

UNDEF 4th

**Protect the Environmental Rights
and Justice of the Public
Evaluation Report**

I. Introduction

A.

These environmental challenges are, in turn, set in a context of governance challenges.

- China has many environmental laws, regulations and standards, but their enforcement is weak, especially by industries at the local level;
- Public Interest litigation (PIL) is new to China; at the time the project began, there were a few environmental tribunals, but the numbers of cases were small
- Environmental Civil Society Organizations (CSOs) as a means to engage citizens in environmental protection face many difficulties, including lack of financial resources, lack of an adequate enabling legislative framework, and limited availability of lawyers who will volunteer for environmental legal aid (in the absence of fees).

The challenge of reconciling economic development and environmental goals as China

Moreover, in this project the basic objectives were at least three fold. The primary objectives included: (a) increas

--a citizen may know the source(s) but not know how to take ac0

thus protecting the rights of the public to a clean environment, an important part of human rights, and contributing to the democratization process in China.

2. Implementation steps

The Project Document also states the steps to implement the strategy:

- a baseline survey to collect data related to project objectives and activities;
- to raise public awareness, printed and video materials to be produced, including a handbook with 5000 copies to be distributed widely, especially to pollution victims and vulnerable groups, producing and broadcasting TV programs, and disseminating information on the ACEF website and websites of other organizations;
- legal aid, including providing legal aid in 20 cases, developing environmental tribunals and training lawyers;
- legislative policy proposals on an environmental PIL system and on liability and compensation for environmental damages;
- survey of public opinion towards the end of the project..

The Project Document recognizes that risk factors include the difficulties in filing environmental lawsuits in China, including the absence of the right of CSOs to appear in court on behalf of the public interest and the uncertainties of the legislative process.

II. Review of the Project Outputs

In this section we summarize activities undertaken to implement the project. As explained in

produced, - surveys conducted, publications

discussion website and the distribution of questionnaire in hard copies. 3822 and 1567 responses were received, respectively, from the 1st and 2nd survey.

The survey results should be viewed with the sample population in mind. Since the bulk of the responses were from the website focused on environmental issues, it must be presumed that the sample population was self-selected from a (website) group already focused on the environment. Primary results of the surveys include:.

1. The first survey found that a majority of respondents have heard of the concept of environmental rights, though 42.84% have heard of it but do not know details.
2. In the first survey, 20.29% of the respondents said they would take all necessary measures to protect their environmental rights; in the second the percentage was 30.4%.
3. In the second survey 56.2% of the respondents reported they had had some experiences in the protection of their environmental rights, compared to 22.2% in the first survey..
4. Regarding the methods to be used to protect environmental rights, 13.08% of the respondents said they prefer seeking assistance from lawyers and settling the case through litigation while in the second survey, the number was 25%. However the public has limited knowledge about Public Interest Litigation (PIL). In the second survey, only 3.5% of the respondents knew about PIL and 37.2% have heard of the term.
5. 65.9% of the respondents acknowledged the role of the CSOs in the protection of environmental rights in the second survey, while the number was 34.07% in the first survey.

B. Educational Materials and Media

The Project Document provided that a Handbook on the Protection of the Environmental Rights was to be produced. This was done, and 6000 copies were distributed. The Handbook has been translated into English and is available in hardcopy and the web. The Handbook should have a sustaining role in increasing citizen environmental rights awareness and capacity.

In addition, ACEF also worked with media in publicizing, and thereby helping to address, cases resulting from citizen complaints. 10 TV programmes on the protection of environmental rights were produced and broadcasted.

C. Policy/Legislative Development

The Project Document called on ACEF to help promote the development of the environmental PIL system through the promotion of amendments to existing law.

Towards this ends, three expert workshops were conducted and expert analyses commissioned and six legislative proposals were produced and provided to top

. The proposals focused on amendments to the Civil

Procedure Law _____, and the Environmental Protection Law of the
of China to include provisions on PIL.

. In 2012, China revised its Civil Procedure Law (with an effective date of January, 2013).
The law now includes a provision that states: _____ he institutions and related organizations
provided by law can bring suits to the Peoples Court on violations of the public interests such as
_____. (Article 55 of the
revised Civil Procedure Law of China). This is a first step in the development of the China PIL
system. The UNDEF project contributed to this progress. This is an outstanding outcome of the
project.

F. Volunteer Lawyer Training

According to the Project Document, 80 volunteer lawyers were to be trained under the project, through two training sessions. The lawyers were selected from web applicants. As a condition to participation, lawyers agreed to handle at least one case on a volunteer basis. As of yearend 2012,

Why were so few litigated cases addressed by the project focused on pollution other than water pollution? Why was water the prime focus for all cases? ACEF reports that the focus on water was possible because water pollution and its effects may be (relatively) easy to trace (pollution from a factory is emitted into a stream or river, for example), ACEF team has capacity to investigate the source and flow of the pollutants, to take samples and send to a laboratory for analysis.

ACEF reports that it receives complaints about air pollution, but they are not typically handled by litigation. Citizens can look to damaged trees (and leaves and fruits) and crops for evidence of air pollution. But ACEF reports that measurement of air pollution from cause (sources) to effects (damage) is difficult (pollution from a factory may be dispersed in many directions) and requires substantial expert and financial resources. The difficulties are compounded where as ACEF reports, in environmental litigation (1) the burden of proof is not applied according to law, and (2) a court requires certificated expert to prove cause and effect.

The project further indicates:

-- successes in cases relate to mining are possible, though they were not obtained through litigation.

-success is less clear in relation to industrial heavy metals pollution, solid waste, and nonpoint pollution; for example, human or animal waste or agricultural pesticide runoff).

In sum, the experience in this project (and further ACEF work) suggests reflection and refinement of strategies:

- (1) In the case of water, ACEF achieves successes, but problems are omnipresent and ACEF resources limited. What can be done to maximize impact of water cases-to make sure that success in one case or region may be basis for continued environmental protection in that region, and success elsewhere?
- (2) Air pollution cases are limited, in part by difficulties of evidence gathering for proof and expertise to testify on the evidence. What strategy can ACEF employ to test ways to success in identifying and addressing air pollution concerns?
- (3) Further key pollutants (e.g. heavy metals, solid waste) and pollutant sources (such as Mines). What does experience to date suggest about strategy in these areas?

2. *What institutional factors and patterns provide clues to “what works and what does not?”*

In addition to showing patterns related to pollution source, the legal aid experience under the project institutional factors work and some that do not. For example:

- (1) The cases show that some laws, regulations and standards may be effectively used, and how they may be used. In the water cases, for example, measurements based on water quality national standards proved effective. In other cases (mines, for example) failures by enterprises and/or the government to follow procedural standards provided legal basis for claims.
- (2) The cases showed that local problems may exist for years without receiving attention from the government (or polluting enterprises).
- (3) The cases showed that some kinds of citizens are likely to identify problems, and serve as first line of defense for the public at large. For examples, fishermen may be likely guardians of the integrity of water supplies, and farmers of the integrity of air quality.

Here, as in the case of the focus on pollutants, there is opportunity to draw from experiences to develop strategies that make efficient use of models that have succeeded and identify areas where models are needed. For example:

- (1) where rules (laws, regulations and standards) have proved to be useful, how can their use be broadened? Similarly, where relevant rules or standards have been less useful, why not? And what can be done to make them useful?
- (2) where pollution problems existed for years in the absence of government action, how did ACEF assistance change the long-term pattern? Can the lessons be applied by citizens in other localities without ACEF assistance?
- (3) where certain citizen groups-fishermen for example- have shown themselves likely to serve as

and compensation that is in order- is often difficult. Damage may become manifest only after many years, and even then in only a small percentage of the exposed population. Moreover, in China today where there are many pollution sources and pollutants, it is often more difficult to identify cause and effect in relation to particular harms.

a. Difficulties in Evidence Gathering and Proof

The experience of the legal aid program indicates that (1) legal proceedings for obtaining compensation are often quite difficult; (2) compensation for harm to humans is difficult in any case.

Among the litigated cases, compensation was provided in 3 cases, but through mediation by the court. In negotiation, claims for compensation for damage to fish, trees, crops and silk worms were successful. In these cases, the basis for the calculation of damage was market price (for example, evidence on the type and number of fish killed and the market price of the fish).

Claims for damage to human life were much more difficult to es

4. What may be learned from experiences in other countries about the specific problems encountered in the project implementation?

In relation to some of the specific obstacles identified in the project experience, there are some lessons to be learned from experience in other countries. For example, drawing on the US experience, which is likely the deepest in public interest law and related litigation:

Compensation for human health damage: The difficulty of proving harm to humans (and other living things) from pollution is universal.⁴ Where the evidence shows humans have been exposed to pollutants but harm (illness) has not manifested itself, U.S. cases have provided that the polluter must

sources for providing legal aid to pollution victims. Such support is not generally available for private lawyers.

In this context, efforts to find ways to support legal aid would be useful. In fact, ACEF reports that it is trying to develop the use of contingent fee in cases where there is possibility of damage compensation. [what is the PIL fund? If it is the compensation fund I think it provides for victims not lawyers. We have not mentioned any other fund] If ACEF can demonstrate success with this arrangement, it may be a model for use by environmental (and other) public interest lawyers. At the same time, as discussed above, this approach will only work if there are models for successfully obtaining compensation for victims. Thus, ACEF may want to consider policy efforts focused on providing for attorneys compensation in cases where evidences of damage are not available.

The challenge of finding appropriate compensation means for public interest lawyers is a universal one. In the U.S., and other countries, environmental public interest lawyers (working in private law firms and NGOs) sustain successful litigation. In the U.S. there are now multiple means by which attorneys fees can be awarded. These include, as ACEF is pursuing, cases where successful attorneys may be paid from damages awarded clients; but they also include cases where success may not include damage awards. For example:

-

The problems that the project addresses occur daily throughout China. For example, the cases of water pollution the project dealt with are likely not unique, but occur in similar ways in myriad towns and villages throughout China. ACEF can assist directly in only a small number of cases. But ACEF can provide the public with the benefit of what has been learned from the project.

The Handbook on Protection of Environmental Rights for the public seeking to protect their own environmental rights. It explains what environmental rights citizens have, and how they can protect such rights.

However, a continued experience now permits it to go much deeper in the information provided to citizens. It now has considerable experience, for example, with the litigation of water pollution cases. It now also has experience with the resolution of mining related concerns through non-litigation approaches. ACEF has experience that shows, for example, that, in some cases evidence may be relatively easy to gather, standards exist, and courts can be successfully used, and in other cases, air pollution, for example, evidence may and solutions may be more difficult.

In tandem with developing its own next steps strategy based on this experience, ACEF can deepen the Handbook (through continued website updates) by beginning to construct a matrix of common fact p With its continuing accumulation of experience, It should be able to tell citizens with increasing depth and specificity what specific pollution problems they should be aware of, what risks they present, and how they can address them.

Drawing from the project experience with each fact pattern, the matrix might include for each fact pattern:

- (1) the kind of pollutant at issue, its characteristics and sources and the risks involved;
- (2) the laws, regulations and policies that are related to the control of this pollutant;
- (3) how to identify and measure the presence of the pollutant; including (from the project experience) the location of experts and equipment needed for investigation and proof;
- (4) the methods to be used to address the pollutant to date litigation, supervision, mediation or some combination;
- (5) the remedies that have been obtained to date- -including, for example, treatment, relocation, compensation for damages to the environment, living things and property;

- (6) particular challenges citizens might expect in dealing with the pollutant, and how they can be dealt with (for example, difficulties in collecting evidence or finding experts, government inaction).

As ACEF, and citizens, continue to learn more the fact pattern matrix can be deepened and expanded to include new fact patterns.

D. UN/ACEF Cooperation

In addition to the express goals stated in the Project Document (as summarized at IC above), it is essential to note the value of UN/ACEF cooperation in summarizing what has been learned from the project. UNDP did substantial work, particularly on international knowledge and best practices transfer and policy advice, to ensure project success, including:

- 1) increasing the project visibility and public awareness of environmental concerns and rights by producing a project video;
- 2) providing ACEF with a platform for international exchanges through several international conferences, such as the Guiyang International Eco Forum in 2011.
- 3) supporting participation in several UNDP regional and global workshops on Access to Justice and Environmental Governance, thereby building their capacity through exposure to the experiences of other countries;
- 4) providing strong technical support through a UNDP international technical advisor to the project, in order to further bring relevant technical advice and relevant global experience to ACEF;
- 5) enhancing the development of South-south cooperation channels for ACEF with other developing countries, such as Vietnam and Mongolia.
- 6) joining including assisting in lobbying the ACEF proposals in revising the Civil Procedure Law and the Environmental Protection Law.
- 7) providing global awareness of ACEFs work, through ACEF participation in UN conferences as noted above, and also through visits of UN officials to China to meet with ACEF s, including the UNDP Associate Administrator (Rebeca Grynspan) and the UN Deputy Secretary General (Jan Eliasson).

IV. Conclusions and Recommendations

A. Conclusions

ACEF, as the Implementing Agency, and UNDP, as the Executing Agency, have cooperated well and successfully implemented the project by following the strategy as set out in the Project Document.

As discussed in Parts II and III, ACEF has implemented all the activities and produced the planned outputs and achieved notable successes. Its legal aid has achieved landmark litigation successes; Its policy recommendations have played a role in the amendment to the Civil Procedure Law, which should broaden CSO environmental litigation rights, and ACEF has trained dozens of lawyers and produced a Handbook for general public use.

As discussed in Part III, UNDP substantial, particularly in bringing international knowledge and best practices to bear on the project, as well as in project implementation.

Explanation for deletion; we say this in the second paragraph above; also, democratization was not part of the Project (see out project definition in Part I), and we do not explain what it means in this context)

B. Recommendations: Next Steps

ACEF now has the opportunity to build on this experience, developing a strategy to build on successes and to address the obstacles to success that it encountered. In doing so, the focus may be on (1) continued development of ACEF strategy based on reflection on what has been learned from its experiences; (2) organization of these experiences to support citizen capacity to address environmental concerns directly.

1. ACEF should reflect on and organize its legal aid experience to permit ACEF, citizens and officials to efficiently and effectively address common environmental fact patterns.

As discussed at Parts II and III, legal aid experience indicates:

- (1) how some key pollution problems may be successfully addressed, while others remain challenging; in the case of water, for example, litigation and other legal aid practices are successful; in the case of air pollution, success has been much more limited;
- (2) how courts and litigation may be used, and their limits;
- (3) how alternative approaches-mediation and supervision-may be used with law to address;

(4) institutional obstacles that remain to be addressed.

may not work. This experience provides opportunity to reflect on, for example, how to best multiply successes in cases which address substantial problems, and how to address important problems that have not been successfully addressed. As discussed at III D, ACEF can review and organize its experience to develop a matrix of fact patterns, so that ACEF and citizens may get the benefit of what ACEF has learned. As ACEF continues to gain experience the matrix can be deepened and expanded.

experience can then be used as bedrock for ACEF own strategy development, for deepening the Handbook on the protection of the environmental rights of the public and for training of lawyers, citizens and CSOs.

2. ACEF should deepen its Handbook and related training and education materials to provide the fact pattern I continued experiences.

Public participation requires an informed public. Because there are so many environmental problems, their nature is often technical and social resources are limited, there is a premium on an informed citizenry that knows as much as it can about common problems and ways to address them; and about the difficulties that will be met.

In this context, ACEF can deepen and expand its Handbook to provide the public with key information on the fact patterns they are likely to encounter, and the tools and strategies to deal with them.

3. ACEF legal aid strategy should incorporate lessons learned from the project.

As discussed in Part III C, id under the project provides lessons to be incorporated in ACEF strategy to use its resources efficiently and effectively.

both primary pollution concerns calls for strategic reflection. Thus, in relation to water and air (and other high priority pollutants) the strategic ne in water; how can citizens use ACEF models for success to take actions without reliance on concerns can be effectively addressed.

(2) ACEF should further conduct educational programs that provide citizens with