

Report Summary

Environment courts, as well as tribunals with expertise in environmental matters, have been increasingly recognized for their accomplishments and further potential in promoting ecologically sustainable development. These environment courts and tribunals play a central role in enforcing compliance with environmental laws by judging claims and interpreting laws, enforcing rights, and providing forums for dispute resolution.

Various countries have pursued different paths in empowering their domestic court systems to enforce environmental laws. In the United States, for instance, most environmental disputes continue to be decided by courts of general jurisdiction, applying principles of general and administrative law. In Australia and New Zealand, specialized courts composed of judges and technical experts focus exclusively on environmental disputes. The Government of Thailand created a special division within its judicial system to handle environmental cases, while the Philippine Supreme Court designated existing courts around the country as environment courts, in an attempt to rationalize the diversified jurisdictions related to environmental law.

In the People’s Republic of China (PRC), environmental disputes are generally decided in the people’s courts, which are courts of general jurisdiction. Since 1989, however, the development of environment courts has accelerated, with 11 of them being established for pilot cases.

Environment courts in countries around the world have been shown to help solve problems such as illegal dumping or discharge of wastes, open burning of waste, and health code violations. They have also been shown to lighten the burden of general jurisdiction courts by taking over large numbers of pending cases. Most important, there has been an increase in compliance and in the number of violators punished in areas where environment courts exist.

The benefits of specialized environment courts include:

- (i) creating a comprehensive, integrated jurisdiction that deals with a range of environmental matters—a “one-stop shop” for merit appeals, judicial reviews, and criminal and civil enforcement;
- (ii) providing a forum for experts in environmental law where they can engage in a free and beneficial exchange of ideas and information;
- (iii) enabling the formation of panels of officers with expertise for the purpose of interdisciplinary decision making;
- (iv) facilitating the development of specialized knowledge of environmental law and issues;
- (v) allowing the adoption of a holistic approach to the resolution of environmental matters, through comprehensive jurisdictions and interdisciplinary decision making;
- (vi) furthering the use of innovative practices and procedures, such as public interest litigation, to broaden access to justice;

- (vii) encouraging innovative solutions to environmental problems;
- (viii) fostering the growth of a coherent and consistent body of environmental precedents and jurisprudence;
- (ix) making possible the quick progress of complex environmental cases, thereby boosting the efficiency and reducing the cost of litigation;
- (x) relieving other courts of some of their backlogs by taking over cases involving environmental issues and resolving them more efficiently; and
- (xi) appealing to the conscience of the public, thereby encouraging adherence to environmental laws and greater participation in programs to protect the environment.

Generally, the establishment of an environment court system involves a few critical steps. First, there has to be some form of enabling legislation or legal foundation that will specify the number, scope, jurisdiction, procedures, and powers of the environment courts. Accomplishing this step would entail identifying existing institutions that are already enforcing environmental regulations, as well as determining the number of cases encountered and then disposed of on a weekly, monthly, or annual basis.

Once it is decided that there is a need for environment courts, the next step is choosing the mode of formal organization. Other important factors to be considered are budgetary constraints; proper training of judges and court personnel; and sufficient and effective regulation, legislation, and ordinances, including guidelines for environment court procedures and sanctions.

The indicators of the effectiveness of environment courts, such as the number of cases filed, the speed with which cases are resolved, the number of judgments made and enforced, and any change in the attitude or behavior of the public, must be monitored to help the courts better their performance. Apart from the environment courts, supplementary units such as an environmental defenders office, a legal aid mechanism, environmental forensics facilities, and venues for alternative dispute resolution must also be given primary consideration, as they could play an important role in improving environmental justice.

Since 1998, there has been an average yearly increase of 25% in the number of environmental lawsuits received by the people's courts in the PRC. In 2005 alone, that number reached a record of nearly 700,000. There is still, however, a severe shortage of specialized environment courts relative to the number of environmental cases filed. In contrast to other specialized courts, environment courts make up only a small fraction of the 3,500 people's courts and the more than 10,000 people's tribunals. However, the total number of compensation cases arising from environmental pollution in 2003 alone reached 1,543, equivalent to one-half the yearly average of cases filed before the maritime courts in 20 years (1984–2004), or two-thirds the average of first-instance intellectual property rights cases filed nationwide each year.

There is thus a clear need for more specialized environment courts. In fact, the number of environmental cases is expected to rise as the PRC's economy grows. If it continues to rise at the current rate of 25% per annum, the number of first-instance environmental cases will increase 2.4 times in 5 years and 7.4 times in 10 years. The situation is exacerbated by the fact that the percentage of environmental disputes that are brought to court is expected to increase, from the current rate of about 3% to about 10% within 5 years. The rapid upsurge in the number of environmental lawsuits, together with a decreasing number of judges in the PRC, makes the need for an expanded environment court system all the more urgent.

There are other compelling reasons for the further development of environment courts in the PRC. One is that judges require specialized knowledge for environmental cases, and they could hone that knowledge through experience in newly established environment courts. Another reason is that the complicated nature of environmental cases leads to the need for special agencies for coordination, which the existing people's courts have difficulty in handling.

Despite the need for environment courts in the PRC, progress has been slow. The current state of the PRC's environment courts reveals a variety of problems, such as the lack of responsible organizations, professional expertise, and constructive policies. In particular, the major problems of the PRC's environment courts are: (i) limited access to such courts, (ii) insufficient training of most judges in environmental law, (iii) lack of interest among victims of environmental pollution in using the courts to protect their rights, (iv) refusal of most courts to accept environment cases, (v) inconsistencies in environmental case judgments, (vi) difficulties in enforcing court orders in environment cases, and (vii) weak regulatory support for environmental justice.

Long-established environment court systems around the world can provide vital lessons to those countries, including the PRC, that are examining their own domestic systems, and looking to improve court affordability, encourage alternative dispute resolution, train "green" judges, raise court administrative efficiency, promote public awareness and participation, and monitor and evaluate court performance.

There are six possible modes of strengthening the environment court system in the PRC: (i) establishing collegial panels, each having an odd number of members and observing the rule of the majority; (ii) holding environment court trials within the basic people's court system; (iii) setting up an environmental protection division within the existing court system; (iv) extending the authority of existing specialized courts to include environmental disputes; (v) establishing a central environment court with nationwide jurisdiction, equivalent to intermediate or higher courts in the general judicial system; and (vi) creating a circuit court for environmental protection.

The authors think that the most feasible approach would be a blending of the third and sixth modes. That would mean the combined creation of (i) environmental protection divisions within the intermediate people's courts, higher people's courts, and the Supreme People's Court for the sole purpose of hearing trials of criminal, civil, and administrative environmental cases within their jurisdictions; and (ii) dedicated circuit courts to deal with first-instance hearings of minor environmental cases. Environmental protection divisions in selected provinces and municipalities should handle the registration of environmental lawsuits, as well as the enforcement of judgments in nonlitigation (administrative) environmental cases.

The authors recommend that the environment court system of the PRC expand gradually, through three stages: (i) pilot testing in local courts, (ii) nationwide dissemination, and (iii) institutionalization through legislation.

The experiences of other countries, such as those mentioned above, can provide models for policies to be followed after an expanded environment court system is in place. For instance, the PRC should work to improve access to justice and court affordability. Then it should establish venues for alternative dispute resolution to save on costs, time, and resources. Further training of environmentally oriented judges will be essential to promote competent decision making. There should be measures to improve court administrative efficiency, such as additional personnel, system streamlining, and other capacity building efforts. Another essential policy will be the promotion of public awareness and participation through the practice of open justice and court accountability. Finally, there should be regular court performance assessments to monitor and evaluate the efficiency and effectiveness of specialized environment courts.

Introduction: What Are Environment Courts, and Why Are They Important?

Courts or other tribunals with special expertise in environmental matters have been increasingly recognized for their accomplishments and further potential in promoting ecologically sustainable development.¹ Indeed, these environment courts and tribunals play a central role in enforcing compliance with environmental law by judging claims and interpreting laws, enforcing rights, and providing forums for dispute resolution.²

Various countries have pursued different paths in empowering their domestic court systems to enforce environmental laws. In the United States, for instance, most environmental disputes continue to be decided by courts of general jurisdiction, applying principles of general and administrative law.³ In Australia and New Zealand, specialized courts composed of judges and technical experts focus exclusively on environmental disputes (footnote 2). The Government of Thailand created a special division within its judicial system to handle environmental cases, while the Philippine Supreme Court designated existing courts around the country as environment courts, in an attempt to rationalize the diversified jurisdictions related to environmental law. In this paper, the term “environment courts” refers to the specialized juridical bodies that resolve environmental disputes and give force to environmental laws.

In the People’s Republic of China (PRC), environmental disputes are generally decided in the people’s courts, which are courts of general jurisdiction in the PRC’s judicial system, illustrated in the appendix.⁴ Since 1989, however, the development of environment courts has accelerated, with 11 of them being established for pilot cases (Table 1). They include environmental protection courts, environmental

¹ B.J. Preston. 2008. Operating an Environment Court: The Experience of the Land and Environment Court of New South Wales. Inaugural Distinguished Lecture on Environmental Law for the Environmental Commission of Trinidad and Tobago. Port of Spain, Trinidad and Tobago. 23 July. www.ttenvironmentalcommission.org/speechaddresses.htm (p. 2).

² D. Zaelke, D. Kaniaru, and E. Kružiková, eds. 2009. *Making Law Work: Environmental Compliance & Sustainable Development*. Volume 1. London: International Law Publishers, p. 447.

³ B.C. Birdsong. 2000. Adjudicating Sustainability: New Zealand’s Environment Court. *ECOLOGICAL Law Quarterly* 29 (1), pp. 4–5. Cited in Zaelke, Kaniaru, and Kružiková, *Making Law Work*, p. 447 (footnote 2).

⁴ The judicial system of the People’s Republic of China (PRC) consists of the Supreme People’s Court, the local people’s courts, and specialized people’s courts. The local people’s courts include the higher people’s courts, covering all provinces, autonomous regions, and municipalities directly under the central government; the intermediate people’s courts whose jurisdictions are districts and municipalities; and basic people’s courts in counties, cities, and municipal districts. The specialized people’s courts include, among others, the Military Court, Maritime Court, Railway Transport Court, Forestry Court, Petroleum Court, Land Reclamation Court, and the Youth Court. All people’s courts are answerable to the people’s congress at the corresponding level, as well as to the standing committee of that congress. All people’s courts function under the supervision of the people’s courts at higher levels.

protection trial divisions within the judicial system, and circuit courts for environmental protection. It is therefore useful to review the effectiveness of environment courts in the PRC and elsewhere, so that the lessons learned can be applied in the PRC, and in other developing countries.

Table 1: Environment Courts in the People’s Republic of China, 1989–2008

Environment Court	Year of Establishment
The Trial Court of Environmental Protection of Qiaokou District, Wuhan, Hubei Province	1989
The Environmental Protection Tribunal of the People’s Court of Dongling District, Shenyang, Liaoning Province	2002
The Circuit Court of the People’s Court of Shahekou District, Dalian, Liaoning Province	2004
The Environmental Protection Court of the City of Jinzhou, Municipality of Shijiazhuang, Hebei Province	2004
The Circuit Court of Environmental Protection of Shiping, Liaocheng, Shandong Province	2006
The Environmental Protection Court of the People’s Court of Tiexi District, Shenyang, Liaoning Province	2006
The Environmental Protection Trial Court of the Intermediate People’s Court of Guiyang, Guizhou Province and the Environmental Protection Court of the People’s Court of Qingzhen Municipality, which is under the jurisdiction of Guiyang	2007
The Circuit Court of Environmental Protection of Jianye District, Nanjing, Jiangsu	2008
The Environmental Protection Trial Tribunal of the Intermediate People’s Court of Wuxi Municipality, Jiangsu Province and the Environmental Protection Collegial Panel under its jurisdiction	2008
The Circuit Court of the People’s Court of Xinbei District, Changzhou, Jiangsu Province	2008
The Trial Division of Environmental Protection of the Intermediate People’s Court of Kunming Municipality, Yuxi Municipality, and the Environmental Protection Collegial Panel under its jurisdiction, Yunnan Province	2008

Source: Authors.

Environment courts in countries around the world have been shown to help solve problems such as illegal dumping or discharge of wastes, open burning of waste, and health code violations. They have also been shown to lighten the burden of general-jurisdiction courts by taking over large numbers of pending cases. Most important, there has been an observable increase in compliance and in the number of violators punished in areas where environment courts exist.

According to Preston (footnote 1), the benefits of establishing specialized environment courts include:

- (i) creating a comprehensive, integrated jurisdiction that deals with a range of environmental matters—a “one-stop shop” for merit appeals, judicial reviews, and criminal and civil enforcement;
- (ii) providing a forum for experts in environmental law where they can engage in a free and beneficial exchange of ideas and information;
- (iii) enabling the formation of panels of officers with expertise for the purpose of interdisciplinary decision making;
- (iv) facilitating the development of specialized knowledge of environmental law and issues;
- (v) allowing the adoption of a holistic approach to the resolution of environmental matters, through comprehensive jurisdictions and interdisciplinary decision making;
- (vi) furthering the use of innovative practices and procedures, such as public-interest litigation, to broaden access to justice;
- (vii) encouraging innovative solutions to environmental problems;
- (viii) fostering the growth of a coherent and consistent body of environmental precedents and jurisprudence;
- (ix) making possible the quick progress of complex environmental cases, thereby boosting the efficiency and reducing the cost of litigation;
- (x) relieving other courts of some of their backlogs by taking over cases involving environmental issues and resolving them more efficiently;⁵ and
- (xi) appealing to the conscience of the public, thereby encouraging adherence to environmental laws and greater participation in programs to protect the environment.⁶

Generally, the establishment of an environment court system involves a few critical steps. First, there has to be some form of enabling legislation or legal foundation that will specify the necessary number, scope, jurisdiction, procedures, and powers of the environment courts.⁷ Accomplishing this step would entail identifying existing institutions that are already enforcing environmental regulations—such as those relating to buildings, fire prevention, safety, public health, housing, solid waste, forestry, and other areas of interest to environment courts. It would also entail determining the number of violations or cases encountered and then dis-

⁵ United Nations Environment Programme (UNEP). 2007. *Judicial Training Modules on Environmental Law: Application of Environmental Law by National Courts and Tribunals*, pp. 179–180. Cited in Preston, *Operating an Environment Court*, p. 2 (footnote 1).

⁶ *Bangkok Post*. 2005. Setting up an Environment Court. 21 August. www.thaibirding.com/news/envcourt.htm

⁷ Australia, Bangladesh, New Zealand, and Pakistan have adopted an enabling law to create environment courts. The legal foundation for the environment courts of the Philippines and Thailand are the issuances of the relevant governing bodies.

posed of on a weekly, monthly, or annual basis. The information gathered will either confirm or disprove the need for environment courts.

Once it is decided that there is a need for environment courts, the next step is choosing the mode of formal organization. Other important factors to be considered are budgetary constraints; proper training of judges and court personnel; and sufficient and effective regulation, legislation, and ordinances, including guidelines for environment court procedures and for sanctions, such as fines and incarceration.

The indicators of the effectiveness of environment courts, such as the number of cases filed, the speed with which cases are resolved, the number of decided and enforced cases, and any change in the attitude or behavior of the public, must be monitored to help the courts better their performance. Apart from environment courts, supplementary units such as an environmental defenders office, a legal aid mechanism, environmental forensics facilities, and venues for alternative dispute resolution (ADR) must also be given primary consideration, as they could play an important role in improving environmental justice.⁸

⁸ S. Sukharomna. 2008. Establishing Green Bench within the Supreme Court of Thailand. Presented at the Asia Pacific Regional Conference on Environmental Justice and Enforcement. Amari Watergate Hotel. Bangkok, Thailand. 14–16 January. www.roap.unep.org/program/Documents/Law08_presentations/Day1/Green_Bench_THA.pdf

The Environment Courts of the People's Republic of China: Situations and Challenges

Environmental Disputes

The annual figure of environmental disputes in the PRC remained at 100,000 from the 1980s to the late 1990s, and has steadily increased since 1997.⁹ The number of disputes in the last decade or so has grown six times; in 2005 alone, it reached a record of nearly 700,000 (footnote 9). Since 1998, there has been an average yearly increase of 25% in the number of environment lawsuits received by the people's courts. Because of growing pressure to deal with these cases, however, most of the disputes were resolved not through litigation or court proceedings but through the intervention of administrative agencies. It is estimated that only about 3% of all environmental disputes have been brought to court.

Environmental cases come in the form of criminal cases, civil cases, and administrative cases, and are under the jurisdiction of the corresponding criminal, civil, and administrative divisions of the local people's courts.¹⁰ Specialized courts such as the Maritime Court, Forestry Court, and Railway Transport Court also share part of the jurisdiction in some cases.¹¹ So far, there has been no detailed record of the total number of environmental cases in the PRC.

The criminal cases mainly include the crimes of impairing the protection of natural resources or the environment and dereliction of duty, which may give rise to 17 types of charges, including those for environmental pollution accidents, illegal catching or killing of precious and endangered species of wildlife under special state protection, and illegal mining. Most criminal cases concern crimes relating to resources, such as illegal tree felling. The number of criminal cases for impairing the protection of the environment is quite small.

The civil cases mainly include disputes over infringement of rights, such as those involving environmental pollution, as well as maritime disputes, including those involving compensation for marine pollution. There are also cases arising from disputes over property rights and ownership in connection with environmental pollution charges. According to the national environmental statistical yearbooks,

⁹ *National Environmental Statistical Yearbooks* prior to 2009.

¹⁰ S. Beyer. 2006. Environmental Law and Policy in the People's Republic of China. *Chinese Journal of International Law*. 5(1), pp. 185–211.

¹¹ For example, according to the Special Procedure of Maritime Lawsuits and the Regulations of the Maritime Court on the Range of Reception of Cases, by the Supreme People's Court, lawsuits concerning seawater pollution due to the discharge, leakage, and disposal of harmful substances, marine production, and ship repairing are under the jurisdiction of the Maritime Court of the place where such incidents occur or where preventive measures are to be taken.

the PRC courts received 1,543 first-instance compensation cases concerning environmental pollution in 2003 (excluding neighboring right disputes involving environmental infringement), with the targeted total figure of compensation reaching CNY60 million.

The administrative cases mainly include complaints against specific actions by administrative agencies responsible for environmental supervision. Environmental administrative cases make up 1%–3% of all the administrative cases from 1996 to 2001.¹²

Reasons to Develop Environment Courts

Specialized environment courts are needed to resolve the increasing load of environmental disputes in the PRC. In fact, the number of environmental cases is expected to rise as the PRC's economy grows. If it continues to rise at the current rate of 25% per annum, the number of first-instance environmental cases will increase 2.4 times in 5 years and 7.4 times in 10 years. The situation is exacerbated by the fact that the percentage of environmental disputes that are brought to court is expected to increase from the current rate of about 3% to about 10% within 5 years. The rapid upsurge in the number of environmental lawsuits, together with a decreasing number of judges in the PRC,¹³ makes the need for an expanded specialized environment court system all the more urgent.

There are other compelling reasons for the further development of environment courts in the PRC. One is that judges require specialized knowledge for environmental cases. Although short-term training can enhance the existing judges' abilities to decide environmental cases, it is not practical for all of them to receive such training. The system of people's assessors¹⁴ can make up for the professional weaknesses of judges, but only to a certain extent. There are also some people's jurors equipped with the knowledge to render judgments in environmental cases, but their full-time engagement as adjudicators for all kinds of cases means that they cannot always participate in judging environmental cases, especially not on a long-term basis. It is thus necessary to recruit new judges who are equipped with knowledge on environmental law, or to provide existing judges with special training and then assign them to newly established environment courts. The courts could then be made up of teams of highly specialized judges prepared to meet the technical demands of adjudicating environmental cases.

Another reason for the development of environment courts is that the complicated nature of environmental cases often leads to the need for special agencies for the purpose of coordination. One aspect of this complicated nature is the tendency of environmental cases to touch on the interests of several parties in such a way that the issues involved are not only judicial but also social in nature. For instance, in environmental cases, it may be necessary to ensure that the victims receive due

¹² Government of the People's Republic of China. 1996–2001. *National Law Annual*.

¹³ In an effort to professionalize the justice system, the PRC is dismissing judges who do not have sufficient legal backgrounds. For example, the number of judges decreased from 280,000 in 1997 to 190,000 in 2006 (K.S. Wong. 2001. CHINA: Reforming China's Judiciary. 17 August. www.hrsolidarity.net/mainfile.php/2000vol10no06/555/ and footnote 14). The Judges Law, promulgated in 1995, stipulates that all new judges have to pass a standard examination.

¹⁴ In the PRC's judicial system, a judge presiding at trial is sometimes assisted by two "people's assessors" recruited in a process similar to jury selection. In cases where special knowledge is required, specialists can be invited to be assessors. They do not rule on matters of law, but can allow or deny objections. When the trial is completed, the judge and people's assessors decide on a verdict.

compensation, or to consider how to make the concerned enterprises adhere to mandated standards of waste disposal, or to find ways of avoiding the social instability that could result from unemployment when factories have to close down. These are all issues that the existing people's courts have difficulty in handling. Specialized environment courts, however, would be better equipped to achieve a balance between making impartial judgments and managing the social effects of those judgments. They would thus be a major help to the nation in tackling the problems of developing and enforcing environmental justice.

Experiences of Other Specialized Courts

The PRC has already established some specialized courts pursuant to the Organic Law of the People's Courts of 1954, among them the Military Court, Maritime Court, Railway Transport Court, Forestry Court, and Petroleum Court. More recently, the government has created economic divisions within the general people's court system, as well as intellectual property rights (IPR) courts and the Youth Court.

The experiences of the PRC with these other specialized courts suggest that such courts do improve the number of cases received. In 1984, a year after the economic divisions were established, the number of economic cases received by the people's courts increased by more than 93%. From April 1984 to February 1985, the number of economic cases was more than double the number in 1983. In the early 1990s, the establishment of specialized IPR courts in Beijing, Shanghai, and Guangdong raised the number of IPR cases received; and judicial efficiency in such cases. In 2007, newly created justice agencies in Beijing decided 2,920 of their 2,940 IPR cases, 12.9 and 13.6 times the figures in 1993. In the same year, that city's municipal higher people's courts and intermediate people's courts were able to render judgments in 214 of their 228 first-instance IPR cases.¹⁵

The PRC's experiences with specialized courts have also highlighted the problems caused by the severe shortage of specialized environment courts. The country's 10 maritime courts have handled a total of 9,691 cases in the 20 years they have been in existence. Meanwhile, the 172 independent tribunals and 140 collegial panels in charge of IPR cases have handled an average of 2,261 first-instance IPR cases nationwide each year. In contrast, specialized environment courts make up only a small fraction of the 3,500 people's courts and the more than 10,000 people's tribunals, even though the total number of compensation cases arising from environmental pollution in 2003 alone reached 1,543. That figure is equivalent to one-half the yearly average of cases filed before the maritime courts in 20 years (1984–2004), or two-thirds the average of first-instance intellectual property rights cases filed each year. These figures reveal the great disparity between the number of specialized environment courts and the number of environmental cases filed. To make matters worse, several specialized environment court agencies were abolished or transformed due to their lack of clearly defined roles and legal foundation.¹⁶

¹⁵ Bao Lei, 2008. *The Development of IPR Tribunals in Beijing in the Past Thirty Years*. Beijing.

¹⁶ For example, the Trial Court of Environmental Protection of Qiaokou District, Wuhan, Hubei Province was abolished for a "lack of legal foundations."

Problems of Existing Environment Courts

Despite the dire need, the development of environment courts in the PRC has been slow. The current state of the PRC's environment courts reveals a variety of problems, such as a lack of responsible organizations, professional expertise, and constructive policies. The major challenges confronting the development of the PRC's environment courts are summarized below.

Limited Access to Environment Courts

Because of the limited number of environment courts, most complaints still end up in the people's courts of general jurisdiction, where judges often lack training in environmental laws, refuse to accept environmental cases, or make inconsistent decisions. Even where the environment courts are accessible, public awareness of them has been low. (These insufficiencies are detailed in the discussion below.)

Insufficient Training of Most Judges in Environmental Law

In spite of the significant progress made in making the judicial system professional over the past decade, very few of the approximately 190,000 judges in the PRC¹⁷ have specialized environmental training.¹⁸ This is understandable, considering the short history of environmental protection law and of environmental law education in the PRC. Environmental law courses have entered the curriculum of some law schools only recently, and most of these schools do not make them mandatory. For the school year 2004–2005, recipients of graduate degrees in environmental law from 30 institutions of higher education, including China University of Political Science and Law (CUPL) and Wuhan University, numbered fewer than 1,000. Very few of these graduates have become judges. Only 5% of the environmental law graduates of CUPL have worked for the courts in any capacity.

Lack of Interest Among Victims of Environmental Pollution in Using the Courts to Protect their Rights

Gong (2008) shows that as much as 60%–70% of the public discusses issues concerning environmental protection. However, less than 20% is interested in protecting environmental rights by means of the courts.¹⁹ The Institute of Environmental Resources Law of CUPL carried out a survey in six provinces, districts, and cities; and found that most victims would prefer to involve a third party in solving environmental problems, such as the media, administrative agencies, or higher authorities. The total number of victims who would either choose to put up with the situation or find non-litigious means, such as reaching an agreement in private, is more or less equal to those who would resort to lawsuits.²⁰

¹⁷ Wong, CHINA: Reforming China's Judiciary (footnote 13).

¹⁸ When the people's courts were reconstituted in the 1980s, there was a serious shortage of judges. Consequently, many local cadres and military people were recruited to act as judges. Most of them had not received any legal training, let alone specialized training in environmental law. In 1995, only about 5% of the judges in the PRC were university graduates (Wong, CHINA: Reforming China's Judiciary, footnote 13).

¹⁹ W.J. Gong. 2008. The Gender Difference Analysis of Environmental Friendship Behavior of Urban Inhabitants. *Journal of China University of Geosciences (Philosophy and Social Science)*, p.11.

²⁰ Results are provided by China University of Political Science and Law (CUPL).

Refusal of Most Courts to Accept Environmental Cases

A deeper reason for the failure of most environmental disputes to evolve into environmental cases is the courts' frequent refusal to take on such cases. One reason for this refusal is the possibility that environmental cases will be influenced by outside forces, particularly class suits with a potentially serious impact on major enterprises. Administrative intercession is therefore preferred over litigation. Quite a few local courts even issue internal documents banning the reception of environmental cases in the form of class action lawsuits. Another reason is the courts' misinterpretation of the existing laws. For instance, many judges misinterpret Article 41 of the Environmental Protection Law and Article 111 of the Civil Procedure Law,²¹ mistakenly believing that cases arising from civil disputes can only be instituted after administrative agencies have already tried to handle them. Another reason is the difficulty in gathering the facts regarding the causes of damage. This is especially true in civil disputes involving compensation for environmental pollution, because there are usually many people involved. Thus, judges who are not equipped to handle such cases generally refuse to deal with them.

Inconsistencies in Environmental Case Judgments

A serious and unavoidable problem is the lack of consistency in judgments in environmental cases. This lack of consistency tends to occur between juridical and administrative agencies. An example is a compensation case concerning the death of tadpoles due to water pollution in Pinghu, Zhejiang Province. While the administrative department of environmental protection identified waste discharge as the cause and passed an order of punishment, the local people's courts on three levels rejected the victims' arguments for lack of sufficient evidence. It was only 11 years later that a judgment was finally made in favor of the victims by the Supreme People's Court, after one victim appealed for retrial twice and a representative in the National People's Congress reported the case to the Congress four times. Moreover, cases of the same nature and with similar facts can end up with entirely different judgments. Even a single case can elicit varying decisions. Due to their divergent understandings of cases and legal articles, judges from different tribunals that separately try the criminal, civil, and administrative aspects of an environmental case sometimes render inconsistent judgments, despite the fact that they are dealing with the same case, arising from the very same act that polluted the environment.

²¹ The Environmental Protection Law, Article 41: "A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management. If a party refuses to accept the decision on the settlement, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court." The Civil Procedure Law, Article 111: "...In case of disputes which, according to the law, shall be dealt with by other organs, the people's court shall advise the plaintiff to apply to the relevant organ for settlement."

Difficulties in Enforcing Court Orders in Environmental Cases

One major reason for the difficulty in enforcing court orders in environmental cases is the failure or refusal of the losing parties in lawsuits, and of local governments, to recognize the significance of environmental protection. This tendency obstructs the realization of environmental justice to a large extent, especially in civil cases. Because of the frequent lack of cooperation and proper coordination, courts are sometimes obliged to implement orders by force. In cases involving discharge of waste by enterprises, however, implementation by force is bound to generate conflict due to sensitive economic issues such as taxation and unemployment.

An even greater problem is regional protectionism. One example is the case of the 97 fish farmers in Jiangsu Province who suffered significant economic losses caused by the illegal discharge of wastewater by an enterprise located near the upper reaches of a river in Shandong Province. In April 2004, the Supreme People's Court of Jiangsu Province rendered a decision directing the defendant enterprise to compensate the victims by paying more than CNY5.6 million. Because of regional protectionism, however, it was 2 years before the victims received CNY4 million, and that was after long and difficult negotiations between the Supreme People's Court of Jiangsu Province and the provincial governments of Jiangsu and Shandong.

Weak Regulatory Support for Environmental Justice

Another significant challenge to environmental justice is the lack of regulatory support from legislation. The Environmental Protection Law (Trial) of 1979 made it clear that those who seriously pollute the environment would be criminally liable. However, articles relating to environmental criminal offenses were not completed until 1997, when the Criminal Law of the PRC was amended. In environmental civil lawsuits, a series of principles and policies, including the burden of proof and the presentation of environmental monitoring statistics, were not enacted until 2004, when the Law of the People's Republic of China on Prevention of Environmental Pollution Caused by Solid Waste was amended. Out of the 3,400 judicial interpretations that the Supreme People's Court has promulgated so far, only 18, or 0.5%, pertain to environmental cases. Furthermore, the interpretations that did concern the environment were mainly associated with environmental criminal cases, whereas the practice of environmental justice is more frequently connected to civil and administrative cases.

Experiences of Other Countries in Strengthening Environment Courts

Long-established environment court systems around the world can provide vital lessons to countries that are exploring their own domestic systems, including the PRC. Table 2 summarizes several countries' specialized environment courts or tribunals, some of which are reviewed in this section.

Improving Court Affordability

Access to justice means that court practice and procedure promote, rather than impede, the use of the courts by all. Procedural law dealing with such issues as standing to sue, interlocutory injunctions, security for costs, laches (a form of estoppel in which a party is barred from claiming due to delay), and costs of proceedings can either impede or facilitate public access to justice.²² Another measure of access to justice is the presence or absence of rules governing a court's discretion regarding general costs, security costs, and undertaking for damages in public interest cases.²³ Ensuring the affordability of court litigation is an important aspect of facilitating access to justice.

Although lower court fees allow access to those with modest means, the courts need financial resources to maintain a high standard of service. A balance must therefore be struck between these two objectives. In the Land and Environment Court (LEC) of New South Wales, Australia, efforts to ensure a balance between affordability and sufficient court funding are made through a graduation of court fees, with due consideration of the nature of applicants and their ability to pay, the nature of the proceedings, the amount of compensation claimed, and the court fees for equivalent proceedings in other courts. Discretion, however, is retained by the registrar of the LEC to waive or vary court fees in cases of hardship or in the interests of justice.²⁴

²² B.J. Preston. 1992. Judicial Review in Environmental Cases. *Asia Pacific Law Review*. 1, pp. 55–61; B.J. Preston. 1993. *Australian Bar Review*. 10, pp. 165–174; P.L. Stein. 1995. A Specialist Environmental Court: An Australian Experience. In D. Robinson and J. Dunkley, eds. *Public Interest Perspectives in Environmental Law*. London: Wiley Chancery, pp. 260–262; P.L. Stein. 1996. The Role of the Land and Environment Court in the Emergence of Public Interest Law. *Environmental and Planning Law Journal*. Vol. 13, pp. 179–183; P.L. Stein. 1999. New Directions in the Prevention and Resolution of Environmental Disputes – Specialist Environmental Courts. Paper presented to the South-East Asian Regional Symposium on the Judiciary and The Law of Sustainable Development. Manila. 6 March, paras. 28–52; and B.J. Preston. 2006. The Role of Public Interest Environmental Litigation. *Environmental and Planning Law Journal*. Vol. 23, p. 337. All these sources are cited in Preston, Operating an Environment Court, p. 19 (footnote 1).

²³ Government of New South Wales, Australia. 2007. *Land and Environment Court Rules*, Part 4, 4.2. Cited in Preston, Operating an Environment Court, p. 19 (footnote 1).

²⁴ Preston, Operating an Environment Court, pp. 16–17 (footnote 1).

Table 2: Specialized Environment Courts and Tribunals in Selected Countries

Country	Specialized Environment Court	Year of Establishment
Denmark	Environmental Appeal Board	1974
Ireland	An Bord Pleanála (Planning Appeal Board)	1977
US (Indianapolis, Indiana)	Indianapolis Environmental Court	1978
Australia (New South Wales)	Land and Environment Court	1980
Australia (Queensland)	Planning and Environment Court	1990
US (Vermont)	Vermont Environmental Court	1990
New Zealand	Environment Court of New Zealand	1991
US (Tennessee)	Shelby County Environmental Court	1991
US (Ohio)	Franklin County Municipal Court Environmental Division	1992
Australia (South Australia)	Environment, Resources and Development Court	1993
US (Cobb County, Georgia)	Environmental Court within the Cobb County Magistrate Court	1995
US (Mecklenburg County, North Carolina)	Mecklenburg County Environmental Court	Mid-1990s
Guyana	Environment Appeals Tribunal	1996
India	Special Environment Courts	1997
Pakistan	Environmental Tribunals	1997
Sudan	Environmental Courts	1998, 2000
Bangladesh	Environment Courts and Environment Appeal Court	2000
Trinidad and Tobago	Environmental Commission	2000
Thailand	The Environmental Division of the Supreme Court of Thailand	2005
US (Wise County, Virginia)	Environmental Court within the Wise County General District Court	2006
Sweden	Regional Environmental Courts	
Kenya	Land and Environmental Division of the High Court and Magistrate's Court	2007
Philippines	First and Second Level Courts designated as environmental courts	2008

US = United States.

Source: Authors.

Considering that, apart from court fees, legal fees and experts' fees are also significant costs of litigation, an environment court should improve its practice and procedure with the intention of reducing these costs. This is the case with the LEC,²⁵ whose efforts include the requirement that experts from related fields meet prior to the trial, preferably face-to-face and usually in the absence of lawyers. This procedure allows concurrent evidence to be given to all, and ensures that the issues are boiled down to the essentials, making trials run more efficiently and thereby saving time, money, and institutional resources.²⁶ Also, since April 2001, litigants and their representatives have been able to attend court hearings over the internet by using new e-Callover facilities established by the court, a system that is cost-efficient for litigants, their representatives, and the court.²⁷

Indeed, sometimes rules of evidence increase the costs of court litigation, thus preventing people from accessing the environment courts. In the village of Mae Tao, Thailand, for example, people have been known to get sick because of cadmium in the local water and rice, but they are unable to resort to the justice system because the burden of proof is on the damaged party, not on the polluters. The villagers would have to prove that cadmium is the cause of their sickness, and it is quite difficult and costly to take water and rice to a laboratory for testing (footnote 6).

Encouraging Alternative Dispute Resolution

In 2005, the Vermont Environmental Court, in the United States, implemented a court-ordered mediation program, which has become an important and effective form of dispute resolution. Parties can resolve their disputes very early in the proceedings in a manner more expeditious and less expensive than protracted litigation, thus conserving judicial resources. In 2007, 20% of the court's caseload was resolved through this mediation program. Approximately one-third of the active cases were referred for mediation, and roughly two-thirds of these cases were resolved. Since mediation results in the limitation of issues, cases scheduled for trial, after mediation has proven to be inappropriate or unsuccessful, will at least have been re-framed in a more focused manner, and can thus be more efficiently completed in court. In addition, mediation can lead to a more civil relationship between opposing parties, because their interaction during the mediation process often generates a better understanding of each other's needs and goals.²⁸

In New Zealand, Section 268 of the Resource Management Act of 1991 empowers the environment court to arrange mediation and other forms of alternative dispute resolution (ADR) by authorizing its members (judges or commissioners) or other persons to conduct those procedures at no cost to the parties. The court conducted 449 mediation events in 2005–2006 and 468 mediation events in

²⁵ Preston, *Operating an Environment Court*, pp. 16–17 (footnote 1).

²⁶ G. Edmond. 2009. Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure. *Law and Contemporary Problems*. 72 (1), pp. 159–189. www.law.duke.edu/journals/lcp/

²⁷ M. Pearlman and M. Greenwood. 2002. Gowns, Phones and Cyberspace – Improving Court Services through Technology. Presentation at the 3rd Australia Institute of Judicial Administration (AIJA) Technology for Justice Conference. Sydney, Australia. 20–22 October. www.aija.org.au/tech3/program/presentations/AIJAspee.doc

²⁸ L. Suskin. 2007. *Report to the General Assembly on the Performance of the Environmental Court*, Montpelier, Vermont: State of Vermont Office of the Court Administrator, p. 10. <http://justusnet.synecology.com/pub/envcrt/EnvCrt rpt2007.pdf>

2006–2007. During 2006–2007, 135 events resulted in agreements reached in full, 131 only reached agreements in part, and 96 did not reach any sort of agreement.²⁹

In Japan, during court proceedings for environmental disputes, which are often filed as tort cases involving claims to compensation for damages, the court may encourage the parties to settle their case through conciliation, a procedure for resolving disputes through compromises by both parties aimed at a reasonable settlement. This process may be conducted by a judge, or a part-time judicial officer (an appointed lawyer), or by a conciliation committee (through the Environmental Dispute Coordination Commission or Prefectural Pollution Examination Commission, pursuant to the Environmental Disputes Settlement Law) composed of a judge and conciliation commissioners (appointed laypeople). The terms of a successful conciliation have the effect of a final and binding judgment. If an attempt at conciliation fails, the court or the judicial officer may adjudicate the case by a ruling to which the parties may make an objection within 2 weeks. If an objection is made, the judgment loses its effect. Otherwise, the ruling becomes a final and binding judgment.³⁰

In Thailand, ADR is an essential part of the court system. The first step in the process of resolving problems is to go through ADR. In this manner, the government provides support to nongovernment organizations (NGOs) and environmental volunteers in their efforts to strengthen the role of the ADR system in resolving environmental disputes.³¹

Training “Green” Judges

In addition to the general importance of judicial education,³² the training of “green” judges has a great significance for the development of environment courts. As environmental law is a comparatively new branch of law, it is still in the process of being molded. The judiciary can play a vital role in this process, as opposed to the legislature, which has no time or resources to deal with the fine nuances that judges encounter in their various cases. Consequently, it is often judicial decision making that gives rise to new concepts and procedures. So the judiciary must have an understanding of environmental problems, as well as a creative vision of how the law can deal with them.³³

Particular problems that may need to be solved include dealing with scientific issues; managing uncertainty over whether a harmful event will occur; effecting sustainability; confronting diverse issues and settings, since disputes could have wide-ranging national and international significance; finding a balance between individual entitlements and more general societal concerns; and learning and

²⁹ H. Johnson. 2009. *The Environment Court of New Zealand, Report of the Registrar 2007–2008*. Wellington, New Zealand: New Zealand Ministry of Justice, pp. 9–10. www.courts.govt.nz/environment/reports/EC_Registrar_Report_2008.pdf

³⁰ Asian Development Bank (ADB). 2009. PowerPoint Presentations during the Green Bag Seminar on Environment Dispute Resolution Mechanism and Experiences in Japan, given at ADB headquarters. Manila. 6 March.

³¹ ADB. 2009. *Environmental Dispute Coordination Commission Report on Seminar and Meetings on Environmental Dispute Resolution Mechanism*. Manila.

³² Republic of Kenya. 2009. Judicial Education and Training Workshop. News Release. 18 June. www.judiciary.go.ke/news_info/view_article.php?id=2607688

³³ D. Kelton and A. Kiss. 2005. *UNEP Judicial Handbook on Environmental Law*. Introduction by C. Weeramantry. Nairobi: United Nations Environment Programme. p. xxi. www.unep.org/law/PDF/JUDICIAL_HBOOK_ENV_LAW.pdf

applying economic principles. To cope with these problems, judges will have to adapt the ordinary techniques of legal interpretation used in their own courts to the special context of environmental law.³⁴

Producing quality “green” judges requires systematic training programs, good environmental bench books, and databases on environmental laws and cases (footnote 8). These are crucial for reducing the inconsistent verdicts seen in court systems. In the US, for example, there is no environment court in Dallas County, or in any county in the North Central Texas region, that can foster consistent verdicts by judges familiar with the state’s environmental laws. Environmental cases are assigned to criminal courts and are heard as routine criminal cases. Typically, a judge hearing an environmental case is not familiar with the state’s environmental laws, and must learn them during the trial. This is a situation that can contribute to inconsistent verdicts in the court system.³⁵

The Consultative Council of European Judges, in its Opinion No. 4 rendered in 2004, emphasizes that the training of judges is both an obligation and a right, as it is “essential for the objective, impartial and competent performance of judicial functions, and for the protection of judges from inappropriate influences.” According to the opinion, “the trust that citizens place in the judicial system will be strengthened if judges have a depth and diversity of knowledge extending beyond the technical field of law to areas of important social concern.”³⁶

In New South Wales, Australia, the LEC encourages the continued training of court personnel to expand their expertise. Apart from a 2-day annual conference, judges and commissioners attend specialist training programs. And they are encouraged to attend other conferences, which are summarized each year in the court’s *Annual Review*. The registry staff is also required to attend regular training programs. For example, in 2007 there was a 3-day course on conciliation for all commissioners and registrars.³⁷

In East Asia, international platforms established to support the implementation of environmental laws and regulations, such as the Asian Environmental Compliance and Enforcement Network, have been involved in training judges on environmental adjudication and environmental damage assessment, and have supported the establishment of green courts in the Philippines and in Thailand.³⁸ Groups of senior judges from Thailand took study visits to learn about environmental justice processes in Australia, Canada, Europe, India, and the US. The visits resulted in a few research projects. Moreover, although intensive training programs in Japan are rare, around 45 judges attended a 2-week session at Kyushu University (footnote 8).

Improving Court Administrative Efficiency

A common criticism of some environment courts is that decisions take too long to be made. Because of the large caseloads, a significant amount of the judges’ time

³⁴ Ibid, p. 22.

³⁵ North Central Texas Council of Governments. 2009. *Environmental Courts*. www.nctcog.org/cs/cj/pdf/plans/dallas/le6.pdf

³⁶ Consultative Council of European Judges. 2004. Opinion No. 4. Quoted in Republic of Kenya. Judicial Education and Training Workshop.

³⁷ Preston, *Operating an Environment Court*, pp. 6–7 (footnote 1).

³⁸ The Asian Environmental Compliance and Enforcement Network (AECEN) is an organization that has 10 national (the PRC, India, Indonesia, Japan, Nepal, the Philippines, Singapore, Sri Lanka, Thailand, and Viet Nam) and two subnational members. It was launched in Manila, in August 2005, with ADB’s support under the Technical Assistance for Regional Environmental Compliance and Enforcement Network.

is taken up by the writing of decisions.³⁹ It must be emphasized, however, that the amount of time it takes to process cases is also affected by other factors, such as delays by parties, unavailability of witnesses, other litigation taking precedence, and appeals against interim rulings.⁴⁰

As far as court efficiency is concerned, the experiences of other countries suggest some effective improvements. One is to set clear deadlines by which decisions must be issued. The Vermont Environmental Court, for example, has set a goal of 30–90 days after trial or submission of motions for most cases.⁴¹ The LEC of New South Wales adopted its own standards in 1996: depending on the jurisdiction, 95% of cases should be disposed of within either 6 or 8 months.⁴²

To meet the goal of time-bound disposition of cases, an informal pleadings system and a case categorizing and tracking system may be helpful. In Queensland, Australia, the Planning and Environment Court developed a relatively informal pleadings system that has resulted in a quick turnaround of the court's business. The system enables the clear identification of legal and factual issues well before the hearing, and confines the parties to those issues.⁴³

The Environment Court of New Zealand maintains a case tracking system that, on filing, allocates matters to either a standard management track (for cases that are not complex, and for which the court issues directions that are standard in nature) or a complex management track (for more involved cases, which are managed on an individual program set by the managing judge). Cases in which the parties agree to defer management for a period may be placed on an on-hold track, subject to the court's agreement. Upon failure of settlement or withdrawal of the proceedings, case management is resumed on either the standard or complex tracks. Also, information technology, which has become a fundamental component of the court's system, has been a key to improving the court's efficiency. Integrated e-filing and case management systems offer the possibility of speeding up registry processes, to the benefit of court users, the judiciary, and registry staff.⁴⁴

In order to facilitate the quicker disposition of cases, additional personnel is critical. At the Vermont Environmental Court, the new position of the environmental case manager has freed up a significant amount of judicial time, while additional office staff made possible the tracking and monitoring of cases. A second judge was also appointed, allowing more "writing" time for all the judges. Because of the additional personnel, the backlog of cases not decided within 6 months was completely eliminated, and docket management has significantly improved. In spite of an increased jurisdiction and caseload, there was a significant reduction of pending cases due to the faster disposition of the court's caseload. The increase of resolved cases (from 252 in 2005 to 326 in 2006) resulted in there being only 143 pending active cases at the end of 2006, a decrease of 12% from the 163 pending cases at the end of 2005. This is despite the fact that 301 new cases were filed with the court in 2006.⁴⁵

³⁹ Suskin, *Report to the General Assembly*, p. 16 (footnote 28).

⁴⁰ Preston, *Operating an Environment Court*, p. 22 (footnote 1).

⁴¹ Suskin, *Report to the General Assembly*, p. 16 (footnote 28).

⁴² Preston, *Operating an Environment Court*, p. 21 (footnote 1).

⁴³ The Scottish Government, *Environmental Courts – Experience in Other Countries*. 2005. www.scotland.gov.uk/Resource/Doc/921/0017251.doc

⁴⁴ Johnson, *Report of the Registrar*, pp. 8, 11 (footnote 29).

⁴⁵ Suskin, *Report to the General Assembly*, pp. 11–12 (footnote 28).

Promoting Public Awareness and Participation

The promotion of public awareness, confidence, and empowerment when it comes to environmental justice depends on the accountability and transparency of the courts and tribunals. Such qualities are achieved through the principle of open justice, which requires that justice not only be done but be seen to be done, ensuring that the administration of justice will be subject to public scrutiny.⁴⁶ To this end, the principle of open justice requires that (i) the conduct of judicial proceedings be in an open court, accessible to the public and the press; (ii) the reasons for court decisions be published; (iii) the judicial officer be unbiased; (iv) procedural fairness be accorded in the hearing and in the determination of matters; (v) abuses of court process be prevented; (vi) the hearing or trial be fair; and (vii) the reasons for criminal sentences be understood, not just by the victims of the crimes but by the community in general.⁴⁷

To the foregoing requirements may be added (i) a mechanism for litigants or other members of the public to make complaints against judicial officers to a dedicated independent body, such as the Judicial Commission of New South Wales, which has the power to uphold complaints and recommend disciplinary actions, including the power to recommend to Parliament the removal of erring judicial officers;⁴⁸ and (ii) informal mechanisms of accountability, such as public comment and criticism, which are corollary to the obligation of judges to conduct their business in public and to give reasons for their decisions.⁴⁹

The LEC of New South Wales is known to uphold the principles of open justice, accountability, and transparency in all its functions. All of its decisions are published and made accessible online free of charge, while more significant decisions are reported in the authorized law reports of the local governments, in *Local Government and Environmental Reports of Australia*, and occasionally in the *New South Wales Law Reports*. The court's reasons for its decisions are provided in writing or, if given orally, they are recorded and reproduced in writing. The performance of the court is reported on publicly in an annual review, and a court users group holds quarterly meetings to discuss the court's performance and obtain feedback. Reasonable and responsible press coverage and critique of the court's decisions are welcomed. The LEC also maintains a sentencing database to allow public information and understanding of the penalties for environmental offenses. Accountability is also ensured by the rights to appeal and review.⁵⁰

Several notable outreach efforts have helped to make the Vermont Environmental Court "user friendly." Regular communication with the public, the state and local bar associations, representatives of state agencies, community organizations, and other court users is considered one of the important responsibilities of a judge, along with the community outreach accomplished via the conduct of training sessions throughout the state, particularly on environment court rules. Pursuant to these responsibilities, the court has adopted a policy of notifying the press

⁴⁶ *Home Office v. Harman* [1982] 2 WLR 338 at 357; 1 All ER 532 at 547. Cited in Preston, *Operating an Environment Court*, p. 23 (footnote 1).

⁴⁷ J.J. Spigelman. 2000. Seen to Be Done: The Principle of Open Justice – Part I. *Australian Law Journal*. Vol. 74, pp. 294–295. Cited in Preston, *Operating an Environment Court*, p. 23 (footnote 1).

⁴⁸ Section 5 of the Judicial Officers Act of 1986, which established the Judicial Commission in New South Wales. Cited in Preston, *Operating an Environment Court*, p. 23 (footnote 1).

⁴⁹ M. Gleeson. 1995. Judicial Accountability. *The Judicial Review*. Vol. 2, pp. 123–124. Cited in Preston, *Operating an Environment Court*, p. 23 (footnote 1).

⁵⁰ Preston, *Operating an Environment Court*, pp. 24–25 (footnote 1).

whenever major new initiatives are made, such as the placing of the Environment Court Mediator List on the Vermont Judiciary website and the weekly posting of the court's decisions on the website.⁵¹

In New South Wales, Australia, the Court Registry (composed of four sections: client services, listings, information and research, and commissioner support) provides procedural assistance to the public and administrative assistance to the eCourt system. It also supports the administration of the LEC's website and makes a database of case judgments available to the public.⁵²

In Spain, significant possibilities for public participation, and a lack of legal restrictions, make possible the involvement of third parties with no "direct interest," such as NGOs and green groups, in any public inquiry on environmental policies or problems.⁵³

Table 3 shows the internet search results for "environment court" relating to several countries over the past 10 years. The figures imply that, compared with the other countries, the PRC does not have much media coverage of environment courts. However, the figures also reflect the fact that media coverage has been increasing in the PRC in recent years, especially in 2008.

Table 3: Search Results of "Environment Court" for Selected Countries

Year	Australia	New Zealand	PRC	US
1998	234	1,094	0	10
1999	235	867	0	8
2000	288	844	0	13
2001	566	1,052	0	24
2002	1,109	1,294	1	38
2003	1,247	1,016	4	23
2004	1,284	1,512	10	14
2005	1,213	1,630	0	30
2006	1,130	1,750	2	39
2007	1,204	1,664	8	31
2008	1,275	1,582	91	27

PRC = People's Republic of China, US = United States.

Source: Dow Jones Factiva. <http://factiva.com/factiva/factiva.asp?node=menuElem1492>; and WiseNews. www.wisens.com/corpsite/global/en/products/wisens.html

⁵¹ Suskin, *Report to the General Assembly*, pp. 13–14 (footnote 28).

⁵² Preston, *Operating an Environment Court*, p. 6 (footnote 1).

⁵³ The Scottish Government, *Environmental Courts—Experience in Other Countries* (footnote 43).

Monitoring and Evaluating Court Performance

An important, but often overlooked, aspect of the sustainable development of environment courts is the monitoring and evaluation of court performance. It is through an accurate assessment of its performance that an environment court will become aware of its strengths and weaknesses, and thus be well guided in its efforts to improve. The LEC of New South Wales, Australia, for one, has worked out a suite of performance indicators that are helpful in determining whether it is realizing the goal of facilitating the just, quick, and cheap resolution of the real issues in all proceedings.⁵⁴

The efficiency of a court can be measured by the backlog indicator,⁵⁵ time standards for delivery of judgments, clearance rate,⁵⁶ and attendance indicator.⁵⁷ The backlog, clearance, and attendance indicators measure how quickly the real issues in proceedings are being resolved. Since delays increase costs, these three indicators, together with the cost per finalization, can also measure how cheaply court proceedings are resolving real issues.

The backlog indicator and clearance rate both measure the pending caseload of a court and how quickly the court is processing that caseload. For example, a clearance rate of greater than 100% indicates that, during the reported period, the court disposed of more cases than were lodged, and that the pending caseload decreased as a result. In 2007, the LEC of New South Wales, Australia, achieved a clearance rate of greater than 100% for both merits-review cases and judicial cases.⁵⁸

Fewer attendances suggest a more efficient process, but intensive case management can also result in an increased number of attendances, which in turn can have countervailing benefits, including (i) bettering the prospects of settlement, thereby reducing the parties' costs, the number of cases queuing up, and the flow of work to appellate courts; and (ii) limiting the issues to be considered, thus shortening hearing time and reducing the costs and queuing time for other cases.⁵⁹

Although there are some well-known principles that a civil justice system should follow to ensure access to justice, the performance of a court with respect to facilitating the "just" resolution of real issues is difficult to measure. In the same vein, observers have expressed serious reservations about the possibility of measuring

⁵⁴ Preston, *Operating and Environment Court*, p. 14 (footnote 1).

⁵⁵ The backlog indicator measures case processing efficiency by comparing the ages (from the date of filing) of the court's pending cases to the court's standards of timeliness.

⁵⁶ The clearance rate is an indicator of efficiency derived by dividing the number of resolved cases in a reporting period by the number of complaints filed in the same period, and then multiplying by 100 to convert the figure to a percentage. It shows whether the volume of disposed cases matches that of newly lodged complaints in the same reporting period. It also indicates whether the court's pending caseload has increased or decreased over that period.

⁵⁷ The attendance indicator is another efficiency measure. In this case, court attendances act as a proxy for input costs, under the assumption that a greater number in attendances translate to greater costs, both to the parties and to public resources. The number of attendances is the number of times parties or their representatives are required to be in court to be heard by a judicial officer or mediator, including appointments that are adjourned or rescheduled. The attendance indicator is the median number of attendances required to reach finalization for all cases resolved during the year, no matter when the attendance occurred.

⁵⁸ Land and Environment Court of New South Wales. 2007. *Annual Review*, p. 38. Cited in Preston, *Operating an Environment Court*, p. 23 (footnote 1).

⁵⁹ Land and Environment Court of New South Wales. 2007. *Annual Review*, p. 39. Cited in Preston, *Operating an Environment Court*, p. 24 (footnote 1).

the quality of judicial decisions.⁶⁰ Even the number of appeals of a court's decisions, along with their success rate, is not considered a good quality indicator.⁶¹ The chief justice of Canada has suggested that quality is more likely to result if the court and its judges and officers retain certain virtues, such as independence, integrity, and impartiality, among others.⁶²

⁶⁰ H. Woolf. 1996. *Access to Justice: Final Report* (HMSO). p. 2; J.J. Spigelman. 2001. The "New Public Management" and the Courts. *Australian Law Journal*. 75, p. 753; and J.J. Spigelman. 2006. *Measuring Court Performance*. Address to the Annual Conference of the Australian Institute of Judicial Administration (AIJA). Adelaide. 16 September. All sources cited in Preston, *Operating an Environment Court*, p. 15 (footnote 1).

⁶¹ J.J. Spigelman. 2006. *Measuring Court Performance*. Address to the AIJA Annual Conference. Adelaide. 16 September, p. 9. Cited in Preston, *Operating an Environment Court*, p. 15 (footnote 1).

⁶² B. McLachlin. 2006. *The 21st Century Courts: Old Challenges and New*. 14th AIJA Oration in Judicial Administration. Melbourne. 28 April, p. 14 (summarizing discussion, pp. 6–13). Cited in Preston, *Operating an Environment Court*, p. 15 (footnote 1).

The Way Forward: Policy Suggestions

Six Possible Modes of Environment Court Development in the People's Republic of China

Based upon the preceding discussion, this paper suggests six possible modes of strengthening the environment court system in the PRC. The advantages and disadvantages of each mode are analyzed below, followed by the authors' recommendations.

The first mode is to establish collegial panels, each having an odd number of members and observing the rule of the majority. According to Article 9 of the Organic Law of the People's Courts, the local people's courts and specialized people's courts can assign several judges to form regular collegial panels to handle trials involving environmental cases. The advantage of this mode is the low cost that would be incurred. A disadvantage is the temporary nature of these panels, which would make it difficult to develop the judges' expertise and achieve consistency in judgment criteria. It would also be very difficult to train enough judges to fill these collegial panels, which would be formed by courts at all levels.

The second mode is to hold environment court trials within the basic people's court system. According to Article 19 of the Organic Law of the People's Courts, specialized environmental protection courts may be established as part of the basic people's courts. The advantages of this mode are the regulatory foundation and judicial resources offered by the basic people's court system, both of which would ease the swift and direct handling of environmental cases. The disadvantage is the lack of confidence some people have in the environmental expertise of most judges in these courts. This lack of expertise could compromise the objectives of having specialized environment courts in the first place.

The third mode is to set up an environmental protection division within the existing court system, especially among the intermediate, higher, and supreme courts. According to Articles 23, 26, and 30 of the Organic Law of the People's Courts, environmental protection divisions may be established within the intermediate people's courts, higher people's courts, and Supreme People's Court to deal with environmental criminal, civil, and administrative cases. The advantages of this mode, which has won wide approval from researchers, are its clearly defined regulatory foundation and the technical expertise of the judges in handling environmental cases. The disadvantage, however, would be the added burden for parties in rural areas involved in minor environmental cases. The lack of specialized trial facilities for environmental cases within the basic people's courts in rural areas would oblige parties to go to the intermediate people's courts to initiate litigation for minor environmental cases, and then proceed to the higher people's courts in the second instance.

The fourth mode is to extend the authority of existing specialized courts to include environmental disputes. The jurisdictions and functions of existing special people's courts in the PRC, such as the Maritime Court and the Forestry Court, can

be widened so that they could also function as specialized environment courts. This mode would draw upon existing judicial resources, but regional restrictions may limit jurisdiction. Moreover, the limited practice of those courts that do not deal with criminal or administrative cases, such as the Maritime Court, may render them incapable of meeting the demands of specialized environment courts.

The fifth mode is to establish a central environment court with nationwide jurisdiction, equivalent to intermediate or higher courts in the general judicial system. According to Articles 2 and 28 of the Organic Law of the People's Court, the Standing Committee of the National People's Congress shall stipulate the organization, responsibilities, and rights of an environment court, which would be established as a specialized agency similar to the Maritime Court. This mode could bring the role of specialized environment courts into full play and set the direction for their future evolution. Nevertheless, there is no clear legal foundation for this mode, and there is still a long way to go before a nationwide environment court can be established.

The sixth mode is to create a circuit court for environmental protection. A people's tribunal of environmental protection on the same footing as the basic people's courts could be established by the intermediate people's courts to receive and try environmental protection cases. This mode would fulfill the objectives of offering a specialized court for environmental cases and providing convenience to the parties involved.

It is the authors' view that the most feasible approach would be a blending of the third and sixth modes. That would mean the combined creation of (i) environmental protection divisions within the intermediate people's courts, higher people's courts, and the Supreme People's Court for the sole purpose of handling criminal, civil, and administrative environmental cases within their jurisdictions; and (ii) dedicated circuit courts to deal with first-instance hearings of minor environmental cases. Environmental protection divisions in selected provinces and municipalities should handle the registration of environmental lawsuits, as well as the enforcement of nonlitigation (administrative) environmental decisions.

A Gradual Approach to Expanding the Environment Court System of the People's Republic of China

The authors recommend that the environment court system of the PRC expand gradually, through three stages: (i) pilot testing in local courts, (ii) nationwide dissemination, and (iii) institutionalization through legislation.

In the first step, different modes of environment courts should be pilot tested locally. The participating local people's courts should be allowed to choose from any of the enumerated modes, depending on local conditions. The preferred mode of these environment courts should then be formally established with official documents.

Following the lessons learned from the first step, the Supreme People's Court should take the second step: regulating the environment courts through judicial interpretations and special litigation regulations for nationwide replication. Government departments of environmental protection, procuratorates, and the courts should cooperate in establishing regulations concerning litigation, trials, and supervision.

The third step should focus on the completion of the regulatory and legislative foundation for the environment court system. The Standing Committee of the National People's Congress may publicize official documents or stipulate special

procedures for environmental lawsuits in order to further regulate the organization, responsibilities, and powers of the environment courts. The National People's Congress should also amend the Civil Procedure Law of the PRC to establish and perfect provisions pertaining to special environmental lawsuits, such as those involving public interests.

Key Actions in Strengthening the Environment Courts of the People's Republic of China

The experiences of other countries, such as those discussed above, can provide models for policies to be followed once a comprehensive environment court system is in place. For instance, the PRC should work to improve access to justice and court affordability to avoid a situation similar to that reported in a village in Thailand (Mae Tao) which contends with the difficulty of accessing Thailand's environmental justice system (footnote 6).

The PRC should then encourage alternative dispute resolution to save on costs, time, and resources; and establish or reinforce supplementary units such as public defenders, legal aid, and environmental forensics offices (footnote 8).

There should also be measures to improve court administrative efficiency, such as additional personnel, system streamlining, and other capacity building efforts. Another essential policy would be the promotion of public awareness and participation through the practice of open justice and court accountability.

Furthermore, there is a need to promote competent decision making by transforming judges into "green" judges through further training to master environmental laws, understand the philosophy of environmentalism, and develop sensitivity regarding issues of environmental justice. To achieve such a transformation, Sukharomna (footnote 8) identified the following requisites in the case of Thailand: (i) increased budget and investment, (ii) systematic training programs, (iii) a good environmental bench book, (iv) a database on environmental laws and cases, and (v) changes in the routine rotation system of judges (footnote 8).

Apart from this transformation, there is also a need to enact "green" legislation, as further suggested by Sukharomna (footnote 8) in the case of Thailand, with emphasis on (i) wider discretion for judges to order compensation for both "traditional damage" (damage to persons and goods) and "environmental damage," (ii) the introduction of a creative sentencing and restorative process with respect to criminal sanctions and probation, and (iii) improvements in the court rules of evidence.

Finally, there should be regular court performance assessments to monitor and evaluate the effectiveness of specialized environment courts.

Conclusions

In the People's Republic of China (PRC), the past 30 years have witnessed the establishment of a legal system for environmental protection with an array of regulations and measures. So far, the PRC has promulgated more than 20 laws and regulations, including the Environmental Protection Law of the People's Republic of China; over 30 administrative regulations, such as the Regulations on Nature Reserves; and over 1,000 criteria for environmental protection.

The PRC has also given priority to environmental supervision in recent years. The national, provincial, and municipal governments are all required to fulfill their environmental supervision responsibilities. Of the 27 constituent sections of the State Council, 14 ministries, commissions, and administrative offices are involved in environmental protection.⁶³ From 1995 to 2006, the staff of agencies within the environmental protection system grew by 88%, and the organizational structure became more intricate.

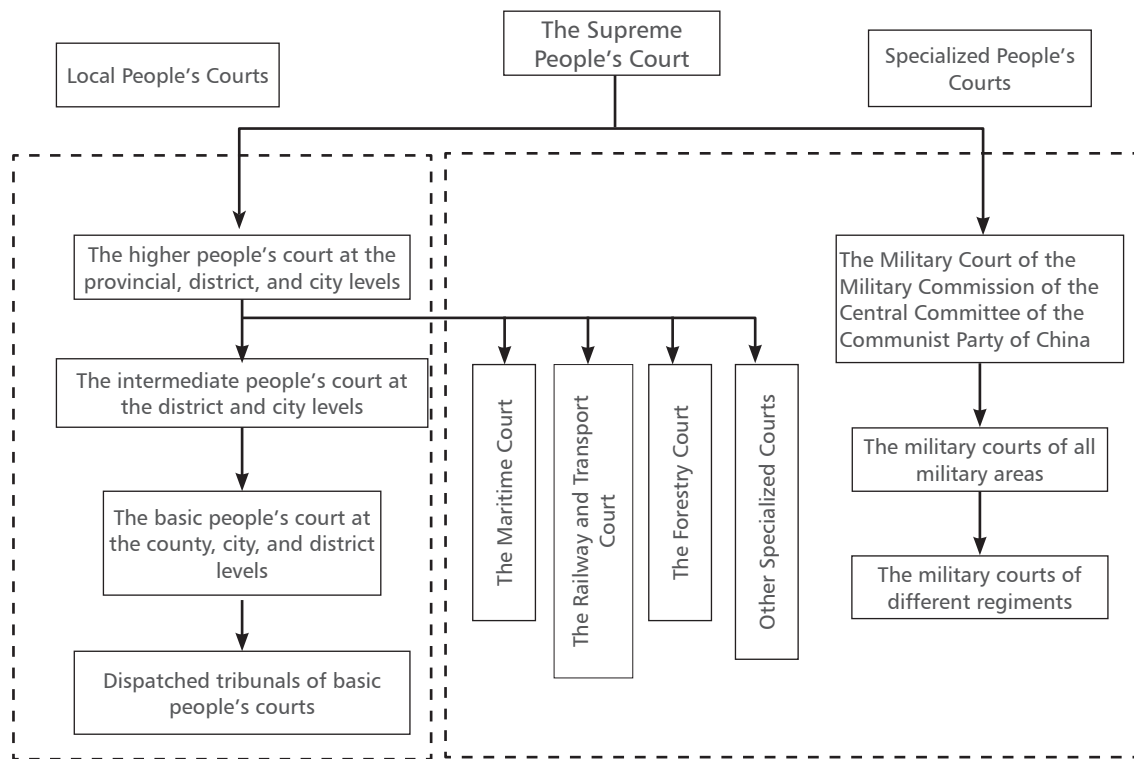
After reviewing the environment courts in the PRC, the authors find that efforts to establish a more extensive environmental judicial system are off to a good start. The PRC government has used several modes to build its system, and the corresponding types of environment courts have been established in a few areas in the country. The 11 environment courts, however, are not enough to handle the rapidly increasing number of environmental disputes that develop into court cases. Clearly, the PRC is still at the initial stage of developing its environment court system, and that is why the approaches discussed in this paper are especially relevant.

Most environment courts in other countries have had a long history, and are now at the point where the priority is to strengthen and improve their efficiency, competence, and accessibility, in part through the monitoring and evaluation of the courts' performance.

In view of the current situation of PRC environment courts, and the experiences of other countries, the authors suggest that the PRC take the following steps comprising the gradual approach presented above: (i) pilot testing the selected mode(s) of establishing more environment courts, (ii) elaborating a system of regulations for nationwide replication, and (iii) strengthening the regulatory and legislative foundation of the environment courts. After these steps have been completed, the emphasis should be on strengthening the environment courts, using the methods of other countries as discussed above. In this manner, the PRC could fully realize its goal of an effective nationwide environment court system.

⁶³ Includes the Constitution of the People's Republic of China, the Organic Law of the Local People's Congress of All Levels, and the Reform Plans for Organizations of the State Council approved by the first meeting of the 11th National People's Congress, the Notice of the State Council on Institutional Setup (No. 11, 2008), and the Main Responsibilities, Internal Structure and the Staffing Regulations of all Ministries and Commissions. The 14 ministries involved in environmental protection are as follows: Ministry of Environment Protection, Ministry of Industry and Information Technology, Ministry of Health, Commission of National Development and Reform, Ministry of Commerce, Ministry of Water Resources, Ministry of Transport, Ministry of Railways, Ministry of Defense, Commission of National Population and Family Planning, Ministry of Agriculture, Ministry of Land and Resources, Ministry of Public Security, and Ministry of Housing and Urban-Rural Development.

The Current Judicial System in the People's Republic of China



Green Benches: What can the People’s Republic of China learn from environment courts of other countries?

The rapid economic growth of the People’s Republic of China (PRC) over the last 30 years has generated many environmental problems and a concomitant rise in the number of environmental disputes. Until 1989, legal cases arising from these disputes were usually heard in the people’s courts of general jurisdiction. In that year, however, the development of the environment court system accelerated, leading to the creation of 11 such courts for pilot cases, a sign of the high priority the PRC has given to environmental protection over the past two decades.

This paper examines the effectiveness of environment courts in the PRC and elsewhere, so that the lessons learned can be applied in the PRC and in other developing countries. It also recommends ways to promote environmental justice in the PRC, given that the 11 environment courts are no longer enough to handle the rapidly increasing caseload throughout the country.

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Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org
ISBN 978-971-561-860-1
Publication Stock No. RPT090772

ISBN 978-971-561-860-1



Printed in the Philippines