

Assisting Pollution Victims to Promote Public Participation in Environmental Protection of China

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A Summary

China is a country transiting from a planned to a market economy. Its political reform is slow but still making some progress. Specifically, the establishment of “ruling the country in accordance with law to develop a socialist country rule by law” in the constitution greatly improved the democratic and legal systems. Currently, the central government has started to promote information disclosure, especially from the government. It has been much easier to get information of laws, regulations, administrative rules, and standards from the websites of national and local government agencies. Moreover, some drafted regulations have been published in the media to solicit public’s input.

However, there are limited channels for the public to participate in the decisionmaking process of the government. A main concern of the government official is that the inclusion of public participation in the decisionmaking process will greatly reduce the efficiency and thus delay the speed of economic development. Acknowledging this situation, CLAPV, an NGO with legal background, elects to support litigation of pollution victims to promote effective public participation, as well as to influence environmental decisionmaking and to promote legislation and the enforcement of laws.

1. 0. CLPAV: An NGO Aims to Improve Legal Governance of the Environment.

1.1. Introduction for CLAPV

The Center for Legal Assistance to Pollution Victims (CLAPV) was set up in October 1998 by China University of Political Science and Law, and is registered with Ministry of Justice. It is a NGO to afford legal aid for pollution victims. Most of its members are

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professors, associate professors, and teachers who do the research work on environmental and resource law at China University of Political Science and Law; Peking University, Qinghua University, Renmin University of China, and so on. Some volunteers are graduate students and lawyers from some universities and law firms.

1.2. CLAPV's Missions

The organization's missions include: raising consciousness on environment, law, and protection for rights of the public; improving the capacity of administrative agencies and judicial bodies; promoting the enforcement and abidance of China environmental law.

1.3. CLAPV's Main Activities

- Opening a legal advisory hotline (86-10-62267459) for the pollution victims for free legal consultation and receive pollution victims' visiting.
- Helping pollution victims file lawsuits and pay part of the court and lawyers costs for the poor pollution victims if their case is fateful and typical.
- Holding environmental law training courses for lawyers, judges and environmental officials in order to enhancing their capacity of handling environmental cases and promoting the implement of environmental law.
- Holding some seminars on environmental law and promoting international and inner-country exchange on the enforcement of environmental law.
- Holding lectures on environmental law and seminars on environmental cases with the medium, and help the public know environmental law and their rights.
- Studying key questions on environmental law and submitting proposals to the legislation bodies to improve environmental legislation and its implementation.

1.4. CLAPV's Funding and Staff

There is no fulltime staff in the center. All of the members are volunteers. The funding is from an endowment supported by societies and individuals.

2.0 The Case of Promoting Public Participation by Aiding Pollution Victims in Court

Two cases are discussed here. The reason we supported cases of this type is that we think they are very typical in China. Because the number of people who were affected public is high, these cases can gain social attention and thus help more people to be aware of atmospheric environment in which they live.

2.1. *182 Beijing Households v. the Planning Commission of the Beijing Municipal People's Government*

In December 11, 2001, the Planning Commission of the Beijing Municipal People's Government issued a planning permit for construction project to two research institutes of the Ministry of Public Health to construct a building for experimental animals. Local residents were against this project and submitted a request to the Legal Office of the municipal government for administrative reexamination of the permit. After the Legal Office sustained the decision of the Planning Commission, 182 households sued the Planning Commission with CLAPV's help. The court ordered the Planning Commission to withdraw the permit. The Planning Commission followed the court order and withdrew the permit.

This is the first case in which Beijing residents won litigation against the planning department of the government. The case gave a chance for 182 households to fully participate in the court process. In addition, through media coverage, many other residents in Beijing also learned their rights from this case and then gained confidence to participate in environmental protection efforts. After this case, some other Beijing residents sued the Planning Commission again.

2.2. *1640 Individuals in Pingnan County of Fujian Province v. the Rongping Chemical Factory*

A joint venture chemical producer of potassium chlorate in Fujian Province heavily polluted two villages with its wastewater, effluent gases, and waste residue. The pollution has caused economic loss of agricultural production and, the most important, serious health problems among local residents. As villagers' petition to local government had failed to solve the problem, villagers decided to sue the polluter. To raise litigation funds, villagers conducted

fundraising activities on the streets of the county. But local polices confiscated the donation box and raised funds.

With the help from CLAPV, 1640 pollution victims sued the chemical producer and asked the producer to stop its production and compensate their economic loss. In July 2003, the court started the procedure of evidence exchange and evidence cross-examination.

This case has been widely reported nationwide.

3.0 CLAPV's Goals and Strategy

CLAPV's goals are:

- Raising the consciousness on environment, law and protection for rights of the public.
- Improving the capacity of administrative agencies and judicial bodies. Promoting the enforcement and abidance of China environmental law.

Environmentally, CLAPV aims to reduce environmental pollution in China to help the public live in a better environment. To achieve our goals, the center encourages the public to adopt ways of litigation to protect their own interests.

Because it is supported by a group of the most influential environmental law experts in China and a group of enthusiastic volunteers, the center is capable of achieve its goals.

To achieve these goals, the center also trains 50 people every year to establish a national network of environmental lawyers. The center also trains judges for free and to help these judges to establish concepts of environmental protection and thus make objective decisions in environmental cases.

The center creates an alliance with pollution victims all over the country. In addition, the center also wins supports from some citizen organized environmental NGOs, the media, and national environmental protection and legislation agencies.

The center uses its websites, news reports about the center, its advertisements on the Central People's Radio Station and the Legal Daily to reach pollution victims.

4.0 Difficulties Experienced

We also have met many difficulties in the course of our aiding pollution victims. Some of main difficulties are.

- 1) It is difficult for the center to raise funds, so the amount of money available often fluctuates.
- 2) It is difficult to coordinate and to transfer tasks among volunteers because there is no fulltime staff member,
- 3) Some court cases have been intervened by local governments.
- 4) The current legal environment is still not in favor of the survival of NGOs.

In addition, due to the lack of funds, the center is unable to publish advertisements in the most influential news media and thus unable to reach those remote areas where the most severe environmental pollution problems are.

5.0. CLAPV's Accomplishments and Lessons Learned

Accomplishments

The success of CLAPV can be attributed to that it has closely connected individual benefits with environmental protection efforts. This motivates the public to protect environment. By fighting against one case after another, more and more public understand their rights and contents of laws and thus promote their awareness of the environment, laws and rights. Every case supported by CLAPV will lead to many similar cases be brought to courts. These litigation efforts in turn form social pressures that push polluting enterprises to observe laws, and those local governments and their environmental protection agencies enforce environmental laws strictly.

Another factor for CLAPV's success is its professionalism. CLAPV protects the environment based on its legal specialties, but does not conduct generic publicity campaigns. Its most effective activities are: 1) supporting pollution victims bringing their cases to court; and 2) training lawyers and judges on environmental laws.

The first activity has helped many pollution victims to protect their rights, and the second activity has provided legal support and judicial safeguards to the public. We believe that the most successful activity should be one that can help the public to change their conceptions through their participation in that activity. It will help the establishment of a society ruled by

law.

Lessons Learned

Some cases cannot be processed in a timely manner because the center has no full-time staff member. Some lawyers of the center are less dedicated to their cases because of this some other problems were encountered. Some lawyers failed to collect all evidence and thus lost their cases. And the center is unable to track cases and thus is unable to evaluate the effectiveness of its consultation efforts. These lessons will be addressed in the center's future capacity building activities.

What Might be Replicable in Our Efforts and Successes?

Every country has its own situation. An activity that can succeed in a country may fail in another country. Even in the same country, an activity that can succeed by one NGO may fail by another NGO. Therefore, we suggest NGOs to determine their missions, goals and activities based on the situations of their countries and their own organizations. We think the following points can be shared with other NGOs.

- 1) Professionalization is a common problem faced by all NGOs. An NGO can achieve a larger success if it can give full play of its specialties. The key to the success of CLAPV is that we are specialized in environmental laws and stress the importance of solving environmental problems with legal means, which are characteristics that other NGOs in China do not have. Our approach is in accordance with the state's policy to promote governance by law. By doing this, we experience little resistance from the government and gain support and sympathy of society.
- 2) The success of CLAPV is also depended on dedication of our volunteers, especially that of the leaders. As an NGO without full-time staff members, our volunteers have other commitments in addition to their work at the center. It is really time-consuming to contact lawyers and plaintiffs and to search organizations performing identification and evaluation services. If we do not have such a group of volunteers, we will fail our activities.
- 3) To success, NGO's strategy is very important. In China, a country with less developed

NGOs and of political sensitiveness of citizen activities, we have to understand the legal space of our NGO to conduct our activities. We must know what is legal and what is illegal. Within the given space, we select those activities, which have large social impacts, that the government is unwilling to be engaged in. Our help to pollution victims is one of such activities. Although the government does not want to be engaged in such activities, society is in special needs for such help. We did experience resistances from local governments, but at national level government is promoting this approach to solve pollution conflicts. If we had elected to encourage pollution victims to demonstrate, to sit in front of the government offices, or to block or destroy the polluting enterprises, which will also attract great social attentions, but our organization would not be able to survive in China. Therefore, we believe rational strategy is a factor contributing to the success of NGOs.