



IVL Swedish Environmental
Research Institute



贵州省环境保护国际合作中心
Guizhou International Cooperation Centre
for Environmental Protection



Recommendations to Guizhou People's Congress

EGP-Guizhou 环境治理项目-贵州项目

Improving access to environmental justice
to protect people's environmental rights
in Guizhou province

推动贵州环境司法发展 维护贵州公众环境权益

A Partnership Project within the
EU-China Environmental Governance Programme
(EU-China EGP).
中欧环境治理项目--地方伙伴项目

This project is funded by the European Union
该项目由欧盟资助

Commission of Legislative Affairs, Standing Committee of Guizhou People’s Congress:

On behalf of the partnership projects “Improving access to environmental justice to protect people’s environmental rights in the Guizhou province” (hereinafter referred to as the Project) of the EU-China Environment Governance Program, All-China Environment Federation (ACEF), on the occasion of drafting, examining and soliciting public opinions for *Rules for Promoting Ecological Civilization Construction in Guizhou*, provides the following recommendations on policies and laws and regulations as reference based on the project results. It is hoped that the recommendations will make a contribution to environmental governance in Guizhou Province.

ACEF

April 9, 2014

Appendixes:

1. Recommendations to Guizhou People’s Congress
2. Amendment Recommendations on *Rules for Promoting Ecological Civilization Construction in Guizhou (Draft)*

Appendix 1: Recommendations to Guizhou People's Congress

I. Background

The Project is one of the 15 local partnership projects within the EU-China Environmental Governance Program (EGP). The Project is jointly implemented by IVL Swedish Environmental Research Institute (IVL), All-China Environmental Federation (ACEF), Guizhou International Cooperation Center for Environmental Protection (GZICCEP) and Guiyang Public Environmental Education Centre (GPEEC) in the period from October 2012 to October 2014. The general objective of the Project is to improve the public's access to environmental justice and protect the public's environmental rights in Guizhou province, as well as to contribute to the improvement of China's environmental governance. The main objectives are as follows: 1. To raise the public's awareness on environmental justice and rights; 2. To improve the capability and level of relative institutions and organizations in maintaining environmental justice ^[1]; and 3. To leverage policy change to improve Guizhou Province's environmental justice development and environmental governance.

From October 2012 till now, a baseline survey in the Project has been conducted in four prefecture-level administrative regions, including Guiyang City, Zunyi City, Anshun City and Qiandongnan Miao and Dong Autonomous Prefecture, aiming to know the experience, difficulties and challenges of the public, pollution victims, governmental organizations, judicial offices, civil environmental protection organizations, law offices and volunteer lawyers in promoting and realizing environmental justice. In this period, a baseline survey report of nearly 90 thousand words has been prepared and submitted to legislative departments in Guizhou as important reference for legislation. Furthermore, a series of awareness-raising and capacity building activities have been carried out for targeted groups in order to enhance their abilities of realizing environmental justice. The Project now aims to provide local legislative departments with proposals and recommendations perfecting the public environmental litigation system and promoting the legislation of environmental damage compensation so as to propel the development of local environmental justice by summarizing the results of investigation and training activities, drawing on EU experience, combined with real situations of Guizhou.

The drafting of the policy recommendations is fully based on the implementation results of the Project, including the baseline survey report, summary of EU-China environmental policy seminars and so on. In addition, the recommendations are formed by fully soliciting opinions of representatives from Environmental and Resources Protection Committee of Guizhou People's Congress, Environmental Protection Department, Environmental Court, Guizhou Province Lawyers Association, Guiyang Public Environmental Education Center, etc.

II. Status Quo

Based on baseline survey and the findings of related departments, three outstanding problems are summed up:

(I) During environmental management by environmental administrative organs, case hearing by environmental courts, and maintenance of legal rights by the public, the institutions for authenticating

^[1]The so-called environmental justice in the Project means that the social public should not be differentially treated in environmental rights and interests due to differences of nations, incomes, genders, residential districts, etc. The environmental justice is expressed in the following aspects: administrative organs for environmental protection can effectively enforce environmental protection laws, crack down on violators of environmental laws, and maintain environmental quality; pollution victims and the social public can resort to administrative departments or judicial organs so as to timely and fairly handle environmental problems when their environmental rights and interests are damaged; judicial organs can fairly and timely deal with environmental infringement disputes; environmental protection organizations, lawyer firms, environmental volunteer lawyers and other main legal workers can provide adequate and effective support for pollution victims and the social public and help to maintain their environmental rights and interests.

and appraising environmental pollution compensation cannot make authoritative appraisal on pollution damage situations. Moreover, due to lack of technical specifications and standards in appraising of environmental pollution compensation, there is not enough basis for relevant institutions to assess such compensation.

(II) Although governmental organs and public welfare organizations for environmental protection have carried out explorations on public interest litigation for environmental protection, relevant laws and systems are still insufficient.

(III) In the aspect of public environmental litigations, lawyers are short of professional knowledge on environmental protection and handle lawsuits only depending on their willingness. Moreover, due to absence of institutional safeguard and a long-term mechanism, the power of legal aid will become increasingly weak.

III. Legal Obstacles

(I) As there is no upper law on environmental pollution compensation, the appraisal results offered by the institutions for authenticating and appraising environmental pollution compensation have no legal force, but is only used as reference of environmental administrative management and judgment of courts. Moreover, the institutions are not validated by competent authorities, that is, judicial expertise departments and judicial and administrative organs.

In conclusion, the main problems are as follows:

1. there are no legal competent authorities in the industry;
2. there is no building basis and driving force.

(II) For public environmental litigations, there is no specific supper law.

In accordance with Article 55 of *Civil Procedure Law*, for the behaviors of damaging social public interest, such as environmental pollution and violation of legal rights and interests of many consumers, the organs and relevant organizations stipulated in law can file lawsuits in people's courts.

However, the laws on environmental protection have no specific regulations on this aspect, so environmental protection is unclear for subjects of public litigation and is affected by actual situations.

(III) The citizens and units whose legal rights and interests are damaged due to environmental pollution are not in the scope of legal aid according to the upper law.

In accordance with Article 10 of *Legal Assistance Regulations* issued by the State Council: citizens who cannot afford employment of entrusted agents in following events demanding agents can apply for legal aid to legal aid institutions:

- (1) Claim national compensation according to law;
- (2) Request social insurance and subsistence allowances;
- (3) Claim pension and alms;
- (4) Claim payment of alimony, cost of upbringing, and cost of maintenance;
- (5) Claim payment of remuneration of labor;
- (6) Claim civil rights and interests caused by heroic actions.

The people's governments of provinces, autonomous regions and municipalities can provide supplemental provisions on legal aid events other than the above items.

Citizens can apply for legal consulting for the events specified in the first and second items of this article to legal aid institutions.

In accordance with Article 11 of *Criminal Procedure Law of the People's Republic of China*, citizens can apply for legal aid to legal aid institutions in one of the following situations:

- (1) After the first interrogation by organs of investigation or since coercive measures are taken, suspects cannot afford employment of lawyers;
- (2) Aggrieved persons and their statutory agents or close relatives in public-prosecuting cases cannot afford entrustment of agent ad litem since the day when cases are transferred for examination and prosecution;
- (3) Private prosecutors and their law agents in private prosecuting cases cannot afford entrustment of agent ad litem since the day when the cases are accepted by people's courts.

In accordance with Article 12 of *Criminal Procedure Law of the People's Republic of China*, for a case that the public prosecutor institutes before the court, if the accused has not authorized any defender due to economic difficulties or other reasons, the people's court can appoint one for him/her, and relevant legal aid institutions shall provide legal assistance.

If a defendant is a blind, deaf or dumb person or a juvenile and does not entrust a defender, or the defendant who is possibly sentenced to death does not entrust a defender, and the people's court designates a defender for the defendant, relevant legal aid institutions should provide legal aid for the defendant without checking economic situation of the defendant.

In accordance with Article 10 of *Guizhou Legal Assistance Regulations*, citizens who need legal aid according to factual proof but cannot afford legal service can apply for legal aid to legal aid institutions to safeguard their legal rights and interests.

The standards of economic difficulties are subject to that of subsistence allowances of urban and rural residents and of five guarantees for rural residents issued by local governments.

In accordance with Article 11 of *Guizhou Legal Assistance Regulations*, except for the scope of legal aid stipulated in Chapter 2 of *Legal Assistance Regulations* issued by the State Council, parties involved complying with the previous regulation can apply for legal aid for the following events:

- (1) Suffer personal injury due to occupational injury, traffic accident, medical negligence or other personal injury accidents;
- (2) Legitimate labor rights are damaged;
- (3) Suffer damage because of domestic violence, abuse, abandonment or other behaviors;
- (4) Legal rights and interests are damaged because of land acquisition or demolition;
- (5) Legal rights and interests are damaged due to counterfeit and shoddy seeds, pesticides, fertilizers and environmental pollution;
- (6) Other events that need to apply for legal aid.

In accordance with Article 12 of *Guizhou Legal Assistance Regulations*, for the following defendants whose defenders are designated by people's courts, legal aid institutions should provide legal

assistance:

- (1) A blind, deaf or dumb person or juvenile who does not entrust a defender;
- (2) A defendant who is possibly sentenced to death but does not entrust a defender

For a case that the public prosecutor institutes before the court, if the accused has not authorized any defender due to economic difficulties or other reasons, the people's court can appoint one for him/her, and relevant legal aid institutions shall provide legal aid for him/her.

None of the previous laws and regulations involves public environmental litigations.

IV. Recommendations

(I) Establish the mechanism of founding and developing intermediary organs for authenticating and appraising environmental pollution compensation through local environmental legislation in Guizhou Province, and specify the industrial competent authorities for providing legal basis for the intermediary organs to make the testimonials of the intermediary organs have legal force.

1. Related government departments, mainly environmental departments, establish the institutions for authenticating and appraising environmental pollution compensation, work out relevant rules and procedures, and standardize management process.

2. Provide an exchange platform, conduct technical guidance and training, and introduce advanced experience of various countries in the world including EU to make the intermediary organs competent.

(II) Through local environmental legislation in Guizhou Province, authorize relevant organs and organizations to institute lawsuits for the behaviors of damaging public interests of the society, such as environmental pollution and resource damage, and require relevant subjects of liability to assume the responsibilities of ceasing infringing acts, removing obstacles, eliminating dangers, recovering original status and compensating for loss.

Procuratorial organs and public environmental organizations can institute lawsuits for concrete administrative behaviors and administrative omission involving environmental resources in accordance with law.

(III) Propose the amendment of *Guizhou Legal Assistance Regulations*, enlarge the scope of legal assistance, and incorporate environmental cases into the scope of legal assistance. Legal aid institutions should provide legal assistance for citizens and units whose legal rights and interests are damaged due to environmental pollution. We should encourage lawyer offices, grass-roots legal service organizations as well as lawyers and other legal workers to provide legal assistance for environment-related lawsuits.

1. Judicial administrative departments should provide policy support in a certain degree for the scope of legal assistance and examination procedure of environmental pollution damage cases.
2. Found the voluntary legal assistance institution for environmental damage in Guizhou Province Lawyers Association, as a support organization of judicial and administrative legal aid institutions.
3. People's courts can designate defenders not only for criminal cases. The scope of legal assistance with designated lawyers is extended to environmental pollution damage and infringement cases and is associated with judicial administrative authorities.

Appendix 2:

Amendment Recommendations on *Rules for Promoting Ecological Civilization Construction in Guizhou (Draft)*

Suggestions on Amending *Regulations on Promotion of Ecological Civilization Construction of Guizhou Province (Draft)*

I. Article 58 of the *Draft* is suggested to be amended as “Organs and relevant organizations stipulated by the law may file a lawsuit against and require relevant liability subject to take responsibilities such as cessation of infringement, removal of obstacle, elimination of danger, restitution and compensation for losses for behaviors harming the public interests such as environmental pollution and destruction of resources in accordance with *Civil Procedure Law of the People’s Republic of China*.”

Environmental public welfare organizations and procuratorial organs in legal connection with specific administrative actions and omissions with respect to environmental resources may file a lawsuit against such actions or omissions for protection of public environmental interests.”

Reasons for the suggestion:

1. Under the provisions of *Legislation Law of the People's Republic of China*, *Regulations on Promotion of Ecological Civilization Construction of Guizhou Province* acts as local regulations and belongs to substantive law, which can neither break through the provisions of national law, nor substantially settle the problem of procedure law. Therefore, it is suggested to add “in accordance with the provisions of *Civil Procedure Law of the People’s Republic of China*” as the basis for Article 58.

Civil Procedure Law of the People’s Republic of China (2012 Amendment) has determined the scope of plaintiff subject of environmental public interest litigation as “relevant organizations”, whose original meaning is to expand the scope of subject conducting public interest litigation. However, the qualifier of “required by law” in front of relevant organizations means that relevant organizations shall observe special provisions of other relevant laws in addition to applicable *Civil Procedure Law of the People’s Republic of China* when prosecuting as plaintiff of public interest litigation, which actually narrows the scope of plaintiff subject of public interest litigation. Such provision is substantially against the fundamental principle of *Civil Procedure Law*. Plaintiff qualification shall be specified by the procedure law as it solves procedure problem. For example, Article 119 of *Civil Procedure Law of the People’s Republic of China* directly solves the qualification problem of plaintiff subject of civil litigation; Article 41 of *Administrative Procedure Law of the People’s Republic of China* directly solves the qualification problem of plaintiff subject of administrative litigation.

2. The plaintiff of environmental public interest administrative litigation is clearly defined as “procuratorial organs and environmental public welfare organizations”. However, a qualifier shall be used to describe the procuratorial organs: in legal connection with specific administrative actions and omissions.

II. Increase an item in the main body of *Draft*: Encourage and support the building and development of public environmental organizations.

Reasons for the recommendation:

Civil Procedure Law of the People's Republic of China restricts the main plaintiffs of public welfare lawsuits to be “organs and related organizations stipulated by law”. During amendment to *Environmental Protection Law*, public environmental organizations should be specified as appropriate and common plaintiffs. The *Draft* also specifies the public environmental organizations as main

plaintiffs for instituting administrative public environmental litigations. Since the environmental court was founded in Qing County of Guiyang City seven years ago, the court has widen the scope of plaintiffs to contain individuals, but public environmental litigations have not been greatly increased and are even insufficient. Due to the actual situation, it is needed to energetically cultivate plaintiffs and encourage more plaintiffs to institute public environmental litigations, thereby protecting the environment more effectively.

III. Article 60 of the *Draft* is suggested to be amended as “Legal aid institutions shall provide citizens and units suffering financial difficulties and infringement of legal interests due to environmental pollution with legal aid.

Reasons for the suggestion:

1. Under Article 10 of *Regulation on Legal Aid*, legal aid shall be provided based on two conditions: one is suffering financial difficulty; the other is within the stipulated scope (including those who request state compensation by law, request social insurance or subsistence allowances, request pension and relief fund, request alimony, cost of upbringing and maintenance payments, request payment of remuneration of labor and request civil rights and interests resulting from voluntary actions against injustice). In addition, the people’s governments of the province, autonomous region and municipality directly under the Central Government may make supplements to provisions on legal aid.

Regulation on Legal Aid of Guizhou Province further makes it clear that “the standard for financial difficulty is subject to the standard of subsistence allowances for urban and rural residents and five guarantees for rural residents published by local people’s governments” with the added scope of application of “personal injuries due to work-related injuries, traffic and medical accidents or other personal injury accidents; infringement of legal rights and interests of labor; damages due to behaviors such as domestic violence, abuse and abandonment; infringement of legal rights and interests due to land acquisition and demolition; infringement of legal rights and interests due to fake and substandard seeds, pesticide, chemical fertilizer and environmental pollution; anything else requiring legal aid.”

Environmental pollution cases, as not explicitly incorporated into those requiring legal aid by law, require clear statement by laws and regulations; as a result, they could be first stipulated in the Draft, and added to Regulation on Legal Aids of Guizhou Province (Regulation) later when the Regulation are officially amended.

Public litigation is in nature for social public interest and no one is stipulated to pay for the legal consultancy service, in this sense, the sustainability of public litigation requires a certain system or regulation. Therefore, it is necessary and possible to ensure and promote the public environmental litigation through the clause “other issues which need to apply for legal aid” stipulated in *Regulations on Legal Aid of Guizhou Province*.

IV. Modify Item 2 of Article 53 as follows: “The environmental administrative authorities of the provincial people’s government should launch the policy of third-party governance for environmental pollution, build and develop intermediary organs for authenticating and appraising environmental pollution compensation, and advocate the third-party supervision system to promote sound development of environmental industries”.

Reason for the recommendation:

The logic of language is stricter.

V. Clause 2, Article 48 of the *Draft* is suggested to be amended as “Major decisions on ecological civilization construction concerning public rights and interests and public benefits, or construction projects posing possible significant impacts on ecological environment shall be brought to hearings for discussion and demonstration before such decisions are made, and be provided with policy risk assessment.

Reasons for the suggestion:

China has established environmental impact assessment system, and environmental impact assessment is defined by law and concrete in content. Ecological risk assessment has not been written into current laws. In accordance with the national guideline of constructing government of laws, policy risk assessment should be made upon the policy-decisions of government.

www.egp-guizhou.com

The contents of this publication are the sole responsibility of IVL and can in no way be taken to reflect the views of the European Union.”

但本文件的内容由IVL瑞典环境科学研究院负责，不代表欧盟意见。