.htm
35 Di ShiWu Zhang: JiaQiang ShengTai JianShe , BaoHu He ZhiLi HuanJing (Chapter 15: Strengthen
Ecological Construction, Protect and Restore the Environment) (31 October 2001), online: XinHuaNet
http://news.xinhuanet.com/zhengfu/2001-10/31/content_83274.htm [translated by author].
36 GuoJia FaGaiWei HuanZiSi ( Environment and Resources Agency of National Development and Reform
Committee), China Circulates the Economical Yearbook 2008 (Beijing: Chinese Financial Economy Press,
2009) at section eleven.
37 The plans for environmental protection formulated by the state must be incorporated into the national
economic and social development plans; the state shall adopt economic and technological polices and
measures favorable for environmental protection so as to coordinate the work of environmental protection
with economic construction and social development. Environmental Protection Law of the People’s Republic
of China 1989 Article 4, online: Ministry of Environmental Protection, People’s Republic of China
immediate environmental interests and economic interests, they are different. The distinction between the sustainable development principle and the ‘principle of coordination of environmental protection and economic and social development’ is that the sustainable development principle sets a bottom line for the coordination between economic interests and environmental interests, that is economic growth must not exceed the restriction of the renewable capacity of the ecosystem, and undermining the material and cultural basis for future generations’ development. However, in the read of the ‘principle of coordination of environmental protection and economic and social development’, it doesn’t have this meaning.

As the leading environmental law, China’s Environmental Protection Law Article 1 states that ‘This legislation is directed at the protection and improvement of the living environment and ecological environment, preventing and controlling pollution and other public hazards, safeguarding the human health, and facilitating the development of socialist modernization.’ From these articles, it shows that the major legislative purpose of Chinese environmental law is to regulate the relationship between environmental protection and economic development. However, in the absence of an essential ideology such as the sustainable development principle, no matter ‘the principle of coordination of environmental protection and economic and social development’ or the ‘to promote the development of socialist modernization’ could become a protective umbrella for policies with enormous current economic and social benefits at the cost of long-term environmental interests. It is fair to say that laws and policies aiming to protect the environment, to conserve natural resources and species, and to control pollution are in consistent with the sustainable development principle. As mentioned above, China has abundant laws and policies serving this goal. The problems lie in the weak enforcement of most of these laws and policies.

Chapter 3

A Survey of Chinese Environmental Law Enforcement Mechanism

3. A Survey of Chinese Environmental Law Enforcement Mechanism

The weak enforcement of Chinese environmental laws is partly due to the insufficient lobbying and negotiation in the law-making process, so the negotiation process are postponed to the implementation of environmental law. The competent legislative organization in China includes National People’s Congress, State Council and administrative departments below the State Council, provincial and municipal People’s Congress, local governments and departments responsible for environmental management within governments. They all have respective authority to enact environmental laws, regulations and rules. However, national and local legislations on one specific matter sometimes collide with each other or both leaving a blank on concrete regulations, there is no overall regulation regarding the legislative range for different administrations.\(^{39}\) In addition, internal governmental documents or written comments by higher authorities (HongTou WenJian) sometimes replace formal environmental law to become the judging basis of local governments.\(^{40}\) The loopholes existing in the legislative mechanism of environmental law on one side shows the not serious enough attitude of environmental management for some administrations, they have not realized the importance of a sound system of environmental laws. On another side, the flexible legislative power of local


\(^{40}\) Ibid.
governments also leaves a door open for subjective and even deliberate neglect of environmental interests. This is obviously not conforms to the sustainable development principle and lead to omission of environmental departments in the future. In China, citizens have channels to participate in a law-making process, especially for laws proposed by State Council. However at local level, the participating right of citizens is hard to be guaranteed. As a result, conflicts and compromises of different interests in the implementation process occur, for example the rent-seeking behavior of enterprise is to seek a remove of environmental limitation or other economical benefits by underground negotiation with environmental officials, and bribery to officials may happen. If the public interests in terms of health, material basis of development, and recreational benefits deriving form environment are not properly reflected in the environmental law, citizens may object to the pollution and environmental harm made by polluters and push government to increase the penalty for violation. Such situation usually happens when certain environmental harm has been caused. In the circumstance of transregional pollution or resource protection issues, if local authorities failed to negotiate the respective share of obligation, the environment or natural resources may lose protection. In a word, all parties involved, especially when they represent different interests must participate in the consultations and negotiations of the law-making course of environmental law to achieve consensus. In this way, the consensus gained through negotiation would have bounding effect to all parties and achieve the objective of balance of interests.

41 Such as the extra protection given by local government to local key industries to avoid its production limited by environmental regulations. Mai Huaide, “Causes of the Formation and Measures of the Resolution of Localism” (2003T21:6 ribune of Political Science and Law (Journal of China University of Political Science and Law) 156, at 157 [translated by author].


43 The ‘rent’ or ‘economic rent’ is economic term which means the surplus exceeding the opportunity cost in the revenue acquired by the owner of productive factors by virtue of its monopoly status. Local governments may use their administrative power to seek extra financial revenue; enterprises may use money to seek exemption of penalty or unqualified environmental franchise. As a result, the rent-seeking activities deviate the original intent of environmental law, cause infringement to public interest by seeking personal interest. The countermeasures suggested by scholars include transparent information system and reformation of government. Zou Wei, “Rent-Seeking and Corruption: Theoretical Analysis and Policy Implication” (n.d.) Vol60, No.2 Wuhan University Journal (Philosophy & Social Sciences), at 202.
this respect, China still has no comprehensive law regarding the environmental legislation and public participation in law-making process, and especially can not ensure the end of negotiation could conform to the sustainable development principle. Problems of the environmental law enforcement accordingly also reflect a lack of a concept of sustainable development.

3.1 The Function and Problems of Central and Local Environmental Protection Agencies

The sustainable development principle requires state allocate sufficient resources and establishing appropriate institution to management national environmental and natural resources. In this regard, Chinese government has many deficiencies need to be improved. China’s Ministry of Environment (MEP) is responsible for national environmental governance. Its major responsibility includes establishing basic environmental protection system, managing all related environmental planning, policy and standards, coordinating and supervising significant environmental issues and cooperating across jurisdictions and levels of governments in the prevention of several pollutant and environmental protection work. The MEP was upgraded from the former State Environmental Protection Agency on March 28, 2008, and the new department was allocated more power and resources. The Minister of MEP now is more powerful in intervening the decisions and activities of local environmental protection agencies. Nevertheless, comparing to other states’ environmental protection agencies, the recourse allocated to the MEP is still seriously inadequate. In addition, the

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45 The competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country. See article 7, Environmental Protection Law of People’s Republic of China.
47 Ministry of Environment was allowed to expand from 250 to 300 employees at the MEP in Beijing since July 2008, in addition to around 30 people in each of the five regional inspection offices, and personnel in affiliate agencies and institutes, the total number could reach 2,600. By contrast, EPA in the U.S. has
MEP has no direct authority to local environmental officials which are subordinated to local governments. The insufficient financial and human recourses and restricted authorities of MEP still impede its effective operation. In this case, how to supervise local environmental implementation, and how to divide the responsibilities between national and local environmental authorities to avoid the shift of responsibilities remains a problem. Moreover, for the transregional and transbasin environmental problems, the effectiveness of the coordination work of the Ministry of Environment is not very competent, appearing unsMOOTH relationship between authorities and unsolvable problem even after a long-time coordination.48

Similar problem also occurs between Ministries. Environmental protection involves many departments and covers a wide range of issues. In China, other departments of government except the MEP also have the environmental protection authorities. Article 7 of Environmental Protection Law reads that: ‘The state administrative department of marine affairs, the harbor superintendence administration, the fisheries administration and fishing harbor superintendence agencies, the environmental protection department of the armed forces and the administrative departments of public security, transportation, railways and civil aviation at various levels shall, in accordance with the provisions of relevant laws, conduct supervision and management of the prevention and control of environmental pollution.’ As the authorities of environmental protection are dispersed, the shirking responsibilities among departments or contradictions of authorities occur. The recent updating did not enable the MEP to take over those dispersed authorities. As a result of insufficient coordination between various departments, overlapping administrative authority and the existence of departmental interests, it is difficult to make central environmental management to play a substantive role.49 In a word, the above

17,000 employees not including outside contractors for a country with less than one-fourth the population of China. Robert, supra note 5, at 4. See also He Gang, New Ministry Begins to Bark, But Still Lack Bite, (18 September 2008), online: China Dialogue http://www.chinadialogue.net/article/show/single/en/2407-New-ministry-begins-to-bark-but-still-lacks-bite


49 Wang, Ibid, at 52.
mentioned problems and institutional defects facing central environmental authorities lessen the effectiveness of the implementation of environmental law, impairing the ability of the top environmental authority to pursue the sustainable development goal.

Article 7 of Environmental Protection Law regulates that ‘The competent department of environmental protection administration under the State Council shall conduct unified supervision and management of the environmental protection work throughout the country’, ‘The competent administrative departments of land, minerals, forestry, agriculture and water conservancy of the People's governments at or above the county level shall, in accordance with the provisions of relevant laws, conduct supervision and management of the protection of natural resources.’ For the Problems emerge in the local environmental law implementation, the most serious one is that local government may sacrifices environmental interest when it is conflict with local economic or social interest. Local protection commonly happens in China.\(^50\)

Due to the consideration of local GDP, tax contribution, and sizable employment produced for local people, large plants often escape from severe punishment for pollution. In practice, Chinese government, especially local environmental department slackens the environmental supervision to many state-owned enterprises or extremely profitable enterprises. Environmental protection agency as a subordinate department to local government can hardly disobey local government's intentional protection to polluters.\(^51\) The neglect of environmental interest may bring short-term economic benefits, nevertheless, much more economic loss may result from environmental accidents, let along the social order, public trust on government are all suffered.

The Tuo River accident which referred to as the largest water pollution occurred in recent years in China can be an example of this situation, The Tuo River in Si Chuan province experienced


severe pollution of waste water discharged from The Second Fertilizer Plant of the Si Chuan Chemistry Corporation in 2004. On February 16, there were problems with the pump in second workshop resulting in the high concentration of ammonia and nitrogen of urea condensate was discharged into the tributary Pi River of the Tuo River. The plant failed to shut down its production and the serious pollution went on for 26 days till the source of pollution was compulsorily cut off on 2th March, the total discharge of pure ammonia and nitrogen amounted to 2000 tons. The environmental security departments within that company withheld true information from local environmental agency and even fabricated false data to prove that the plant kept conforming to the legal discharge standard. The accident causes huge loss: there were around 500,000 kilograms of dead fish along the river bank, the economic loss amount to 300 million, millions of citizens lived without drinking water for twenty days, the aquatic environment need at least five years to recover.

Besides the serious violation of the Second Fertilizer Plant, the local environmental protection agency of Qing Bai Jiang District also failed to fulfill its responsibility, tolerating the fertilizer plant produce in the absence of monitoring device for sewage for a long time. After the accident happened, local officials were suspected that have hold the information from the public and the State Environmental Protection Agency. The pollution had been reported to the environmental protection agency of Qing Bai Jiang District on the dawn of February 23, yet no action had been taken until March 2. At the trial of the Tuo River case on January 6, 2005, the former deputy director of the Qing Bai Jiang District environmental protection agency Song Shiyong and two other her former subordinates revealed the startling facts that after being aware of the pollution facts of the Si Chuan Chemistry Co., the environmental bureau secretly

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54 Li et al., supra note 52.
collect the evidence of conviction in order to impose a fine on the plant instead of treat the pollution as an emergency.\textsuperscript{55} However this explanation did not convince people at court, Song Shiyi and other criminals still convicted of environmentally regulatory misconduct along with set terms of imprisonment.\textsuperscript{56} The reason for the hide of accident of the fertilizer plant is to get maximum profit which is not hard to understand. However, the nonfeasance of local environmental agency depends on the officials testimony is due to the consideration of getting larger amount of monetary fine. It was condemnable that the environmental officials in Qing Bai Jiang District took economical interests as the priority of administrative conducts, against its responsibility which should put the interest of citizen’s health and the environment as the overwhelming priority. A more disappointing guess is that the officials took a blind eye on the accidents as the polluter is a key industry for local economy. From the above analysis, it shows that local implementation of environmental law in China is far away from satisfactory extent which majorly due to some local authorities’ neglect of the environment and people’s environmental right. This kinds of administration apparently disobey the tenet of sustainable development and should be rectified to avert negative outcome occurs in the future.

Like the MEP, local environmental departments also have the lack of resources problem which includes the tight financial budget, insufficient technical support and inadequate personnel. According to a survey conducted on the Capacity of Environmental Administrative Enforcement in Chinese eight province (Guangdong, Hainan, Hubei, Hunan, Jilin, Liaoning, Jiangsu, Shanxi), four municipality directly under the Central Government (Beijing Shanghai, Tianjin, Chongqing), and four provincial cities (Wuhan, Xian, Zhenzhou and Ma’anshan) in 2006,\textsuperscript{57} the actual number of environmental officials at provincial, municipal, and county

\textsuperscript{55} HuaXi DuShi Bao, “TuoJiang WuRan An ShiZhi HuanBao GuanYuan Bu ZhiZhi WuRan Shi Wei ShiHou ChuFa” (The Dereliction of officials in Tuojiang Pollution Case is for the Punishment) (7 January 2005) online: DongHu SheQu http://www.cnhubei.com/200412/ca653893.htm [translated by author].

\textsuperscript{56} Beijing Youth News, “TuoJiang WuRan An LiuRen Bei Pan” (Six Person were Convicted in the Tuojiang Pollution Case) (12 September 2005), online: Youth Net http://bjyouth.ynet.com/article.jsp?oid=6314254.

\textsuperscript{57} Lu Xinyuan, Daniel J. Dudek& Qin Hu et al., “Survey on the Capacity of Environmental Administrative Enforcement in China” (2006)19 Research of Environmental Sciences Suppl, 3 at 3-6 [translated by author].
levels are 28, 30 and 27, the workforce is far not enough for the high intensity of environmental protection work. The budgets for provincial, municipal and county environmental protection agencies in 2004 are 4.661 million, 2.207 million and 1.851 million, however, the expense of environmental implementation still inadequate after calculation. The technical support and necessary appliance for the purpose of communication and transportation are also insufficient. In 2003, the total funds for purchasing apparatus and appliance was 130 million, which less than the 270 million budgets was set in the Eleventh Five-Year Plan by 140 million.

The third problem is the limited authority and administrative measures of local environmental protection agencies. There are six main categories of administrative punishment in environmental management: warning, fine, confiscating illegal income, ordering the violator to stop the operation or use of the project, revocation of permits or other certificate with the nature of permit, and other administrative punishments regulated in environmental protection law and regulations. The most frequent used method is the imposing fine on polluters, accounting for 60% among the total administration, yet the amount of fine regulated in current environmental laws is at issue. The more powerful methods such as demanding the large-scale polluters to clean up within a definite time or shutting down the plants to reorganize are all belong to local governments. Moreover, the environmental protection agencies barely

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58 Lu et al., Ibid, at 3.
59 Lu et al., Ibid, at 5.
60 Lu et al., Ibid.
62 Lu et al., supra note 57, at 6.
63 ‘The investigation on the effectiveness of present fine shows that, 68.3% of institutions investigated think that the amount of fine regulated in present environmental laws and regulations can not constitute effective deterrence to violators.’ Lu et al., supra note 57, at 7. Detailed analysis on this matter is in the first part of 3.3 of this paper.
64 For small-scale enterprises, the environmental protection agencies have the authority to order them to clean up or close for reorganization. However, the constraint to large polluters is more important. Duan Haiyan, Game Analysis of Environmental Law Enforcement (Environmental Law, Master of Laws, Ji Lin University, 2005) [unpublished] at5.
have the power of compulsory implementation; it belongs to China’s People Courts. It is understandable that considering the seriousness of more powerful and compulsory measures, the authority of environmental protection agency should have certain limits, yet it also becomes a two-edge sword which might facilitate local government to offer protection shield to local industry or decrease the efficiency of environmental enforcement thus can not stop environmental violation timely. This circumstance does not fulfill the requirement of the sustainable development principle that is establishing appropriate institution to preserve and improve the environment.

The last problem is the corruption of officials exists in the environmental protection mechanism. Since 2002 till 2008 June, 487 officials of environmental protection department in 22 provinces and municipalities have been investigated and punished due to corruption. The number of such crime and the number of violators have increased year by year. The number of corruption case in 2007 increased by 88 percent than its counterpart in 2006, and the number of violators doubled than the level of 2006. These corrupted officials trade public’s environmental interests with illicit income and personal benefits, extremely disobeying their responsibilities and lack basic knowledge of sustainable development principle.

3.2 The Environmental Dispute Settlement System

Administrative mediation is the main environmental dispute settlement channel in China. The two parties would negotiate on the issue, damage and compensation presided by the officials of environmental protection agencies. The administrative mediation of official has no decisive enforcement power. It causes some waste of legal resource and reduces the efficiency of dispute settlement. The problems of Chinese administrative mediation includes: 1. there is no

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comprehensive regulation about the range, effect, procedure and form of administrative mediation to date.\textsuperscript{66} 2. The administrative mediation system lack specialized staff and special finance. 3. The system is within governments or under the supervision of local environmental protection agencies, its independency, neutrality and justice lack the guarantee from the aspect of institution.

In China, only a small number of environmental disputes will be settled in court due to the high cost and unaffordable burden to normal citizens, the collection of evidence and doing environmental test is time-consuming and arduous in China.\textsuperscript{67} Even the pollution case has been brought to trial, it happens that the judgments of court are very hard to be enforced. This disappointing situation partly due to the independency of Chinese judicial system whose finance and judges are affiliated to local authority, some senior judges are directly appointed by the Communist Party. In this case, judges’ judgments on key cases would be affected by the governments or the Communist Party. So are the enforcements of court decisions. Local government may protect the enterprises from being punished; as the revenue of government is rely on them.\textsuperscript{68} The independent judicial power of court should be ensured in order to provide the final safeguard of law. But this involves political issue and still need a long way to go in China. With regard to the specific problems in the area of environmental law, includes: 1. Plaintiffs much be directly affiliated with defendant’s action and evidence of substantial damages must be demonstrated by plaintiffs.\textsuperscript{69} 2. Most courts lack environmental experts to

\textsuperscript{66} There are simplified regulations in the Article 41 in \textit{The Environmental Protection Act}, Article 62 in \textit{The Air Pollution Prevention and Control Law}, Article 55 in \textit{The Water Pollution Prevention and Control Law}, Article 61 in \textit{The Environmental Noise Pollution Control Law}, and Article 84 in \textit{The Law on the Prevention of Environmental Pollution Caused by Solid Waste}.

\textsuperscript{67} Less than 1 percent of the more than 100,000 disputes over environmental violations reported in 2007 reach the courts. Li Jing, “Group Wants More Polluters in Court” (16 January 2008) online: China Daily http://www.chinadaily.com.cn/china/2008-01/16/content_6396814.htm.

\textsuperscript{68} Qie Jianrong, “HuanJing WuRanAn 12Nian ZhiXing BuGuo DiFang BaoH Shi ZhuYin” (Non-Implementation of Environmental Pollution Case for 12 Years, the Main Reason is the Protection of Local Authorities) (22 May 2009), online: China News http://www.chinanews.com.cn/gn/news/2009/05-22/1703345.shtml.

\textsuperscript{69} The China’s \textit{Civil Procedure Law} Article 108 provides that: ‘the plaintiff must be directly interested
deal with environmental cases, especially for those remote areas. The specialized environment court is only pilot project now,\(^70\) its spread is arduous. China has not yet developed substantial private bar specializing in environmental law, aside from lawyers working on Clean Development Mechanism of the Kyoto Protocol projects on behalf of foreign investors.\(^71\)

3. The loose sentence of criminal obligation of people who committed certain environmental crime. These problems readily result in unjust outcomes of environmental disputes.

In a word, the environmental dispute settlement system has similar deficiencies with the environmental management mechanism, such as the lack of resources and responsible officials, the inappropriate institution, and the intervention by local governments. These problems all reflect that central and local governments have not truly realized the importance of the environment and relationship between development and preserving the environment. Thus reluctant or not work hard enough to adopt effective measures to solve current problems. The application of the sustainable development principle is very needed to cure these problems.

citizens, juristic persons and other organizations.’ In China, citizens can generally only sue polluters for personal injuries caused by pollution, the plaintiffs further need to identify their precise harms, assign a monetary value to them, and demonstrate a direct causal link to the defendant’s behavior. The Pollution Control Law of United Kingdom stipulates that the plaintiffs for public nuisance litigation has no need to consider the ownership of resources, or whether the plaintiff is the direct victim of the contamination to environment, as long as the plaintiff has the right to use or enjoy certain resources or his own livelihood depends on these resources, he is entitled to bring environmental lawsuits using ‘protection of the public environment’ as an excuse. American citizen only has to show that the violations lessened the aesthetic and recreational values that the citizen enjoyed from a clean environment rather than show precise harm caused by the pollution to the environment or to health of the citizen. Another example is the Supreme Court of United States also takes an extended point of view on the plaintiff’s qualifications of environmental cases. Aesthetic damages or lessened recreational values can be the cause of lawsuit. The plaintiffs do not have to show precise physical injury or property damage caused by the pollution to the environment to file an environmental litigation. Qi Shujie, “Comment on the Perfection of Environmental Disputes Litigation System in China” (2007)01 Journal of Henan Administrative Institute of Politics and Law 136 at 139.

\(^70\) Environmental court first be set up in the end of 2007 in Qingzhen City, Guizhou Province, followed by another environment court in Wuxi, Jiangsu Province in May this year. Chen Yuanyuan, “HuanBao FaTing QiDai DaPo FaZhan PingJing” Chinese Environment (25 September 2005), 003 [translated by author].

\(^71\) Robert, \textit{supra} note 5, at 5.
3.3 The Role of Civil Society

Citizens, enterprises and environmental Non-governmental-organizations (NGOs) should participate in the decision-making of environmental laws and policies and have roles in the enforcement of environmental laws. Their participation is helpful to formulate rational environmental law, to supervise government’s implementation of environmental law, and promoting the acceptance and spread of the sustainable development principle in public.

* The Reason of Noncompliance of Corporate Polluters

A lot of enterprises in China neglect their environmental responsibility, illegally discharge contamination or build plants. According to the latest published *Annual Report on Enterprise Citizenship in China 2009*, it is estimated that pollution in China's industrial enterprises accounted for about 70% of the total pollution. In which, 50 percent of pollution is a result of poor corporate governance. For example, a survey found that as a result of mismanagement, in a number of key enterprises in chemical, oil and other industries, the loss rate of industrial waste is as high as 86%. This shows that many Chinese enterprises do not consciously control and reduce pollution and increase their ability in dealing with environmental matters. This partly due to that in market-directed economy, all corporate pursue maximum profit, lay economic interest at the first place, thus China needs effective environmental laws to prevent corporate from excessively pursuing economic interest at the cost of the environment.

Some Chinese discharge standards for waste air, waste water and solid waste are even stricter than abroad, however, the technological level and disposal facilities of many Chinese

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74 For example, an important indicator to measure the pollution extent of water is the COD (chemical oxygen demand). The provisions in China about this indicator require not higher than 60 mg per liter, compared to the 120 mg abroad. Yuan Yue, “Should the Report of Environmental Impact Assessment Reveal
enterprises are not able to fulfill the requirement of the provision. In addition, the insufficient supervision and punishment do not have enough deterrent power, so the enterprises would choose not to abide by their obligation regulated in environmental laws. Meanwhile, the penalty for environmental violations is relative low that actually discourage enterprises to comply with the law, paying the small amount of penalties is far more economical. In the regulations of Chinese environmental laws, the ceiling of fine for water pollution violations is 500,000 Yuan (around $73,206), and the ceiling of fine for radioactive pollution, solid waste and atmospheric pollution violations is 200,000 Yuan (around $29,283). Even when polluters refuse to pay for the fine or to dismantle the pollution facilities would result in double or triple fine, the total amount of fine is still not enough to awe the polluters. Wang Canfa, the founder and leader of the Center for Legal Assistance to Pollution Victims (CLAPV), said to the reporter that because of the backward technology of sewage treatment in China, the cost for sewage treatment is 1.2 ~ 2.0 Yuan per ton, a factory discharges more than 100,000 ton of sewage every day, that accumulates to hundreds of thousands management fee per day. If the enterprise being accused, a fine of 200,000 Yuan will be imposed prior to June 2008. In addition, as the regulation in the Administrative Punishment Law of People’s Republic of China against double jeopardy, that is one and the same act such as the pollution discharge of enterprises would be only accused for one time. In this case, enterprises only need to pay a fine equivalent to a day’s treatment fee to ‘legally’ discharge throughout a year. Moreover, chances are most factories’ illegal discharge would not be found or be found after a long period. That’s way many enterprises choose to discharge pollution secretly rather than control pollution. The motives of such evasion of environmental obligations not only depend on the compliance cost,
penalty intensity, but also on the ownership of enterprise and its relationship with local government. If the violator is state-owned enterprises, the environmental officials may negotiate with them about the penalty, and for the consideration of potential impact on the local economic development and employment, the local governments even may close an eye on the pollution of those plants.\textsuperscript{79}

* Insufficient Supervision from Civil Society

Citizens

Citizens have important roles in supervising the implementation of environmental law. In Article 6 of China’s Environmental Protection Law, provides that: ‘All units and individuals have the obligation to protect the environment and individuals may report or file charges against those who cause pollution or otherwise damage the environment.’ This general provision regulates the obligation of all stakeholders to participate in environmental protection, although it is not clearly defined. The public participation in China is not satisfactory: the proportionality of population involved in the public participation is few and its distribution is unbalanced.\textsuperscript{80} Disparities in terms of environmental protection consciousness exist among citizens in different regions in China, relatively lower in rural areas and higher in big cities.\textsuperscript{81} Different extent of public participation among provinces exists as well, more actions are likely to be taken in big cities such as Beijing or Shanghai than rural areas in China. Moreover, the range of participation is still narrow: public seldom can participate in the law-making and implementation of environmental law. At present, the content of public participation in China

largely focuses on the education and propagation of environmental knowledge in forms of lectures, seminars, training courses, theatrical performances, exhibitions, environmental books and magazines.\(^{82}\) Chinese citizens can make a complaint about environmental problems through many different channels, the major channels include hotline, ‘visit and letter’, email and website. But there are some limitations imposed on parade or gathering, citizens need to apply in writing firstly at public security organs and wait for a permit.\(^{83}\) And during the period of the Congress of National Representatives each year, the sensitive political climate would cause a prohibition to pro-environment manifestations of the public. A survey in 2006 shows that 100% of the investigated institution had set up at least one channel for citizens’ complaint, 57.3% have two or more than two channels.\(^{84}\) However, whether local authority would regard and respond to those public opinions or complaints of environment is another problem. In some places, local authority consider the environmental problem or public’s complaint are inconsequential compared to other issues, such as local GDP.\(^{85}\)

Besides the institutional deficiencies of the public participation mechanism, on the other hand, investigation shows that the environment still rank relatively low in the public mind in China, especially for adults who always preoccupied with other matters that they consider more urgent or significant than the environment.\(^{86}\) The lack of full access to official environmental data and the distortion of the information on mass media result in overly optimistic estimation of the country’s environmental conditions.\(^{87}\) The fundamental measures being able to deal with the environmental problems must base on the change of people’s sense of treating the nature. Now, most of Chinese people know little about the sustainable development principle and its meaning,\(^{88}\) thus they have not realized the endangerment could be caused by their

\(^{82}\) Wu et al., \textit{supra} note 80, at 196.
\(^{84}\) Yok-shiu, \textit{supra} note 81, at 35.
\(^{85}\) Yok-shiu, \textit{supra} note 81, at 57.
\(^{86}\) Yok-shiu, \textit{supra} note 81, at 44, 45, 46. See also Chinese Environmental Awareness Program, “2007 National Environmental Public Awareness Survey(2008)02 World Environment, at 18.
\(^{87}\) Yok-shiu, \textit{supra} note 81, at 54.
\(^{88}\) Sun Libo, “GongZhong KeChiXu FaZhan YiShi De DiaoCha Yu SiKao” (Investigation and Thinking on
unsustainable production pattern and lifestyle. Therefore, people should well aware of the sustainable development concept and its positive impact to both present and future generations, changing people’s short-sighted behaviors, otherwise it is very difficult to reverse the current trend of environmental degradation.

Non-governmental Organizations

Environmental NGOs already has a history of more than ten years in China.\textsuperscript{89} Since the establishment of the first environmental NGO---China Environmental Science Institute in May 1978, the existing environmental NGOs in China has reached a number of 2768.\textsuperscript{90} Most of them are active in the environmental research, propagation and campaigns. Environmental NGOs have been instrumental in many areas such as energy conservation, tree planting and wildlife protection. However, its development in China is not very smooth. The biggest problem is the lack of funds. Chinese tax law do not encourage donations to NGOs,\textsuperscript{91} which cause most of the environmental NGOs face fund shortages, 76.1 percent of China's

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\textsuperscript{89} Chen Wenxian,“WoGuo HuanBao NGO FaZhan BuChongFen De YuanYin FenXi” (Analysis of the Underdeveloped Situation of Chinese Environmental NGO) (2006)12 Social Science Forum, at 55 [translated by author].

\textsuperscript{90} Among them, organizations initiated by government departments accounts for 49.9% of non-governmental organizations, environmental NGOs form private sector accounts for 7.2%, environmental community and the commonwealth consist of students accounts for 40.3 percent, the branch of Hong Kong, Macao, and international environmental non-governmental organizations in the mainland accounts for 2.6%. Wang Xiaogang, \textit{A Quest for New Theory of the Development of Environmental Law in China: Reflexive Law, Deliberative Democracy and Risk Society as Theoretic Perspectives}, (Environmental Law, Master of Laws Thesis, Ji Lin University, 2008) [unpublished].

\textsuperscript{91} The new Enterprise Income Tax Law came into effect since January 1, 2008. In Article IX, corporate donations for public welfare spending that less than 12 percent of the total amount of annual profits should be deducted from taxable income in the calculation of tax. The proportion of tax-free donations increases by 9% from the former 3%. This is a promising step to encourage enterprises to donate to NGOs. However, the current financial crisis facing by most of the NGOs in China will not be alleviated by this amendment of the Enterprise Income Tax Law. Because there is no higher body for the management of China's NGOs, thus NGOs can not register in the Department of Civil Affairs, so some of NGOs are non-profit incorporated organizations registered in the Department of Business. NGOs can initiate projects and activities, but from a legal perspective, they can not accept corporate donations or initiate any form of fund-raising activities. So their funds are still largely from international donors.
environmental NGOs do not have fixed sources of funding. In 2005, 81.5% of the environmental NGOs raised funds of 5 million or less, 22.5 percent of them have little or no funds. Due to lack of funds, more than 60% of the environmental NGOs do not have their own offices; 96% of full-time staffs working at environmental NGOs earn a below middle-level salaries, the 43.9% of the basic full-time staff even can not get pay; and 72.5 percent of them can not afford their staffs’ unemployment insurance, pension, health care, social security and other benefits. This situation again shows institutional deficiency and low public environmental protection awareness, there are no policies to encourage the development of environmental NGOs and support from public is also deficient. In essence, environmental protection awareness and the sustainable development principle has not rooted in China.

Media

Media plays indispensable role in the propagation of environmental protection strategies, revealing environmental concerns and accidents. In China, the total number of national and local newspapers and periodicals having content of environmental protection has amount to 407 and this number does not include electronic media, websites and comprehensive media with environment column. The content of environmental news has developed into diversified coverage. Nevertheless, few restrictions are still imposed upon media in terms of the content of environmental news in China. If the report contains ‘sensitive content’ or seriously impairs the reputation of Chinese government, the news is almost impossible be published. Chinese government once asked the World Bank to cut the reports which found about 750,000 people die prematurely in China each year caused by air pollution in large cities, because of the

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94 Ibid.
concerns that the report could provoke social unrest. Another example is about the scandal of the Three Gorge Project. Before 2001, a reporter of China Youth Daily reported that the selection of the cement additives used in the construction of the dam is not from the bid winner, but from another private company. Thus, the reporter interviewed two distinguished engineers Zheng Shouren and Xu Linxiang, both of them deemed that it would lead to serious quality problem of the project. However, this report did not be circulated, even worse is that the reporter had to bear the responsibility of either ‘false reports’ or ‘disclosing national secret’, but this report is not a national secret. The fact itself and the punishment of the reporter seldom been known to Chinese public, expect few posts on internet. The original source on Wei Ming BBS of the Peking University has been removed.

Chinese government might afraid to be exposed by media on the environmental scandals. Actually, the exposition of environmental problems can be benign incentives for the enterprises to better comply with the environmental laws and for the local governments to supervise vigorously. It also helps the government to respond public concerns regarding the environmental issues. However, as Chinese government and the Communist Party of China take social order and its reputation as priority, the supervising function of media is impaired. The overall consideration of environmental interests and developmental interests in national policies advocated by sustainable development principle has not been implemented in China.

96 Wu Xi, “SanXi GongCheng De GuoJia MiMi” (The National Secret of the Three Gorge Project) (2001)35, online: Three Gorges Probe http://www.threegorgesprobe.org/gb/ch/3g0110gb.html (This is a foreign electronic magazine) [translated by author].
Chapter 4

The Reformation of Chinese Environmental Enforcement Mechanism to Promote Sustainable Development

4. The Reformation of Chinese Environmental Law Enforcement Mechanism to Promote Sustainable Development

As discussed above, the unsatisfied results of the implementation of Chinese environmental laws lie in the lack of pro-environment political priorities and peoples’ incorrect sense on the relation between economic development and environmental protection. Chinese environmental law enforcement system needs a correct ideology which can be the guideline when interests are conflict with each other. No any ideology is more suitable than the sustainable development principle in coordinating such conflict. So the start of the reformation of Chinese environmental law enforcement mechanism should be the inclusion of the sustainable development principle in China’s environmental laws. Upon this principle, many measures could be taken to fulfill the goal of sustainable development.

The sustainable development principle can offer solutions for the problems in the implementation mechanism of environmental law in China. From the irresponsible environmental management agencies, low-leveled public participation, to the ineffective environmental dispute settlement, intentionally breach of environmental law done by some enterprises and governmental officials. These problems actually are all resulting from the underestimation or ignorance of environmental interests and the overestimation of economic or social interests; the excessive concentration on present generation’s benefits but regardless of
the developmental opportunities of future generation. Its positive effect on improving the implementation of environment law lies in two sides. One direct effect is that it defines the environment as the basis of development, thus enabling national policies and legislations to take full account of their impacts on the environment. In addition, the government will have motives to reform the regulative mechanism and continually refine its enforcement techniques. On the other hand, the principle also strengthens public awareness on environmental protection, inspiring them to produce and live in a way of sustainable development, meanwhile supervising the law enforcement of government. On this ideological ground, many actual reformations can further fortify the sustainable development principle due to the repeated practices of government officials and the public.

However, to actual adopt the sustainable development principle in China’s environmental law system is not easy, as the rooted sense of taking economic development as priority has remain in Chinese people’s minds nearly for 30 years since Deng Xiaoping’s reformation in 1978. It takes time and efforts to transform the sustainable development ideology to norms of action. The acknowledgment of this ideology both in law and in people’s minds is equally important. It is more important to build a sustained system to repeatedly confirm, promote and consolidate the sustainable development principle, providing adequate stimulation and sanctions guiding people to accommodate themselves to behaviors according with this principle. When the awareness of the sustainable development principle become a consensus of the whole society, changes in many respects in China including enhancing the effectiveness of China’s environmental law could come into reality.

The solutions to problems in different aspects are not exhausting but a model which could be used to provide mechanism and workable guideline for the reformation of environmental law towards the sustainable development goal. The reformation would be a long-time and comprehensive course, through amendment of specific environmental law or launching intense campaigns can not achieve the intended result of the sustainable development principle. To
ameliorate the implementation of Chinese environmental law must depends on the improvement of the current political, legal, social and even economic systems of China. It majorly consists of three aspects: implementable national sustainable development policies which show stronger political will; promoting the effective implementation of the environmental law mechanism by establishing appropriate institution and devices; strength the capacity of regulatory agency, regulated parties and the public to respond the challenge posed by sustainable development through institutional capacity building, technological innovation and education.

4.1 Stronger Political Will of Chinese Authority Is a Necessary Impetus

In every country, political will plays a role in forming and adjusting national policies, yet considering the bureaucratic and autocratic nature of Chinese authority, the political will is even crucial in initiating reforms and campaigns. The Communist Party of China (CPC) possesses absolute power in the domain of politics, administrative management, military affairs, and has immense influence in economical and cultural realm. Former Chinese reforms and campaigns in many areas such as economical development, fighting corruption, enhancing social harmony, and environmental protection are all firstly proposed or stressed at meeting or in report of central authority. It accordingly became a significant sign and direction to be followed by other governmental departments and influencing other stakeholders’ behaviors. In that case, to promote the realization of sustainable development in China, strong and clear articulation from the central leadership is necessary. The fifth-generation of leadership Hu Jintao and Wen Jiabao already made some progress in insisting on the sustainable development strategy. However, the development priority still largely prevails among other political

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97 The fourth opinion made by Hu Jintao at the 17th Party Congress, which says: “Improve energy, resources, ecological and environmental conservation and enhance China's capacity for sustainable development.” and suggestions in views of strengthening the capacity of sustainable development. Xinhua, “Full text of Hu Jintao’s report at 17th Party Congress” (24 December 2007), online: Xin Hua Net
preference.\textsuperscript{98}

In contemporary China, economic interest and developmental priorities frequently beat environmental interests in the government’s policies and actual deed. One example is the Three Gorge Dam Project being constructed on the Yangtze River since December 14, 1994. The 200 billion dam project is intended to achieve three aims: flood control for the Jing Jiang and the middle and lower reaches of the Yangtze River region; electricity generation which is calculated to provide 84.7 billion kW·h; increase the navigability of the Yangtze River.\textsuperscript{99}

However, the three issues which generated controversy within China and abroad are the relocation of 1.4 million residents who originally live in the construction area of the project; the preservation of cultural relics, several important archaeological sites and ancient rural landscapes which will be flooded; impact on regional climate, water quality, flora and fauna of the river and its banks. However, major Chinese media are not allowed to report negative remarks on the project due to the tight media supervision and control of Chinese government. Such as the Xin Hua News which is the key official news agency in China and major gate for foreigners to know about China, a series of its news mention little adverse impact on the above aspects or the seriousness of problems are diminished.\textsuperscript{100} On the contrary, described as ‘The Three Gorges Dam is a model for disaster’ by International Rivers,\textsuperscript{101} the environmental risks
of the project are estimated and reported by several oversea medias in aspects of pollution, earthquakes, landslides and mudslides, changes in the weather, drought, lost species and historic relics. But Chinese central government stubbornly insists on its construction. Because the Three Gorge project was approved in principle by the State Council in April 1984 when none formal feasibility study of the project had been done at that time. After acquiring the affirmation by the chairman Deng Xiaoping on the project’s construction at a national meeting, the construction of the Three Gorge project already became an inevitable outcome.

The environmental impact report of the Yangtze River Three Gorge Project is not widely open to the public, as other many environmental impact reports, it is retained as specific knowledge and reference to professional engineers. In addition, the credibility of the report itself is problematic. The first environmental impact assessment report---The Evaluation Report of the Impact of the Yangtze River Three Gorges Project on the Ecological Environment was submitted by the Chinese Academy of Science in 1987, which concluded that the project does more harm than good and therefore it was not cheerful for the Chinese Government. As a result, the authorities used a procedural flaw in the course of the evaluation as an excuse to veto the entire report.

103 Details of the process of the demonstration and adoption of the Three Gorge project at early stage in 1980s is not smooth, to prevent too many opposition to the project, only few experts who held opposite opinion to the project were selected into the expert group. “1984Nian GuoWuYuan PiZhun SanXi GongCheng FangAn GuoCheng CangCu” (The State Council Approved the Three Gorge Project in 1984 and its Hasty Process) (23 April 2004), online: Sing Tao Net http://www.stnn.cc/feitures/sanxia/sanxia8/20060609_252331.html [translated by author].
104 The report need to be purchased and can be downloaded on internet on the Zhu Long Web http://down2.zhulong.com/tech/detail234707.htm.
105 The original conclusion in this report is that: “The Three Gorges Project on the ecology and the environment will have a wide range of complex and profound impact in the long-term. The pros and cons cross and mutual restrain, but from a holistic, systematic and comprehensive analysis of the project’s impact to the ecological and environmental, it is undoubtedly and very clear to conclude that the project would bring more harm than good.” Lu Jialuo, To Solve Problems Left over by the Three Gorges Project is still a Long Way to Go, Yan Huang Chun Qiu, 2008 No.5.
The Environmental Impact Report of the Yangtze River Three Gorges Project began its evaluation on the project. Only two months later, the National Environmental Protection Bureau approved the second report in February to make it ready for the discussion of the National People’s Congress.\(^\text{107}\) It is criticized that the second environmental impact report is not based on a separate resurvey, but on the one-sided and selective use of the original investigation.\(^\text{108}\) The conclusion of the report is that the project has advantages as well as disadvantages to the environment, the disadvantages can be lessened to lowest level after taking proper measures, in general the adverse effects of the Three Gorges Project do not affect the project’s feasibility.\(^\text{109}\) This clearly shows that once Chinese central government decides to construct the Three Gorge Project, this decision override any environmental laws or scientific investigations.

The intentionally neglected or hidden drawbacks of the dam which estimated and warned by many environmental experts have begun to show.\(^\text{110}\) The water quality of the Yangtze's tributaries is deteriorating rapidly, the bloom of blue algae happened in Tai Lake last year, the rampant soil erosion in the downstream area, sludge problem in the Chong Qing Port, and the riverbank collapsing and landslides along the shores of the Yangtze’s tributaries prove the predict of scientists.\(^\text{111}\) An additional four million people in risky areas due to environmental

\(^{108}\) Wang, supra note 106.  
\(^{109}\) Supra note 107.  
\(^{110}\) One of the most famous protestor to the Three Gorges Project in China is Professor Huang Wanli, who successfully forecasting the failure of San Men Xia Dam, and continue pointing out the potential threat of the Three Gorges Project until his death in 2001, the letters and articles he wrote to China's authority had no answer. Dai Qing, “Huang Wanli JiaoShou BaoHan CiShi ZhongGuo Zai WuRen FanDui SanXia GongCheng” (Professor Huang Wanli Pass away, There is Nobody Object to the Three Gorges Project Anymore) (n.d.), online: Er Xian Tang WenKu http://www.edubridge.com/erxiantang/library/sanxia_huangwanli.htm [translated by author].  
\(^{111}\) ZhongGuo XiaoFei Wang, “SanXia ShuiZhi WenTi QianDong GaoKu WuShui ChuLiLv Jin LiangCheng” (The concern about the water quality of Three Gorges Area form the high authority, the Ratio
damage caused by the dam have to be relocated. The central government realized that the environmental problem aroused by the Three Gorge Project is far more serious than former expectation. In June 2007, Chinese Premier Wen Jiabao convened a meeting of the State Council to discuss the environmental problems of the Three Gorges project, emphasizing that ‘solving environmental problems surrounding the controversial dam project should be a priority for the country.’ On Sept 25th, a group of senior government officials and scholars admitted at a work meeting in Wuhan that the Three Gorge Project has caused an array of ecological disasters, including more frequent landslides and pollution, and if government do not take preventive measures and prompt actions, the project could lead to an environmental catastrophe. The lesson must be draw that Chinese government should honestly deal with the Three Gorges Project and other future projects, environmental interests should not be neglected at any time.

When people expect Chinese government could learn from former lessons, and honestly utilize the sustainable development view to deal with the environment and development problems, as the coming of financial crisis, the same kind of tragedy might happen again. There are signs and concerns that to deal with the financial crisis, some policies initiated by central and local governments might counteract China’s achievement in terms of environmental protection and

of Sewage Disposal is only 20%) (25 July 2007), online: Urban Plan Web
http://www.upla.cn/special/sanx/article_8074.shtml [translated by author].
Shai Oster, “SanXia DaBa ZhiYou” (The Concern of the Three Gorges Dam) ZhongGuo ShiDian (31 August 2007), online: Wall Street Journal
Tan Qiwei, vice mayor of Chongqing, a sprawling metropolis next to the reservoir, said the shore of the reservoir had collapsed in 91 places and a total of 36 km had caved in.” Xinhua, “China warns of environmental ‘catastrophe’ from Three Gorges Dam” (26 September 2007), online: People’s Daily Online

It is announced by the Chong Qing Municipal Government on October 9, 2007. Lin Yang, “China’s Three Gorge Dam Under Fire” (12 October 2007),online: Time
http://www.time.com/time/world/article/0,8599,1671000,00.html.

Ibid.

Jiang Shiqliang, Li Zhihui, “WoGuo ZhengShi SanXia GongCheng ShengTai HuanJing ZhuDuo WenTi” (Our Country Face up to the Ecological and Environmental Problems of the Three Gorges Project) 25 September 2007), online: Xin Hua Net
transformation of productive pattern in the past few years. Data shows that in the first quarter of 2009, the decline rate of China’s energy consumption per unit of GDP narrowed than the rate in 2008, the pace of the environmental-friendly economic growth has stagnated. Since the beginning of this year, the State Council has formulated the National Reconstruction and Revitalization Plans of Ten Key Industries and has actively promoted the plans’ implementation to maintain China’s economic development. The ten industries are the iron and steel industry, automotive industry, textile, equipment manufacturing, shipping industry, light industry, petrochemical industry, electronic information industry, non-ferrous metals and transporting industries. Almost all these industries rely heavily on resources or may cause big amount of pollution to the environment. The effect of these stimulative policies has been apparent. The heavy industries advance vigorously along the 18,000 kilometers coastline of China, in some costal cities where already experience some problems of land constraints, shortages of water, electricity shortages, ecologically fragile and do not have the industrial base also join in the revitalization plan. The potential retrogression in the course of evolution aiming at technology and knowledge-oriented economy is really a pity and shows that the sustainable development strategy did not become a stable guiding principle in China, although people can find the word of sustainable development in many policies and documents. To sum up, from the above analysis, it shows that contemporary Chinese society and China’s authority have not fully realized the seriousness of the environmental problems and really adopt the sustainable development principle in terms of environmental protection.

115 The data published by the National Bureau of Statistics shows that in accordance with the initial accounting data, the total energy consumption growth is 3.04%, and 6.1% for GDP growth in the first quarter of 2009. The energy consumption decreased by 2.89 percent of per unit of GDP, compared to the annual level of the decrease of energy consumption per unit of GDP 2008, the trend retard by 1.7 percentage. Cai Jing Web, “Jiu JingJi HaiShi Jiu WuRan?” (Save the Economy or Save the Pollution?) (19 June 2009), online: China Association of Environmental Protection Industry http://www.caepi.org.cn/highlights/18329.shtml [translated by author].
116 Commented by Professor Yue Qingping at Beijing University, he further mentioned that, the macroeconomic measures to fight against the financial crisis can not be a kind of ‘Black Economy’, the environmental problem in China should not be aggravated because of the short-sighted pursuit of partial interest reflected by mere increase in economic figure, Ibid.
The sustainable development principle has been universally accepted including China at international stage regarding its significance and innovational effect to single country or to the entire human society as a whole. This principle could lead Chinese government and Chinese people realized the importance of environment and rationalize developmental activities without causing huge environmental cost. China as one of the participant of Rio Declaration, Agenda 21 and other binding or unbinding conventions or instruments, should be a responsible nation and stick to its promises. Considering the Chinese-characteristic govern system, stronger political will to promote sustainable development need to be strengthened on the basis of current intensity. It would be an immense impetus for the reform of China’s environmental law system.

4.2 Institutional Reform and Capacity Building of Chinese Environmental Law Implementation Mechanism Is Foundation

To make the rhetoric into practice, transforming the political resolution form central leadership into actual deeds at local level needs the institutional reform and capacity building, both of them are arduous and ongoing process. From the angle of legislation, enforcement and judiciary system of environmental law, promoting compliance of polluters and developing public participation, the following solutions to problems in each aspect will enable environmental laws and policies to be effective, and finally approach the sustainable development goal set in environmental laws and policies. The motive and purpose of each solution may not directly link to the sustainable development principle, but they are all together playing a role in a systematic mechanism to meet the ultimate goal of sustainable development.

*Appropriate Amendments of Chinese Environmental Laws and Regulations

First of all, the sustainable development principle should be established as the basic principle
of Chinese environmental law, adding the content of intergeneration equity principle. Only by defining the responsibility of the present generation and stressing the overall consideration of economic, social and environmental interests in developmental issues can people fully aware of the importance of environment. Considered the deficiencies in Chinese environmental law legislation mechanism, it is necessary to regulate the extent of legislative power of central and local governments and related departments. Meanwhile, public participation in the law-making process need to be clearly defined and strengthened, the undergoing enactment of Method of Public Participation in Environmental Protection could be a promising start.\(^\text{117}\)

From the view of regulated parties, the predictability, transparency and feasibility of environmental law are the key elements in promoting compliance. Vague or abstractive provisions of some environmental laws make them hard to be enforced, thus amendment to them should be done, such as the unreasonable compliance standard and weak consequence of violation. Other amendments relating to environmental regulatory mechanism, environmental judiciary system and public participation would be discussed later.

*Improve the Environmental Regulatory Mechanism*

To achieve sustainable development in China, improving the environmental regulatory mechanism is the key. The sustainable development principle implies taking environment protection and pollution prevention as a priority in the implementation of environmental law and strengthens the capacity in doing so. The reconstruction of Chinese environmental regulatory mechanism aims to constitute an environmental management system with independent, authoritative, effective and efficient characteristics, which require equal attentions to both institutional reform and capacity building.

The role and responsibility of each environmental protection agency and other governmental departments, the measures enabling effective supervision or cooperation mechanism between them all need to be substantiated. All Ministries involved in environmental protection should straighten out respective managerial responsibilities, which could ease the problem of overlapping or duplicated authorities and undefined relationship between government departments. Only on the basis of clear and respective responsibility divided by different region, extent of seriousness or regulated object can all-leveled environmental protection agencies be entitled to and be obliged to carry out full responsibility. As the local departments play substantial role in other concrete environmental management work, so their responsibilities should be clearly defined as well.

In order to make environmental protection mechanism effective and efficient, some institution and strategies would be helpful. Firstly, the performance of local officials in terms of environmental protection should be included into the evaluation of local government and officials. Bonus-Penalty mechanism can be introduced to provide incentives of good governance and strict enforcement of environmental law. For some pollutants, the outcome of pollution reduction has already been linked to local authorities’ performance and achievement of individual officials. Whether the pilot assessment measures of environmental management could end up with success still need time to verify. To measure local government’s performance on implementing sustainable development, green GDP can calculate growth that take into account environmental costs. However, the green GDP research started in 2004 and released a report only for one time in 2005 and was indefinitely postponed.

118 The head of provincial or municipal would be dismissed if the ultimate discharge amount exceeds the goal assigned by the central environmental agency. See the assessment method of total reduction amount of major pollutants in the “Eleven-Five” Period Sun Xiuyan, “WuRanWu JianPai, HaiYao JiaBaJin” (More Efforts Needed in Pollution Reduction) (22 August 2007), online: People Net http://politics.people.com.cn/GB/1026/6151000.html [translated by author].

in 2007. The major underlying reason is that local authorities dislike the green GDP and then lobbied the former SEPA and the National Bureau of Statistics not to release the data. Under this circumstance, restoring the green GDP project is necessary and should guarantee the result produced is scientific.

Besides institutional reform, the capacity building of environmental agencies also needs special attention. An effective and efficient environmental management mechanism usually needs technique, equipment and infrastructures to maintain its normal operation. Financial and human resources also need to be guaranteed. To avoid excessively affiliate to local authorities and intervened by other local departments, the personnel and financial support of environmental agencies might need specific arrangement, such as funds allocated directly from central government. However, to really ensure this requirement in China is hard. Limited resources for environmental protection agencies in China might be last for a period. In this case, setting priorities becomes a necessary strategy. Prompt action in full force should be taken for large-scale or serious pollution.

Local governments can also enhance its implementation capacity by introducing appropriate measures or launching specific programs. For example, drafting respective pollution standards and inspection schedule depends on local circumstance; clean production campaigns and promoting pollution prevention and conservation of resource and energy at the source. Local environmental agencies can change the inflexible from of environmental inspection into diverse and flexible forms, such as random and unannounced inspection, night-time inspection, and round-the-clock supervision. The choice of such form must in accordance with the characteristics of pollution and fully consider the psychology of polluters.

Wang Jinnan, a serious expert at the Chinese Academy for Environmental Planning who was technical head of the green GDP project, reveal this reason to reporter, he also remarked that: “Taking out the costs of environmental damage would lead to a huge fall in the quality of economic growth in some areas…At present many areas still place GDP above all else, and when such thinking dominates, the size of resistance to a green GDP can well be imagined.” Chris Buckley, “China Silences Green GDP Study, Report Says” (23 July 2007), online: Alert Net http://www.alertnet.org/thenews/newsdesk/PEK219981.htm [translated by author].
*Ameliorate Environmental Judiciary System*

The sustainable development principle demand people to care about the balance of developmental interests and environmental interest. When the environmental damage happened, the restoration of the balance between socie-economic interest and environmental interests is necessary. Environmental judiciary system on one side provides compensation from polluters to victims of environmental damages, punishing environmental violation; on another side it supervises the administration of environmental agencies, punishing the nonfeasance and illegal administrative behaviors by judiciary supervision.

Some suggestions from China’s legal professionals have been adopted by the judicial system, such as lay part of the burden of proof on defendant,\(^{120}\) the common litigation system, the legal aid system, and extending the limitation of actions to three years since the plaintiff know or should know the pollution damages.\(^{121}\) Chinese scholars also suggest that China should amend the qualifications of plaintiffs of environmental cases, extending the legitimate plaintiff to interested citizens, juristic persons and other organizations.\(^{122}\) The following three solutions in terms of facilitate environmental justice will provide incentives for responsible implementation of environmental law and strong deterrence for polluters.

**Public Interest Litigation**

Equal access to the judicial system not only depends on the regulation of citizens’ right to bring suit against polluters, but also need to ensure the ability of realizing such right, that is to enhance citizen’s ability to file environmental cases. It is common that the victims of pollution in most rural part of China do not have enough money or legal knowledge to sue the polluters.

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\(^{120}\) ‘Litigation caused by environmental pollution damages, the perpetrator should bear the burden of proof on the exemptions provided by law and their behavior do not exist causal relationship with the damage.’ *Regulation on the Evidence of Civil Procedure* issued by the Supreme People’s Court on December 21, 2001.

\(^{121}\) *Environmental Protection Law of People’s Republic of China* Article 42.

\(^{122}\) Wang Canfa, a famous environmental expert in China advocates this proposal. Deng, *supra* note 78.
In this case, the deterrent power of environmental laws is impaired and no compensation could be given to suffered citizens and to restore the environment. One of the workable solutions is entitling the environmental lawyers or environmental NGOs to initiate public interest litigation in China’s people court. As a good sign of such change, in Wuxi, Jiangsu Province, NGOs has already entitled to sue polluters on behalf of public interest in environmental court for the first time in 2008.123

Institute Environmental Court

There are two pilot environmental courts in Qing Town, Guizhou province and in Wuxi, Jiangsu Province.124 The advantage of environment court contains: firstly, judges who have professional environmental knowledge can better judge environmental cases. Secondly, the independent environmental courts help to eliminate localism and provide strong judicial supervision to local environmental agencies. Thirdly, the specific environmental court can punish violator timely, thus ensuring compensation for victims and costs for environment restoration. The environmental court institution is promising in handling environmental disputes, so the pilot environmental courts should be stabilized and popularized in the near future.

Ensure Enforcement of Judgment

The judgment must be enforced to bring environmental justice to victims of pollution and make polluters to pay for the environmental harm they caused, save the polluted environment for present and future generations. As discussed above, the protection and intervention of local authorities constitute a major reason for the non-implementation of environmental cases. So ensuring the independency of Chinese legal system is very important. This needs certain

124 Zhou Bohuang, “HuanJing FaTing De SheLi WenTi TanTao” (Discussion on the Institution of Environmental Court ) (2008)03 Entrepreneur World 259, at 260 [translated by author].
political will and continuous effort by Chinese legal professions to promote its realization. Other circumstances such as defendants’ intended escape of compensation can be resolved form amendments to current laws. For example, environmental litigation could refer to regulations in Civil Procedure Law of the People’s Republic of China that courts can cooperate with banks and formulate measures to prevent asset transfer of polluters or to appropriate saving deposit form bank compulsorily.125

*Promoting Compliance of Regulated Community

The sustainable development principle tells that the purpose of preventing pollution and protecting the environment is not to stagnate economic activities or closing down all pollutive plants. On the contrary, the core concept of the sustainable development is the right to development.126 In addition, industrial development is the basis of technological innovation which is encouraged by the sustainable development ideology. The government should well aware of this standpoint that polluters need to be assisted in complying with environmental laws. Environmental legislation would never tailor to the need of the polluters with the largest pollution need or exploiter having infinite desire to exploit natural resources. Some of the regulated parties must feel difficult in reducing its environmental need. In this case, incapable of complying with environmental law is a problem that requires the regulative agency be aware of the barriers for compliance and take some measures to help them enhance the ability to respond to the requirement of environmental law. It is common that small or medium-sized enterprises lack mature institution or experience, money and techniques in dealing with pollution problem. In some key cities, local authority has realized this problem and formulated

125 Article 218 of Civil Procedure Law of the People’s Republic of China regulates that: ‘If a person to be enforced fails to fulfill the obligations specified in a legal document as instructed by the enforcement notice, the people’s court shall have the power to make inquiries to the banks, credit unions or other units that deal with saving deposits about the savings deposited by the person subject to the enforcement, and shall also have the power to freeze and appropriate the savings deposited by the person subject to the enforcement, however, the inquiry, freeze, or appropriation of the deposits shall not exceed the scope of the obligation that the person subject to the enforcement should fulfill.’
126 ‘The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.’ Article 3 of Rio Declaration, supra note 19.
policies and allocated special funds to encourage enterprises to install environmental-friendly equipment or pollution disposal facilities, and to reward enterprises by tax rebate for achieving outstanding progress in terms of energy reduction.\textsuperscript{127} Besides the administrative measures, Chinese environmental protection agencies have worked together with other government departments to launched the “Green Credit”, “Green Insurance”, “Green Trade”, “Green Taxes” and a series of green economic policies.\textsuperscript{128} It is a good start by using the economic lever to promote the compliance of enterprises.

Another circumstance is that polluter who capable of complying with environmental law, but intentionally ignore their liabilities, the issue here is not only to promote compliance but to enforce requirement. Stricter inspection, upgraded administrative sanction, disqualifying them to economic benefits, and moral censure could be used to urge enterprises to fulfill their environmental responsibilities.


\textsuperscript{128} The Former Deputy Director of China’s Environmental Protection Agency Pan Yue revealed his plans for seven new green economic policies on the “China Green Forum” on September 9, 2007. Pan’s proposed policies include “Green Taxes”, which would tax individuals or groups based on their use or misuse of environmental resources. “Green Credit” would leave polluting enterprises unable to obtain credit, or do so only at punitive rates of interest. “Green Bond” meant to unable polluters to issue bonds or increase their investments, while environmentally-friendly firms would enjoy lower interest rates and other benefits. “Green Insurance” policies would force polluters to take out insurance against environmental risks. In the event of a pollution accident, the insurers would pay compensation to the victims. Other policies include: environmental charges; environmental compensation; an emissions trading market; and a green trade policy which targeting at environmental management of exporting enterprises. Pan Yue, Ma Li, “Changing the rules of the game” (14 September 2007), online: China Dialogue http://www.chinadialogue.net/article/show/single/en/1321-Changing-the-rules-of-the-game.

The implementation of the above green economic policies faced some problems including the local protection for enterprises in “Two High” (high pollution and high resource consumption) industry and difficulties in the communicating mechanism between environmental agencies and other government departments. Deng Xin, “ZhongGuo LvSe JingJi ZhengCe LuXianTu: DuiHua HuanBao ZongJu Pan Yue” (Chinese Green Economic Policy Scheme---A Dialogue with Pan Yue of Environmental Protection Agency) (26 February 2008), online: China Net http://www.china.com.cn/news/txt/2008-02/26/content_10769554.htm [translated by author].
*Establish Pervasive Public Participation Mechanism*

Public participation means that various social groups participate in the decision-making and implementation of public affairs, providing comments and suggestions or launching activities. Public has three basic rights in terms of public participation, besides the right to litigate which has been discussed above, public participation also includes the right to know (right of information) and the right to participate.\(^{129}\) The three rights are interrelated and reinforcing each other. As stated in Principle 10 of Rio Declaration, ‘Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’

Public can be the best representative of environmental interest and provide infinite power in the course of pursuing sustainable development. Due to the common good property of the environment and the ‘policy failure’ of government’s environmental management,\(^{130}\) the price of environmental goods sometimes cannot reflect its real social and economical cost. Since the environmental costs are bore by all citizens, the negative externalities of pollution and


\(^{130}\) Policy failure would weaken the effectiveness of environmental laws and policies. The reasons are as follows: the lack and distortion of environmental information; the delay of policy-making and its implementation; limited people can participate in the decision-making of public policies, thus the preference of certain group can not rightly reflect the public interest; the target of policy is rational person, their would try all means to evade their responsibilities, especially when the legal mechanism is not well-designed and well-functioned; at last, is the rent-seeking activities which result in unjust allocation of environmental resources at the cost of public environmental interest. Liu Shengying, *The Thinking of Sustainable Development of Ecological Environment of Our Country* (Environmental Law, Master of Laws Thesis, Ji Lin University, 2004), at 19 [unpublished] [translated by author].
ecological damage damnify the environmental interests of all citizens and their future generations. It thus gives motivation for the public to participate in environmental protection. As stated in China's Agenda 21: ‘the participatory approach and participatory extent of public, groups and organizations will determine the process of the achievement of sustainable development goals.’

The example of the PX project in Haicang, Xia Men City in 2007 can prove the effectiveness of public participation in China. The government of Xia Men approved a chemical plant which listed as a key project and would bring 80 billion GDP to Xia Men City. Yet its production is Para-Xylene which is dangerous and carcinogenic, even worse is that there are over 100,000 residents within a radius of five kilometers from the plant. The procedural flaw in the project’s environmental impact assessment and lack of information reveal beforehand ignite the query and debate over the issue. In March 2007, at the National People’s Congress, Zhao Yufen who is the first revealer of the problems of PX project in alliance with another 104 members of the Chinese People’s Political Consultative Conference submitted a proposal regarding the relocation of the PX project. At the beginning of June, residents of Xia Men City manifested their opposition and resolution to protect the environment of Xia Men by ‘taking a walk’ in front of the building of municipal government. Next, the overwhelming 90% of citizen’s objection in the environmental assessment symposium consisted of ordinary residents afterwards finally decide the relocation of the PX plant. The success of Xiamen PX incident shows the power of citizens in the course of environmental protection, therefore, the public must have their legitimate rights and channels to advocate for public environmental interest. Any policies affecting the public interest, especially environmental interest, public’s opinions must be taken into account.


To develop effective public participation mechanism, institutional reformation and capacity building is needed to promote the participation of ordinary citizens, environmental NGOs and media. Chinese government should firstly establish appropriate mechanism for public participation. Secondly, the government should serve as the initiator and coordinator in the process of public participation. Thirdly, Chinese government should continuously enhance the ability of participation and supervision of citizens, environmental NGOs and media. Taking the environmental information release system as an example of institutional reform, China has began to establish the environmental quality announcement systems in all provinces and big cities, the range of information revealed includes the air quality, city noise, drinking water quality, drainage water quality, seawater quality near seashore, ecological circumstance and pollution accidents.\textsuperscript{133} It is a good start though the percentage of institutions which provide such environmental information to public is not very high, only 56.4% among investigated institutions in a survey in 2006.\textsuperscript{134} It can be expected that expanding its application, ensuring the authenticity of these environmental information and maintaining the sustainability of this institution is the next challenge facing Chinese government.

Secondly, facilitating public participation needs Chinese government to invest more legal and administrative resources into it. For example, in the environmental impact assessment, although as early as September 2003, the Environmental Impact Assessment Law has came into effect and the Open Measures of Environmental Information came into effect on May 1, 2008, the legal framework still lack practical method to guarantee citizen’s right of know and right of participate: ordinary citizens have little chance to get environmental impact assessment report or participate in its hearing. Taking hearing for example, citizens’ rights regulated in related laws need to be specific in terms of procedure, time phase, channel for citizens to know and to participate, meanwhile, amendment also need to be made in the content and range of

\textsuperscript{133} See regulations in \textit{The Decision of State Council to Implement the Scientific Development Concept and Strengthen Environmental Protection} (2005).
\textsuperscript{134} Lu et al., \textit{supra} note 57, at 8.
information released and the academic support for language and professional terms being used in the hearing.

At last, the ability of citizens to participate needs the nourishment of environmental awareness through environmental education, environmental news and various activities. In this regard, China can take advantage of the merit of environmental NGOs and media. Environmental NGOs due to their organizational advantages and accessibility to the majority of society can better promote environmental public awareness and their understanding of the sustainable development principle. In this sense, environmental NGOs must be allowed and even encouraged to grow in number and strength in China. Chinese government should provide favorable conditions for environmental NGOs and create development spaces to them, such as encouraging donation to environmental NGOs. The role of media is also indispensable, as it provides environmental information and education to citizens which foster their environmental awareness. Therefore, restriction on the authentic environmental reports must be removed. The right of free reporting for both domestic and foreign reporters should be protected.
5. Conclusion

China has impressive economic development annually and generally stable social order, but Chinese environment keeps deteriorating. The degradation of environment endangers the health and developmental capacity of both present and future generations. It also causes negative effects to other countries. So, Environmental interests deserve particular attention or at least equal attention when Chinese people facing hard choices between economic development and environmental protection.

The sustainable development principle can become both the guideline and the goal for the reformation of Chinese environmental law enforcement mechanism. The rationale behind the sustainable development principle is the balance of environmental interests, economic and social development. To make the reformation successful, China needs the combination of stronger pro-environmental political will, more responsible enforcement mechanism and judicial system, and strengthened public environmental awareness and public participation. The sustainable development principle would be the best guiding principle in the institutional reform and capacity building process. Although the resolutions are not exhausted, it could be expected that China’s superior environmental law scholars can complement the research and making incremental progress.

It is worth noting that the globally environmental degradation, the pressure of population growth and need of development make the goal of sustainable development more and more difficult to achieve. It is also worth noting that the situation even harder in China, because of
its imperfect legal system, immature civil society and autocratic political system. However, many lessons have warned Chinese people that we must take prompt action to save the environment, making the sustainable development principle incorporating into people’s daily life and become influential leading principle of Chinese environmental laws and the implementation mechanism of environmental laws.