Environmental Tort

A Comparison of Environmental Tort and Access to Justice in China and Sweden (2013)

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

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Abbreviations and Acronyms

ADR	Alternative Dispute Resolution
Art.	Article
CPL	Law of Civil Procedure (1991) (China)
EPIL	Environmental Public Interest Litigation
EPL	Environmental Protection Law (1989) (China)
GPCL	General Principles of Civil Law (1986) (China)
GrL	Group Proceedings Act (2002:599)
LPC	Local People's Court (China)
PP	Precautionary Principle
PPP	Polluters Pay Principle

1. Introduction

This report on Environmental Tort - a Comparison of Environmental Tort and Access to Justice in China and Sweden – has need produced as part of the project "Improving access to environmental justice to protect people's environmental rights in Guizhou province" (EGP-Guizhou), one of the 15 local partnership projects within the EU-China Environmental Governance Program (EGP). The project is implemented by a qualified team consisting of four member organizations. The manager of the project is IVL Swedish Environmental Research Institute (IVL), who jointly implements the project together with All-China Environment Federation (ACEF), Guizhou International Cooperation Centre for Environmental Protection (GZICCEP) and Guiyang Public Environmental Education Centre (GPEEC). With a total budget of 1.2 million euros, the project will be ongoing from October 2012 to October 2014.

The overall aim objective of the EGP-Guizhou project is to improve the public's access to environmental justice, protect the public's environmental rights and to contribute to the improvement of China's environmental governance. To leverage policy change in order to improve China's environmental governance is the main policy purpose of the Project.

The report is the result of cooperation within the project between legal experts at ACEF and an environmental law expert , Ms. Fannie Finnved, the Faculty of Law at Uppsala University in Sweden.

2. Background

Civil proceedings in environmental matters are getting more and more common in China. It must therefore, from the aspect of civil society's access to justice, be easy for the citizen to litigate. From a legal perspective there are two both equally important views on access to justice to immerse in: the procedural regulations and the substantive law. It is crucial for a well-functioning judicial system that the rules about the judicial procedures are clear, accessible and suitable for its purpose. That includes rules of jurisdiction, the courts' organization and requirements through law for civil litigation (such as the right to litigate, procedural hindrance etc.). Sometimes it is more appropriate to litigate through class actions instead of individual actions[1]. This is good way to litigate when many parties are concerned, such as when a whole village suffers from environmental pollution through a nearby-located industry. From the individual's perspective a class action can ease the burden of cost and from a wider perspective the group can put pressure on industries and authorities. These types of environmental class actions are often called "Environmental Public Interest Litigation" (EPIL) in China. Another important procedural issue is where and by whom the case is determined, such as in which court the question will be heard and which constellation the judge panel will have. Environmental damages can be very complex by its nature, which is why a special constellation of judges and experts often are necessary. The forum is therefore as important as the form of action. From a procedural point of view, consequently both the rules of action (individual action or class action) and the rules of forum will be examined closer.

Regarding the substantive law there are many interesting issues to evaluate linked to legislation within environmental tort. One of them is the legal meaning and assessment of "environmental damage". There is no legal definition of "environmental damage" according to neither the Swedish

[1] Other frequent used terms for class actions in legal doctrine are "joint actions", "group actions", "representative actions", "public interest litigation" and "actio popularis".

nor the Chinese environmental legislation. It is therefore not always clear which types of damages fall under this definition. From the plaintiff's perspective it is often more desirable to classify a civil dispute (for example when damage has occurred) as an environmental case, since more advantageous rules often apply in those situations. The more generous the assessment of "environmental damage" is, the easier it will therefore be for the plaintiff to win a case. For example the rules of evidence are more generous in environmental cases then in regular civil cases. In Sweden, lawmakers have chosen to lower the requirement of proof in environmental tort cases.[2] Legislators in China have instead chosen a more international model to deal with evident difficulties that can occur for a plaintiff regarding environmental damages. To solve these problems a reversed burden of proof in environmental tort cases is therefore applied in China according to article 66 Tort Law.[3] Both models (relief of proof or reversed burden of proof) are expressions for the legislator's intention: to augment the civil society's legal engagement in environmental cases.[4] If the standards of proof are low for plaintiff, the legal engagement amongst them will also increase, while the opposite order decreases the same.[5] Therefore it is important that as many environmental damages as possible fall within the scope of environmental legislation, so that appropriate rules of evidence can be applicable. This requires an appropriate legal definition of "environmental damage". Unfortunately, as mentioned before, there is no legal definition of "environmental damage" according to neither the Swedish nor the Chinese law. Instead the scope of environmental damages has been developed through case law. This is especially problematic in China where there is a lack of legislation about the country's environmental courts, and why the application of the law can vary from one province to another. The classification of environmental damages will therefore not always be applied uniformly around the country.

According to Organic Law of People's Court there is no such thing as legally established environmental courts.[6] The law is explicit and comprehensive, and thus there is nothing in the Organic Law that legitimizes the existence of particular environmental courts in the system. Nonetheless there undeniable exists different types of environmental courts around the country.[7] These types of hybrid environmental courts vary widely from province to province – both in terms of judges' composition and in practice. Some regions do not have any environmental courts at all.[8] Hence it is hard to draw any general conclusions about these types of courts that exist sporadically around the country.[9]

The lack of legislation about environmental courts may reduce individual's predictability about the law. It can also diminish equal access to justice. Especially when there are great variations of local customs and practice depending on which court that is hearing the claim. The value of the

[2] In *other* environmental cases (which are not involving any environmental tort damages) the reversed burden of proof is applied. For more general information about the appliance of the principle in Sweden, see Michanek. Zetterberg: Den svenska miljörätten, p. 106.
[3] The reversed burden of proof in environmental cases differs from regular civil processes in Sweden.
[4] Ekelöf. Boman: Rättegång IV, p. 88.
[5] Diesen. Strandberg: Bevisprövning i tvistemål, p. 312.
[6] There are some established special courts in China according to the Organic Law, such as a military-, railway-, transport- and maritime court.
[7] For example Guizhou Province Guiyang County Ecological Protection Court, who was the first environmental court in China established 2007.
[8] McElwee: Environmental law in China, p. 263.
[9] Wang, Gao: Environmental Courts and the Development of Environmental Public Interest Litigation in China, p. 44.

environmental courts' precedent is also unsure since environmental courts in China are not proper organs in the judicial system according to Organic Law. Some opponents have even claimed that these hybrids constitute judicial activism. By imposing legislation on environmental courts, the citizens' access to justice will become more equal and predictable in China, since the geographical differences will diminish.

3. Why immerse in Environmental Tort Law?

In Sweden environmental tort cases plays a small role in the environmental protection system, which partly has historical reasons. The maintaining of a good environment has for a substantial amount of time been considered as the sole responsibility of the state.[10] Historically, therefore, concession and operative supervision has since the 1960s been the main ground in Swedish environmental protection. Environmental tort has consequently filled an almost insignificant practical function. This also depends on the established insurance system in Sweden, which diminishes the need to litigate to get compensation for an occurred damage. Unlike starting a process in court, it does not cost anything to hand-in a request for insurance money. For that reason it is more advantageous for the civilian person to request for insurance money then to start that process in court. This is the main reason why so few environmental tort cases come up for trial in Swedish courts. Over the years there has been a reversal of trends and the interest for environmental tort law has increased in Sweden, not least due too international developments on the field.[11]

In China however, environmental tort cases are the most important and common type of environmental cases that annually enter for trial in courts.[12] The numbers of environmental tort cases are steadily increasing each year (since 1998) and the growth is expected to be almost 25% annually, which is a positive trend.[13] Nonetheless, the culture of negotiating through ADR remains strong in China, and is why some environmental departments in Local People's Court (LPC's) have never had a single environmental tort case up for trial since they were established. This should be considered when comparing the caseload and number of environmental tort cases in Chinese respective Swedish courts.

It is authorized to resolve civil disputes through Alternative Dispute Resolution (ADR) methods in China according to article 51 of the Law of Civil Procedure (CPL). In certain types of civil cases (such as family related issues) it can be more advantageous to use ADR methods in front of court proceedings. It offers discretion and increases the number of agreements between the parties. Contrariwise, in environmental cases, it is beneficial to put light and attention through public court proceedings. The attention may put pressure on polluters and decision makers, which may force them to act. This is especially important when there is a widespread corruption among officials. A consequence of the strong prevailing ADR culture in China and article 41 in Environmental Protection Law (EPL) (a regulation that authorizes ADR methods in front of court proceedings in environmental tort cases) is that many occurred environmental damages never comes up for trial in court. Many

[10] Due to the first Environmental Protection Act in Sweden: MskL (1969:387).
[11] Larsson: The Law of Environmental Damage. Liability and Reparation, p. 111.
[12] Moser, Yang: Environmental Tort Litigation in China, p. 10895.
[13] Tun Lin et al: Green Benches: What can People's Republic of China Learn from Environment Courts of other Countries? Asian Development Bank, p. 5.

cases are instead getting solved behind closed doors and will therefore not be up for public attention.[14] Hence it is advantageous to revise article 41 in EPL.

4. A Comparison of Environmental Tort Legislation in China and Sweden

In Sweden, the legislation about environmental tort is to be found in the 32 chapter of the Environmental Code (1998:808), virtually unchanged from the original Environmental Damage Act (1986:225).[15] By the environmental tort legislation's placement in the Environmental Code, other legal environmental principles (linked to the Code) will also prevail in environmental tort cases. This is something advantageous for the plaintiff, cause it includes appliance of the polluter pays principle (PPP) and the precautionary principle (PP).[16] One great exception has though been made, which is the reversed burden of proof. Unlike other environmental related cases, the reversed burden of proof is not applicable in any tort cases at all according to an exempt in the Environmental Code.[17]

In China, unlike Sweden, the regulation about environmental damages is to be found in a separate Tort Law – a relatively young law still under its developing phase. Until recently there was no specific law in China that regulated non-contractual damages, whilst there have been rules for breach of contract since 1987 in the General Principles of Civil Law (GPCL). After ten years of debate Tort Law finally came into force in July 2010. Chapter VIII in the Tort Law provides special rules about environmental torts. The introduction of Tort Law has in many ways been a positive contribution to Chinese civil law, especially as a clarification of current law. The conclusion, when comparing the Swedish and Chinese environmental tort legislation, is that its outputs and outcomes are very different. In China, for example, it is important for the civil person to proceed in court when an environmental damage has occurred to get compensation, while the reverse order prevail in Sweden due to the vast insurance system. Moreover, in contrast to Sweden, environmental tort cases often fill an important role for environmental protection in China, especially when the official lack in their supervision.

5. Suggestions for Legal Improvements aiming to increase Citizens' Access to Justice in Environmental Cases

5.1. Suggestion 1: Legislate about Environmental Courts in China

To increase knowledge, application and enforcement of environmental legislation in court:

It is clear among Sino-researchers that there is a major gap between the written environmental law and its application, implementation and enforcement[18]. This is caused by a variety of reasons. One of

[14] Stern: Environmental litigation in China, p. 46.
[15] When the Swedish Environmental Code was adopted in 1998 it replaced 15 other environmental acts.
[16] For the official English version of the Swedish Environmental Code, see the Swedish Government's translation: http://www.government.se/content/1/c6/02/28/47/385ef12a.pdf (last visited 2014-01-20).
[17] 2:1 § the Swedish Environmental Code.
[18] See McElwee: Environmental law in China, p. 3.

the causes is the shortage of legally trained staff in the courts[19]. The number of lawyers in the country is relatively small compared to its size. One way to pave the way for better enforcement is therefore to capitalize available expertise in the best possible way, especially if the inadequacy mostly comes from ignorance of the law. Clear mistakes of the law will diminish through legally trained staff, which will increase application and enforcement of environmental legislation.

It is not unusual that misinterpretations of the law occur because of shortage of legally trained staff. In environmental tort cases for example, the reversed burden of proof is sometimes applied in an incorrect way[20]. This happens even though the law is very clear about the reversed burden of proof (article 66 Tort Law) [21]. Another common misinterpretation of the law is that the tort action must be illegal in order for the plaintiff to even present a claim in court. That is not an accurate interpretation of the law according to article 65 in Tort Law:

"*Where any harm is caused by environmental pollution, the polluter shall assume the tort liability*." – Art. 65 Tort Law (2009)

According to this quoted section of the law the tort liability is strict for the polluter, whether the tort action was illegal or not. In some situations there are other regulations (such as EPL and GPCL) that may be applicable in parallel to Tort Law when an environmental damage has occurred. When two different regulations are applicable over the same situation, mistakes can easily be made if one does not know about the Rule of Lex Specialis[22]. In a situation like this the law governing a specific subject matter (lex specialis) will override a law that only governs over the matter in a general way (lex generalis). Consequently, the rules in Tort Law override other regulations about the same matter according to the Rule of Lex Specialis.

One example of when the Rule of Lex Specialis becomes applicable in environmental tort cases is when assessing the tort action. There are two contradictory regulations over the same matter – one in Tort Law (article 66) and another one in GPCL (article 124). As mentioned before, the polluter's tort liability is strict regardless of weather the tort action was illegal or not (article 66 Tort Law). On the contrary, article 124 in GPCL regulates that the tort action must violate an environmental state provision, or else the plaintiff will not be able to press charge in court:

"*Any person who pollutes the environment and causes damage to others in violation of state provisions for environmental protection and the prevention of pollution shall bear civil liability in accordance with the law*." – Art. 124 GPCL (1986)

These two contradictory rules (over the same matter) increase the risk of misinterpretations. It would therefore be appropriate to abolish article 124 in GPCL to clarify the legal situation. Until then,

[19] One partly reason for this is that the legal system in China needed to be built up from almost scratch after the Cultural Revolution.
[20] Stern: Environmental litigation in China, p. 131.
[21] Before Tort Law, the Supreme People's Court stated that the reversed burden of proof should be applicable in environmental cases. This was already in 1992, see "Supreme People's Court's Judicial Interpretation on Several Problems in the Application of the Civil Procedure Law of the People's Republic of China" (1992). Supreme People's Court also confirmed this in 2001 by issuing an instruction to the LPC's. See art. 4 p. 3 in "Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings" (2001).
[22] The Rule of Lex Specialis is to be found in article 5 Tort Law.

clear mistakes of the law would diminish through legally trained staff in established environmental courts, which would also increase application and enforcement of environmental legislation.

To increase knowledge about environmental issues in court:

It is often necessary for the judges to have good interdisciplinary knowledge in environmental cases to do adequate assessments. Environmental cases are often complex by their nature. For example it may require extensive scientific knowledge to determine if an operation is dangerous for the environment or not. Without interdisciplinary expertise it is difficult (if even possible) to understand or determine adequate causality in an environmental tort case. By setting up special environmental courts, not only would the interpretation of the law be more fair but also the general knowledge about environmental issues would increase.

In Sweden lawmakers have chosen to meet the need of interdisciplinary knowledge in environmental cases through a special composition of judges within the environmental courts[23]. This special constellation consists of regular judges and specially trained technical judges (such as civil engineers, geologists and biologists). The ways of securing the scientific expertise in environmental cases varies from one country to another. In Finland for example, expert judges operate in regular courts since there are no established environmental courts in the country[24]. Environmental courts in Sweden have been a positive experience. China can therefore benefit from Sweden's experience on that matter. Whether lawmakers choose to adopt legislation about environmental courts or introduce expert judges in ordinary courts, the expertise in environmental cases need to be secured. China has already taken some steps towards establishing environmental courts, and this is why it is appropriate to continue in the same direction. It would therefore be desirable to supplement the Organic Law of the People's Court to establish environmental courts in the Chinese judiciary.

To augment the civil society's legal engagement in environmental cases:

In a country where few citizens go to court to resolve disputes, it is more important than ever to have clear rules of jurisdiction. Since there are significant differences in local practice regarding the existence of environmental courts, it can be hard for the regular citizen to know where and how to present a claim. Clear rules of jurisdiction would therefore increase the society's legal engagement and in the long term have positive effects on the citizen's access to justice. Differences in local practice would diminish through legislation about environmental courts from a governmental level. The outcome of a claim would no longer depend on the local practice, since the same rules would be applied to the whole country.

To legitimise the existence of environmental courts in the judicial system:

Another reason to legislate about environmental courts in the Organic Law of People's Court is to legitimise their existence in the Chinese legal system. Critics have argued that environmental courts in their current existence constitute judicial activism, since they do not have any legal support through law[25]. To impose rules about environmental courts would clarify the courts' role (both in terms of competence and function) for the public and other governmental authorities in China. For

[23] According to the law (2:2 § MMDL) the technical judges must possess expertise knowledge in a particular scientific area and also some scientific experience in general.
[24] Kuusiniemi: Domstolarna och experterna: Hur trygga sakkunskapen i miljömål? P. 319.
[25] Zhang, Zhang: Specialized Environmental Courts in China: Status Quo, Challenges and Responses, p. 20.

example it has been unclear whether a decision from an environmental court has had any legal value as a precedent in similar cases[26]. This problem is well known among decision makers, which is why legislation about environmental courts is to be expected in the future[27].

5.2. Suggestion 2: Impose a legal definition for "Environmental Damage" in China and Sweden

5.2.1. Current Regulation in China regarding the scope of "environmental damage"

Today there is no legal definition of "environmental damage" neither in Tort Law, GPCL or EPL. As mentioned before, it remains uncertain what legal value the precedent from the local environmental courts has. One can therefore not completely rely on decisions from environmental courts to find out the scope of "environmental damage" according to Tort Law. Despite this, it is possible to discern a certain trend among courts where *personal injuries* and *property damages* have often been considered as environmental damages according to the formulation in article 65 Tort Law ("harm caused by environmental pollution"). It is also clear that the damage must have violated a civil right or interest protected by law according to article 2 in Tort Law:

" *Those who infringe upon civil rights and interests shall be subject to tort liability according to this law."* – Art. 2, Tort Law

Protected civil rights and interests are being quoted in the article's second section. That means that a plaintiff can get compensation for an environmental damage if it also has infringed one of these lined up interests. For example it may be the right to "ownership", "health" or "life" – all interests with a clear connection to personal injuries or property damages. Consequently, an environmental damage must have infringed an anthropogenic-protected interest to be coverable. This is also the position of environmental law professor Zhang Zitai [28].[29] Ecological damages (with no connection to anthropogenic-protected interests) are therefore not coverable according to the current legal Chinese system. This viewpoint is consistent with the application of the law in Local People's Court (LPC's).[30] Furthermore, pure economic losses (with no connection to any personal injuries or property damages) may however fall under the category of environmental damage (unlike ecological damages) according to professor Zhu Xiao[31].[32] Thus, there is an uncertainty over the extent of "environmental damage".

Clarification by a legal definition in Tort Law would therefore be desirable. A legal definition in Tort Law would also allow an extension to its meaning, which would allow ecological damages to be

[26] For example, it was unclear if EPIL was allowed or not through local courts' precedent.
[27] Judge from Guizhou. Communication through e-mail: 2013-03-23.
[28] Zhang Zitai is a professor in environmental law at Fudan University, China.
[29] Zhu: Environmental law, p. 238.
[30] Judge from Guizhou. Written communication through e-mail: 2013-03-23.
[31] Zhu Xiao is a professor in environmental law at Renmin University, China.
[32] Zhu: Environmental law, p. 241.

reimbursable as well. That would be consistent with the principle that the environment has an intrinsic value by itself, decoupled from anthropogenic interests.

5.2.2. Current Regulation in Sweden regarding the scope of "Environmental Damage"

Like the Chinese legal system there is no legal definition of environmental damage in the Swedish Environmental Code. However, some damages are explicitly mentioned in the Code and therefore fall within its scope: personal injuries, property damages and pure economic losses caused by different kinds of environmental pollution.[33] The scope of these kinds of injuries has been developed through precedent, legislative history and doctrine. Some damages though are explicitly excluded from its scope, such as damage caused by ionising radiation or electric current.[34] Also some damages caused by water activities have special rules beside the regulation in the Environmental Code.[35] According to general tort law principles in Sweden, all damages can be reimbursable through tort law if the damage can be measured in economic means. This principle is applicable regardless of whether there is legal support for such damage or not. On the contrary, non-financial damages (such as ecological damages) must have legal support to be recoverable.[36] This becomes problematic when an ecological damage has occurred, because there are no regulations about ecological damages either in the Environmental Code or in the Swedish Tort Law. Consequently, pure ecological damages are not reimbursable according to current law since there is no legislation.

One way to get to grips with the problem should be to legislate about ecological damage in the Environmental Code. Subsequently, the value of the ecological damage can be calculated using ecosystem services, something that shortly will be introduced in the Swedish law system.[37] Instead of legislation, the question of ecological damages has partly been tried in court through precedent. One of the most famous precedents is "the wolverine case" (NJA 1995 s 249) where two wolverines (protected by Swedish law) had been wrongfully shot by a citizen without permission from any authorities. The authorities made a claim for 50 000 SEK per wolverine that had been killed through a non-contractual damage claim (tort liability). The defendant objected with the general Swedish tort principle that there was no legal basis for such a claim since the damage was a non-financial one. The damage for loss of nature (the conservation value) had no economic value according to the defendant. Since there was no legislation about these kinds of damages it could not be covered by tort liability rules. The Supreme Court of Sweden found a different opinion. They classified the wrongfully killed wolverines as a financial loss for the state. The loss of the wolverine's conservation had in fact entailed costs for the state and the defendant was therefore charged by court decision to compensate for each wolverine killed (50 000 SEK per wolverine). This reasoning has been given in other similar cases afterwards, such as in "the wolf case" (RH 2000:94) where wolves had been

[33] For pure economic losses, the damage must be of "significance" or else it is not reimbursable according to the rules in the Code. It may instead be reimbursable according to the Swedish Tort Law (SkL 1972:207).
[34] According to 32:2 in the Environmental Code special rules applies for these kinds of damages. See the Electricity Act (1997:857) and the Act (2010:950) on liability and compensation for nuclear accidents.
[35] 32:3 § the Environmental Code.
[36] Hellner. Radetzki: Skadeståndsrätt, p. 366.
[37] At the moment ecosystem services are being investigated by the Swedish Environmental Protection Agency. Summary in English: http://www.naturvardsverket.se/upload/miljoarbete-i-samhallet/miljoarbete-i-sverige/regeringsuppdrag/2012/ekosystem-ekosystemtjanster/sammanfattning-ekosystem-eng-2013.pdf (last visited 2014-02-20).

illegally shot and the State had incurred costs for maintaining the wolf population. [38] Both the wolverine and wolf case goes in the direction that ecological damages to some extent are recoverable according to Swedish law. A clarification through legislation would though be a desirable clarification of current law, since the present situation is unsatisfactory according to experts in doctrine. [39]

5.2.3. Legal improvement suggestion: introduce a legal definition for "environmental damage" in Swedish and Chinese Law

Good material rules are as important as adequate procedural rules. One material improvement would be to introduce a legal definition of "environmental damage" in both the Chinese and the Swedish system, since there is no legal definition today. This fact has to some extent made the scope of "environmental damage" unclear. A clarification is as important for the public as for the authorities. However it is clear that proper ecological damage (with no connection to any anthropogenic interests) are not covered by tort liability in China. In Sweden, however, the situation is different. Through "the wolverine case" the state has been granted a kind of tort compensation for ecological damages, even if the Supreme Court classified the injury as a financial loss. It is important though to emphasise that "the wolverine case" concerned a particular situation, which is why it cannot be applied generally as Swedish law (although some fundamentally important questions were raised in the case). A legal definition of "environmental damage" would be a positive clarification of current law in both Chinese and Swedish law. It could also be a positive extension of tort liability when an ecological damage has occurred, so that pure ecological damages are reimbursable as well.

5.3. Suggestion 3: Impose binding rules for the LPC's regarding Class Actions in China

5.3.1. Background and current law

Class actions in civil disputes are since 2013 regulated in China through an amendment in article 55 CPL.[40] The development of class actions began though in the mid-2000s through local court precedents and was strongly influenced by the corresponding "class actions" originally developed in the common law countries.[41] Since statutory provisions were missing the practices differed greatly from one province to another. According to data from 2012 class actions were only allowed in three regions before the amendment came into force.[42] Consequently, the civil society's access to justice has become more equal across the country since the amendment in CPL. Geographical location no longer determines whether it is possible to proceed through class actions:

[38] The defendant had to compensate 40 000 SEK for each illegally killed wolf.
[39] See Bengtsson: Miljöbalkens återverkningar, p. 172.
[40] Class actions in environmental cases are often called EPIL in China, even though there are many different way of naming it depending on legal culture.
[41] Adam Moser. Assistant Director at US-China Partnership for Environmental Law at Vermont Law School. Communication through e-mail: 2013-02-27.
[42] The Chinese provinces that allowed EPIL before the amendment was Yunnan (Kunming), Guizhou (Guiyang) and Jiangsu (Wuxi). See Jingjing: Environmental Justice with Chinese Characteristics: Recent Developments in Using Environmental Public Interest Litigation to Strengthen Access to Environmental Justice, p 39.

"*Where the object of action is of the same category and the persons comprising one of the parties is large but uncertain in number at the commencement of the action, the people's court may issue a public notice, stating the particulars and claims of the case and informing those entitled to participate in the action to register their rights with the people's court within a fixed period of time*." – Art. 55 st. 1 CPL

The legal scope of class actions according to 55 CPL applies generally to all civil disputes, not just environmental ones. The regulation is therefore not specifically designed for environmental cases, which is similar to the Swedish regulation about the same matter.[43] So far only certain types of cases have been accepted in Chinese courts (environmental and consumer law cases) even though article 55 CPL does not exclusively provide this regulation.[44] Courts in China are not, however, forced to accept a claim through class action. The court may instead choose to divide the claim into several individual ones.[45] This is not uncommon among LPC's according to the sino-researcher Stern.[46] Today the LPC's have a number of compelling incentives to split class actions into several individual claims. First of all it enhances the caseload, which also in turn increases financial resources. Secondly it increases the number of "case acceptance fees", which is also a source of income. These fees have been proven to be very onerous for plaintiffs and been a real obstacle to access to justice.[47]

5.3.2. Legal improvement suggestion: impose binding rules for the LPC's regarding class actions in environmental cases

Class actions in environmental cases may bring a number of advantages for a pollution victim. In addition to the social aspects, a class action involves more resources – both financially and in terms of expertise. Through several participants the burden of the case acceptance fee is also shared. As previously mentioned, the LPC's are not bound to accept a class action. Consequently, the positive benefit of a class action gets lost. In order to increase the individual's access to justice in environmental matters the option for LPG's to split class actions to individual actions should be removed.

[43] See the Swedish Group Proceedings Act (2002:599) (GrL) and 32:13-14 §§ MB.
[44] Liu Zequn (ACEF). Communication through e-mail: 2013-03-21.
[45] See the wording in art. 55 CPL. See also Stern.: Environmental litigation in China, p. 49.
[46] Stern: Environmental litigation in China, p. 49, 53.
[47] For more information about "case acceptance fees" see Stern: Environmental litigation in China, p. 53.

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