



# **EU – China Environmental Governance Programme**

## **Policy Synthesis Report**

Modernization of the Environmental  
Governance System in China  
Executive Summary



EU – China Environmental Governance Programme

October 2015



Disclaimer: This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of EU – China Environmental Governance Programme and can in no way be taken to reflect the views of the European Union.”

# Contents

Introduction	3
I. Background	4
1. China's national governance	4
2. Environmental governance in China today	5
3. Environmental governance urgently requires modernization	7
II. Progress	10
1. Breakthrough in top-level design	11
2. Basis for ecological and environmental system	12
3. Actions by relevant government departments	13
4. Successful local approaches	14
5. New trends in social environmental governance	14
6. International experience	15
III. Problems and challenges	16
1. Challenges on the system level	16
2. Challenges on the institutional level	17
3. Challenges on the action level	18
4. Problems per thematic area	18
5. The 8.12 Tianjin Accident	21
IV. Policy recommendations	22
1. General policy recommendations	22
2. Recommendations for environmental information disclosure	24
3. Public participation in environmental decision-making	25
4. Recommendations for environmental access to justice	27
5. Enhancing corporate environmental responsibility	28



# INTRODUCTION

China is achieving considerable progress in the field of environmental governance in recent years. The Government raised the goal of ecological civilization to the highest strategic level. The CPC Central Committee and State Council have issued a series of policy documents on ecological civilization and environmental governance, highlighting the environmental cost of irrational economic development and stressing the value of natural resources and healthy ecosystems. A string of environmental legislation has followed, including powerful enforcement measures – stiff penalties for violators as well as innovative mechanisms for the public and civil society to play a role in supervising the environmental performance of businesses and government.

Despite the efforts and progress, China's environmental governance system is still relatively weak compared to the ecological and development pressures the country faces today.

Through the five-year implementation period of the EU – China Environmental Governance Programme from 2010 - 2015, the Chinese and overseas experts involved in it have had the opportunity to closely witness and analyse the policy developments and challenges in environmental governance in China. Based on this collective experience, the programme has compiled this comprehensive report of policy recommendations to China's central government, proposing means to further improve environmental governance, with a particular focus on the themes of information disclosure, public participation in environmental decision-making, access to justice in environmental matters, and corporate environmental responsibility.

This document is an English translation of the executive summary of the policy synthesis report. The full report in Chinese, and other relevant materials, are available on the website: [www.ecegp.com](http://www.ecegp.com) .

# I. BACKGROUND

Governance refers to the aggregation of ways in which public or private institutions manage their common affairs. National governance refers to the continuous process in which public institutions (including legislative, administrative and judicial institutions) and private institutions (including enterprises, social organizations and public groups) jointly manage national affairs, coordinate different or competing interests and take joint actions. The national governance system reflects a nation's institution and its executive power, and the governance capacity includes the ability of main governance bodies to fulfill their respective roles.

## 1. China's national governance

China's current national governance system was born from a planned economic system. Over the years, although China's economic system has evolved, the governance system remains outdated. As a result, China's current governance system is not fully suited to the newly-established socialist market economic system, and its governance capacity cannot meet the urgent demands of the country. The CPC Central Committee thus raises that we should vigorously facilitate the modernization of the national governance system and governance capacity. As a major component of national governance, the environmental governance system and environmental governance capacity are the weakest link, and it is therefore most necessary and urgent to improve the environmental governance system and enhance environmental capacity building.

Government sector (or political power, including legislation and judicature), market (enterprises and relevant supporting system) and society (public and social organizations) are the three major bodies in national governance system. Currently, the government sector retains a monopoly in the governance system. Market governance is still in its early stage of development, and the development of social governance is constrained and pending. To truly achieve modernization of our governance system and capacity, we have to promote balanced development of the three bodies, construct a co-governance system that involves multiple players, and pursue structural and institutional improvement. In promoting environmental governance, an issue concerning all citizens, active participation of society and the market is indispensable.



## 2. Environmental governance in China today

Environmental governance is closely associated with eco-civilization development. Currently, with very poor trends in the ecological environment and an undersupply of environmental public goods, modernization of the environmental governance system and governance capacity is the most pressing priority to develop eco-civilization. As mentioned above, modernization of the environmental governance system and governance capacity requires us to bring the roles of government, the market and society to full play, and enable the three bodies to play coordinated roles towards improving environmental quality.

Looking at our current environmental governance, we see that on one hand, the central government and leaders attach great importance to environmental issues and have formulated a number of policies, rules and regulations at the national level and developed a top-down environmental administrative governance system. The country has set ambitious environmental and energy goals in the five-year plan for national economic and social development to encourage the development of green and new energy industries. China also actively participates in international environmental cooperation, endeavoring to present itself as a country which cares about environment to the international community. On the other hand, China's ecological environment keeps worsening, and the government is losing its environmental credibility; governments at all levels show a complex and cautious attitude towards social organizations; improper actions have been taken in dealing with mass incidents and public conflicts caused by environmental problems. The above-mentioned situation reflects the defects and weaknesses of the national environmental governance



system and governance capacity.

Environmental governance capacity can be categorized into hard power and soft power. The hard power includes pollution supervision and control facilities, environmental sanitation facilities and environmental technologies; the soft power includes laws, policies, institutions, public satisfaction, global influence and the professional quality and abilities of cadres in administrative departments responsible for environmental protection.

After decades of development, the main contradictions in China's economic society have undergone great changes. The main contradictions related to environmental governance include: over-capacity in some industries vs. insufficient consumption (leading to wasteful production causing pollution); the people's growing need for environmental public goods vs. insufficient public environmental service capacity (the focus of people's livelihood has shifted from subsistence to better environment). In recent years, investment in environmental governance has increased rapidly and supervision facilities, pollution control facilities and other facilities have improved, but the development of environmental soft power still lags behind. These contradictions have added to the public dissatisfaction towards environmental protection. In addition, the escalating living standard and changing consumption behaviors have piled huge pressure on the ecological environment, reflecting the contradiction between man and nature.

Currently in China, environmental governance in China still takes the model of control-oriented governance dominated by the government sector, in which government strictly regulates pollution enterprises through laws and regulations. When choosing regulation



strategies and tools in such a model, China is shifting from using “command and control” regulation alone towards using a combination of “command and control” and “market measures”. The effects of such a model of environmental governance are affected by the awareness, willingness, incentives and capacities of the responsible environmental protection bodies. Although the methodology and functions of such control-oriented governance has been improved by introducing market measures and public participation as a supplement, it is still a model of one-dimensional environmental governance dominated by the government sector. **It is this one-dimensional governance model that has caused the failure in all aspects of China’s environmental governance capacities to match the urgent and practical needs triggered by economic and social development as well as environmental degradation. There exists systematic insufficiency in governance capacities for environmental protection administrations in China.**



### 3. Environmental governance urgently requires modernization

The central government is actively promoting the streamlining of administration, delegation of powers and multi-stakeholder governance. In this context, meeting the people’s increasing needs for environmental goods through enhancing governance by the government sector alone is against the policy objective of the government, and will fall far short of achieving the desired modernization. From now on, we should give play to market governance through rational and well-designed systems, enable the market to play a determinant role in resource distribution and make enterprises a truly active actor in pollution control and management. Meanwhile, we should enable the public to know

and supervise environmental behaviors relevant to their interests and health and allow them to participate in and improve environmental decision-making with assistance from professional and independent environmental social organizations (as public trustees to exercise rights) and obtain judicial remedy when their environmental rights are jeopardized.

Against this background, we hold that modernization of the environmental governance system and governance capacity requires a shift from the current one-dimensional governance dominated by government to diversified governance where government, market and society all play a role. It is necessary to enable enterprises and the public to become as important as government in environmental governance and to play their irreplaceable roles in environmental protection. To realize this goal, government objectives, policies and actions must be fully understood by enterprises and the public (information disclosure). Following that, for all public decisions with potential environmental impacts, government should regard enterprises and the public as partners who can contribute their wisdom to the decision. In addition, decisions incorporating public opinions are likely to be better received by the public, preventing conflicts in implementing the decision (public participation). Furthermore, government should formulate proper incentive mechanisms to encourage enterprises to internalize environmental externalities and realize the synergy between protecting environment and increasing profits (incentive); lastly, there should be an independent and just judicial system for all environmental governance subjects including government, to turn to for remedies when their legitimate environmental rights are jeopardized (access to justice). Thus, environmental information disclosure, public participation in decision-making and environmental access to justice together form the three pillars to enhance social environmental governance, and encouraging enterprises to fulfill their social obligations through appropriate mechanisms can be seen as the engine to drive market players to engage in environmental governance.

The above-mentioned four themes correspond with the key themes of the EU – China Environmental Governance Programme. This report will demonstrate the progress, challenges and international and local experience in these four areas, and raise relevant policy suggestions on the modernization of the environmental governance system and governance capacity.







## II. PROGRESS

Over the past five years, government and central and local levels have made great efforts to promote the modernization of the national governance system and governance capacity. First, the policy agendas and leaders of the CPC have pointed out several times that promoting modernization of the national governance system and governance capacity will be a major administrative goal, and a series of relevant requirements have been raised; second, the 3rd plenary session of the 18th NPC has made a number of institutional arrangements for the modernization of the national governance system and governance capacity, such as writing eco-civilization development into the party constitution, setting out a strategy for comprehensively deepen reform, establishing six special leading groups to deepen reform (in which eco-civilization and economy are put in the same group); third, a new national governance pattern of ‘diversified and coordinated governance’ has been developed to replace the ‘government takes all’ pattern, so as to elevate the position and influence of social governance; fourth, the reform goal to allow the market to play the dominant role in resource distribution has been set, influencing the upgrade of industries and the transformation of economic development patterns, affecting the overall situation of ecological and environmental protection.

In the area of environmental governance, China has also achieved a series of achievements in terms of policy documents, laws, regulations, action plans and local practice.



## 1. Breakthrough in top-level design

The The CPC Central Committee and the State Council's *Opinion on Accelerating Eco-civilization Development* (May 2015) points out that we should respect nature, conform to nature and protect nature. It stresses that we must optimize policies on prices, finance and tax, encourage and guide all entities to participate in eco-civilization development; we should improve the public participation system, disclose environmental information timely and accurately, expand the range of disclosure ensure citizens' right to know the truth and uphold public environmental rights; we should optimize the systems of reporting, public hearing, and public supervision and develop a social action system with universal participation; we have established an environmental public interest litigation system for the public to file lawsuits against behaviors that pollute the environment or damage the ecological environment; in the approval, implementation and assessment of construction projects, we should enhance public participation in order; we will guide social organizations in the eco-civilization development area to develop soundly and give play to NGOs and volunteers. All of these central government's guidelines are closely in line with the further recommendations in this report.

The Political Bureau of the Central Committee approved the *Integrated Reform Plan for Promoting Eco-civilization* (September 2015) and raised that we must follow six ideas:

- Respect, protect, and stay in tune with nature;
- Integrate development and conservation;
- Foster the understanding that clear waters and lush mountains are invaluable assets;
- Cultivate respect for the value of nature and natural capital;

- Seek equilibriums in China's territorial space;
- Ensure that mountains, waters, forests and farmlands are a community of life.

**We also need to adhere to 6 principles in promoting eco-civilization, including:**

- Ensure the right direction,
- Maintain the public nature of natural resource assets, Integrate environmental governance for rural and urban areas,
- Attach equal importance to incentives and restraints,





*People's Court's Interpretation of Applicable Laws in Environmental Civil Public Interest Lawsuits*, the *Supreme People's Court's Interpretation of Applicable Laws in Environmental Tort Liability Lawsuits* and so on. The above-mentioned systems have provided a legal basis to safeguard public acquisition of environmental information, environmental access to justice, participation in environmental decision-making and supervision of law violations.

### 3. Actions by relevant government departments

In order to implement the General Plans for Eco-civilization Reform, the leading group for economic and eco-civilization reform cooperated with relevant institutions to formulate 6 key reform measures:



- *Environmental Protection Inspection Plan (trial)*,
- *Ecological Environment Inspection Network Development Plan*,
- *Trial Plans for Carrying Out Auditing of Natural Resource Assets of Leaders and Cadres*,
- *Regulations on the Party and Government Leaders' Accountability of Ecological and Environmental Damage (trial)*,
- *Trial Plans for Making Natural Resource Asset Balance Sheets*,
- *Trial Plans for the Reform of the Ecological and Environmental Damage Compensation System*.

In order to implement the national action plans to reduce emissions and conserve energy, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Industry and Information Technology, the National Government Offices Administration, the National Energy Administration, the Administration for Quality Supervision, Inspection and Control jointly promulgated the *Implementation Plan for the Energy Efficiency Pacemaker System* in 2014. In 2015, in order to implement the *Environmental Protection Law*, the *Action Plan for Air Pollution Prevention*, the *State Council's Opinion on Promoting Eco-civilization Development* and the *Action Plan for Water Pollution Prevention*, the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology and the Ministry of Environmental Protection jointly formulated the *Implementation Plan for the Environmental Protection Pacemaker System*. The plan aims to transform the environmental management pattern from one with only bottom-line constraints to one which also includes pacemaker lead on a voluntary basis through awards for pacemakers, policy incentives, and standard upgrading. The plan also aims to set pacemaker targets, release pacemaker name lists, establish models and provide policy

incentives to pacemakers to encourage society to learn from them and advocate green production and green consumption. The above-mentioned action plans will play major roles in enterprises' voluntary fulfillment of environmental responsibilities.

#### 4. Successful local approaches

The practice to modernize the governance system and the governance capacity in some environmentally-advanced areas has provided good reference for institutional development on the national level. For example, the 'Jiaxing' model in Zhejiang Province to promote public participation in environmental protection is widely praised; the efforts made by Ningbo and Wenzhou on information disclosure are widely recognized by social organizations and the public; Shandong Province uses a three-level Weibo system to disclose environmental information and collect public reports, thus promoting environmental protection in the province and improving the strained government-public relations; Chongqing adopts various means to motivate enterprises to fulfill environmental responsibilities and clarify the relations between the government and social relations, and this practice is affirmed and taken as best practice by the Ministry of Environmental Protection and environmental departments in many other areas; the Hebei Provincial Regulations on Public Participation in Environmental Protection (Nov 2014) is the first local regulation to be approved after the 4<sup>th</sup> Plenary Session of the 18<sup>th</sup> CPC Central Committee raised that we should allow third parties to draft regulations, and it filled in the gap of local public participation; Shenyang and Guiyang's exploration of environmental institution reform and environmental judicial institution reform also provides good reference for the modernization of the national environmental governance system and governance capacity.

#### 5. New trends in social environmental governance

New trends also emerge on the environmental social governance level. In recent years, social media has risen as a new power, lighting up the public's enthusiasm to participate in environmental protection, and raising their expectations for rapid environmental quality improvement. The public reports environmental law violations and supervises government behaviors through online environmental activities such as sharing photos on Weibo (China's version of Twitter) and Wechat (China's version of Whatsapp). Many netizens also comment on or make jokes about environmental pollution, environmental decision-making, mass incidents or environmental accidents on forums, post bars, Weibo and Wechat and in QQ groups. In particular, during the period of heavy haze, netizens express their complaints and their wishes for better environmental quality through social media. A number of social environmental organizations use the Internet, smart phones, real-time positioning and other new technologies to engage in environmental governance through APPs. For example, the Blue Map of the Institute of Public and Environmental Affairs (IPE, a Chinese environmental social organization dedicated to promoting environmental information disclosure in China)



gained over 3 million users in a short period of time; SEE provides funds for individuals and organizations to carry out environmental activities and motivates more entrepreneurs to pay attention to environmental protection; social organizations such as the All-China Environment Federation and the Friends of Nature actively file public interest lawsuits. Now more and more media are beginning to expose environmental law violations and government inaction. Not long ago, the pollution discharge in Tengger Desert revealed by Beijing News journalists also drew high attention from leaders of the central government.

## 6. International experience

Despite their different level of development, international experience can still provide China with precious reference. In 1972, the Declaration on the Human Environment in Stockholm raised that humans have the right to enjoy free, equal and comfortable living environment and the right to live in dignity and comfort. At the same time, they shoulder the obligation to protect and improve the environment for their peers and descendants. In 1992, the Principle 10 of the *Rio Declaration* pointed out that environmental problems should be settled with the participation of relevant citizens. On the national level, everyone should have access to environmental information from relevant public institutions, including the information about hazardous matters and activities in their communities, and everyone should have the opportunity to participate in decision-making. All countries should provide information to encourage public participation and improve public understanding. They should also provide effective channels toward judicial and administrative procedures, including compensations and remedies. In 1998, the *United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)* declared that every contracting party should ensure access to environmental information, public participation in decision making and access to justice in environmental matters, so as to protect human's right to live in an environment suited to their health and benefits. The three pillars of the Aarhus Convention – access to environmental information, participation in decision making and access to justice in environmental matters are three of the four foci of this report, and they form the mainframe of environmental social governance.

# III. PROBLEMS AND CHALLENGES

In modernizing the national environmental governance systems and governance capacity, we are faced with all-round and systemic challenges. It is a long process to improve the environmental governance system and enhance our environmental governance capacity. Moreover, problems such as the poor ecological and environmental situation in China, the frequent environmental accidents and mass environmental incidents, the high public demands for environmental goods and the eagerness to improve environmental quality add to the challenges in upgrading environmental governance in China.

## 1. Challenges on the institutional level

On the institutional level, there are two challenges: (i) top-level design of system reform lags behind current needs, and (ii) existing top-level design is not (yet) effectively implemented.

The national environmental governance system is part of national governance. The CPC reform leading panels put eco-civilization and economy in one panel because they learned that ecological and environmental problems in China are mainly economic problems that originate from its irrational social and economic development system. For example, for a long time, the ownership of China's natural resources and assets has been undefined, and the rights and liabilities remained unclear, causing a waste of natural resources and hindering the sound development of the ecological environment. As another example, the value of natural resources is not fully realized in the production process. In resource and environmental supervision, the rights and liabilities are entangled and contradictory, thus leaving many environmental problems unsolved. Fortunately, the newly established Integrated Reform Plan for Promoting Ecological Civilization provides solutions to these problems. In the future, the biggest challenge is how to implement the top-level designs provided in the plan. In particular, how to overcome the resistance of departmental interests and develop a quality-oriented environmental governance system and governance capacity. In general, China's environmental governance is systematically insufficient with distorted development of governance subjects, virtual absence of social governance, poor market governance and weak national environmental governance. There are many endogenous contradictions on the institutional level. However, the solutions to these problems go far beyond the scope of this report, and we can only hope to solve them through



long-term national political reform and the implementation of short-term measures to deepen reform.

## 2. Challenges on the legislative level

On the legislative level, the challenges are as follows:

First, environmental legislation cannot break the departmental limit. The departments in charge of drafting legislation tend to make concessions or use ambiguous words in order to safeguard their own interests and avoid objections from other relevant departments.

This phenomenon has caused difficulties in law enforcement and has made many laws a mere scrap of paper.

Second, many laws are erected only for the purpose of legislation rather than solving real problems. The legislation departments lack a clear understanding of problems and overlooked the uneven development in the vast territory of China. After a law is approved, there are no supporting policies to ensure its implementation, and there is a lack of manpower, materials, capital and intelligence in law enforcement.

Third, the rules and regulations formulated for the implementation of environmental laws are not down-to-earth. As operational rules for law implementation, many rules and regulations are not operable, and local departments do not know how to implement them. According to survey results, this phenomenon is particularly common in public participation. Many local environmental protection departments report that they do not know how to deal with the guidelines and regulations from the Ministry of Environmental Protection. Some departments do not even print and distribute these guidelines and regulations.

Fourth, the environmental standards related to enterprises are not scientific. To avoid potential responsibility, the environmental departments have overlooked the social and economic development levels and the service capacity of market technical facilities and services. Rather, they have just issued unrealistically high standards, causing many of them useless. Some enterprises even think that doing nothing is better than failing to meet the standard. This situation has made it very difficult for enterprises to abide by the law and fulfill their environmental obligations.

### 3. Challenges on the action level

The greatest challenge on the action level is the assessment mechanism for local party and government leaders. Due to the long-time GDP oriented assessment mechanism, environmental protection serves as the fig leaf for local economic development—as long as no major environmental accidents or environmental mass incident take place, the environmental protection target is regarded as achieved. In the field, problems such as local administrative power's interference in environmental law enforcement, insufficient enforcement capacity and a lack of initiatives of enterprises to abide by environmental laws keep cropping up.

In practice, environmental department staff are hard-working and have put in a great deal of effort, and the number of officials who were dismissed and resigned from environmental departments is much higher than for other governmental departments. However, public satisfaction with environmental protection keeps downgrading, depressing all members of local environmental departments. Society thus cannot form a favorable public opinion atmosphere to jointly combat pollution, which to some extent has reduced the effectiveness of environmental protection.

In the global community, a country's soft power in environmental protection has become an important aspect of its national influence. However, currently, environmental pollution, rather than "human rights" and "corruption", has to some degree, become one of the major reasons for many other countries and organizations (media) in the world to criticize and challenge China. How to improve China's environmental protection soft power through disclosure, participation and access to justice has also become a major challenge. Some scholars hold that China's settlement of its own environmental problems could be its largest contribution to the world in the 21st century, because China is so large that global ecological security cannot be achieved without China's ecological security. As the largest developing country, China can set an example for other developing countries with its environmental improvement, and guide other developing countries to follow a path of green development.

### 4. Problems per thematic area

As it comes down to the four specific thematic areas this report is concerned about, i.e., environmental information disclosure, public participation in decision-making, environmental access to justice and corporate environmental responsibility, there also exist many realistic problems.







### **(1) Environmental information disclosure**

In terms of environmental information disclosure, it is common to see that active disclosure is insufficient, and disclosure applications do not receive effective responses. In most cases, government and enterprises actively disclosed much environmental information in the past only to show that they are complying with the Regulations on Government Information Disclosure and the Environmental Information Disclosure Methods. The information holder takes no account of whether the type of information disclosed is of the most concern to the public, or how the information disclosed will influence the affected public's life and work. In practice, there are also many problems concerning

the platform, standard, authenticity, convenience and timeliness of the disclosed information. In terms of disclosure applications, relevant institutions often reject to disclose information on the excuse that the information is a national secret or confidential business information, or that it goes beyond the disclosure range, preventing the public or social organizations from acquisition of information needed.

In addition, large amounts of environmental data are also needed for high-quality scientific research, whose result can be used to support scientific environmental decisions. Yet in reality, it has always been difficult for researchers to access to environmental data – sometimes the data is impossible to be acquired even with payment.

### **(2) Public participation in decision-making**

Why has public participation in decision-making always been insufficient? In cases of possible environmental damages, why would the public prefer to protest in the street rather than resort to legal channels? The reason is simple. The public is not aware of how to express their environmental appeals and is incapable of negotiation and bargaining with the government (which requires assistance from professional social organizations as well as free and responsible media). Therefore it is necessary to help the public better understand environmental information, making them aware of how the acquired information will affect their life and health in the future. At present, governments at all levels are trying to explore

new channels to guide the public to participate in decision-making. However, the following problems exist:

1. Decision-making institutions tend to think that public participation takes time and will hinder effective implementation of projects;
2. Decision makers tend to believe the suggestions and opinions from experts, thinking that the public do not have relevant expertise;
3. Decision-making institutions worry that they may lose their power or prestige, or worry that public participation may reveal some details that they wish to conceal;
4. Decision-making institutions are project developers themselves rather than neutral defenders of public interests;
5. Public participation faces multiple challenges due to different reasons such as a lack of democratic political culture and public participation traditions, a lack of government credibility and insufficient access to justice for violations of the public's right to participation.



Information disclosure is the foundation for public participation. Without information disclosure, the public do not even know what happened, not to mention participation. In practice, we have found that public participation is a bureaucratic behavior, exercised in a form which seems to provide opportunities for the public to response, but in fact the decision has already been made. The government cannot create a safe environment for constructive public criticism, which reduces the public's enthusiasm to air their opinions on their concerned problems and topics. In the limited participation procedures, power-holders manipulate the period for responses to reduce the number of responses, causing the public to be unaware of the facts and adding to the difficulty to acquire information.

### **(3) Environmental access to justice**

In the environmental judicial area, the rate of closed environmental civil cases is rather low. What is the cause for that? What are the obstacles for access to fair environmental justice? Since the implementation of the new “Environmental Protection Law”, why did the number of environmental public interest litigation cases not “skyrocket” as expected? When will environmental public interest administrative litigation “break the ice”? What kind of judicial support can provide the maximum remediation for the worst scenario of environmental damage? More specifically, regulations in environmental judicial practice such as “no-fault liability” and “shift of burden of proof” can hardly be implemented; lack of access to justice for the public’s environmental procedural rights as stipulated in many articles of plenty of laws; lack of legal basis for the sprouting of environmental tribunals in people’s courts at basic level. These are the challenges in the environmental access to justice that this report will respond to.

### **(4) Corporate environmental responsibility**

Enterprises are the main players in the market economy, and should be the main polluters and controllers of environmental pollution. Abiding by environmental laws is the most fundamental requirement for enterprises to fulfill their environmental responsibilities. But in reality, why is this bottom line not safeguarded? To be more specific, why do enterprises lack the momentum to disclose environmental information on their own initiative? Why are enterprises unwilling to incorporate environmental vision into their value system? Why are enterprises reluctant to develop good interactions with the public? What kind of institutional design do we need to stimulate their enthusiasm and enable them to fulfill their environmental responsibilities? The report attempts to solve these problems, the major challenges facing corporate environmental responsibility in China, with policy recommendations.

## **5. The 8.12 Tianjin Accident**

The Tianjin explosion on 12 August 2015 has exposed in all aspects challenges facing China’s environmental governance, from failure of information disclosure of hazardous materials before and after the accident, to the ineffective public participation in the EIA process and to the desperate expression of appeals from the public in the post-accident period. The performance of the responsible enterprises in fulfilling their duties is even more overwhelmingly disappointing. Environmental access to justice, be it private interest litigation from victims or public interest litigation for ecological environment remediation, may still have a long way to go.



## IV. POLICY RECOMMENDATIONS

### 1. General policy recommendations

(1) Actively promote government, market and society to participate in environmental governance (recommended to CPC Central Committee General Office and General Office of the State Council)

How to streamline the relation between government, market and society is the core issue concerning the modernization of the environmental governance system and governance capacity. The concept of ‘multi-stakeholder governance’ raised by the 3<sup>rd</sup> Plenary Session of the 18<sup>th</sup> CPC Central Committee aims to achieve common development among the three, form synergies and realize diversified governance. In environmental governance, the market is responsible for pollution control, the government is responsible for supervision of market (enterprises), and society (the public) is responsible for government supervision. They supplement each other, and none is dispensable. In cases where the market fails to achieve pollution control, government will make adjustments; when environmental public goods are insufficient to meet public demand, in other words when government fails to exercise its function, social governance will play its role.

(2) Enhance local-level environmental law enforcement capacity and regain government credibility in environmental governance (State Council and Ministry of Environmental Protection)

In the environmental protection area where public service products clearly cannot meet





public needs, especially when market governance and social organizations are not well-developed, it is extremely dangerous and irresponsible to adopt 'one size fits all' policies to streamline administration and delegate powers to lower levels. Local-level environmental departments are the main enforcers of environmental laws, their lack of enforcement capacity (both in terms of hard power and soft power) has caused accumulated environmental problems and seriously damaged government credibility. Enhancing local-level enforcement capacity is therefore the only way to take to solve environmental problems and regain environmental credibility.

**(3) Develop a strict accountability and litigation system for damage to natural resource assets (NPC and Legal Affairs Office of the State Council)**

China is a socialist country with public ownership, where natural resources belong to the nation. In the past, natural resource assets were owned by all citizens nominally, but there were no clear responsible trustees. When natural resource assets are damaged, it is difficult to hold someone accountable or make compensations. The *Integrated Reform Plan for Promoting Eco-civilization* reconfirms the ownership of natural resources. Next, we should establish a strict accountability system for natural resource asset damages to ensure that natural resource assets can be protected. The accountability system can appoint local party or government leaders as trustees of natural resources and hold them responsible for resource assets; at the same time, we should establish a litigation system for natural resource asset damages to enable social organizations and the public to sue behaviors that damage natural resources and inaction of trustees.

**(4) Further reform the assessment mechanism for local party and government leaders (Organization Department of the Central Committee of the CPC, Ministry of Environmental Protection, Ministry of Supervision)**

The GDP-based assessment mechanism is the root for many environmental problems. The current methods, such as 'talks with leaders' and 'same accountability for party and government leaders' are all exploratory methods which have not been normalized or legislated, and it is likely that the situation will be better with strict management, but

much worse without it. We suggest that the Ministry of Environmental Protection further cooperate with the Organization Department of the Central Committee of the CPC and the Ministry of Supervision to deepen the reform of the assessment mechanism on the basis of experience in some areas, expand the coverage of one-vote veto, normalize methods like ‘talks with leaders’ and ‘same accountability for party and government leaders’ and move away from the situation where GDP is the only assessment standard.

#### (5) Carry out third-party assessment on environmental protection legislation (NPC and Legal Affairs Office of the State Council)

In reality, due to departmental interests or contradictions, many laws are not enforceable enough. In order to get the laws approved, legislators tend to delete or keep vague certain contents about institutions, personnel and capital. This has led to a lack of support after the laws are enacted, and finally caused them to become a scrap of paper. Besides, many clauses in the law lag far behind actual demands. Therefore, we need to introduce independent third-party assessment institutions to identify and remove obstacles to the enforcement of environmental laws.

#### (6) Increase investment in environmental governance soft power (Ministry of Environmental Protection and Ministry of Finance)

Since the 10<sup>th</sup> Five Year Period Plan, China’s environmental protection hard power has increased significantly, while the soft power such as laws, policies, environmental education, environmental awareness, environmental communication, government public relations and foreign communication and cooperation lag behind. As a result, public condemnation against environmental departments has increased, and society cannot form synergy to combat pollution. In view of this, we recommend that more emphasis is placed on the development of environmental soft power and enhance law-making, policy-making, information disclosure, media publicity and public relation safeguards in aspects such as institution arrangements, personnel planning, budgeting and expertise.

## 2. Recommendations for environmental information disclosure

- (1) Utilize big data technology to develop a nationwide information disclosure platform that is easy for the public to access and exchange information on environmental risks (led by Ministry of Environmental Protection).
- (2) Develop and run social media platforms to release relevant environmental information and timely respond to public demands (led by Ministry of Environmental Protection and implemented by environmental departments at provincial, municipal and county levels).
- (3) Clarify that environmental information that should be disclosed may not be regarded as a



national secret or as confidential business information (led by National People's Congress Standing Committee and State Council).

(4) Remove the requirement to state an eligible purpose for a request for information disclosure (led by National People's Congress Standing Committee and State Council).

(5) Allow and regulate the public to independently measure and disclose environmental information (led by National People's Congress Standing Committee and State Council).

(6) Further extend punishment for enterprises who violate information disclosure laws (guided by National People's Congress Standing Committee).

(7) Incorporate enterprises' information disclosure law violations into the scope of environmental public interest litigation (guided by National People's Congress Standing Committee).

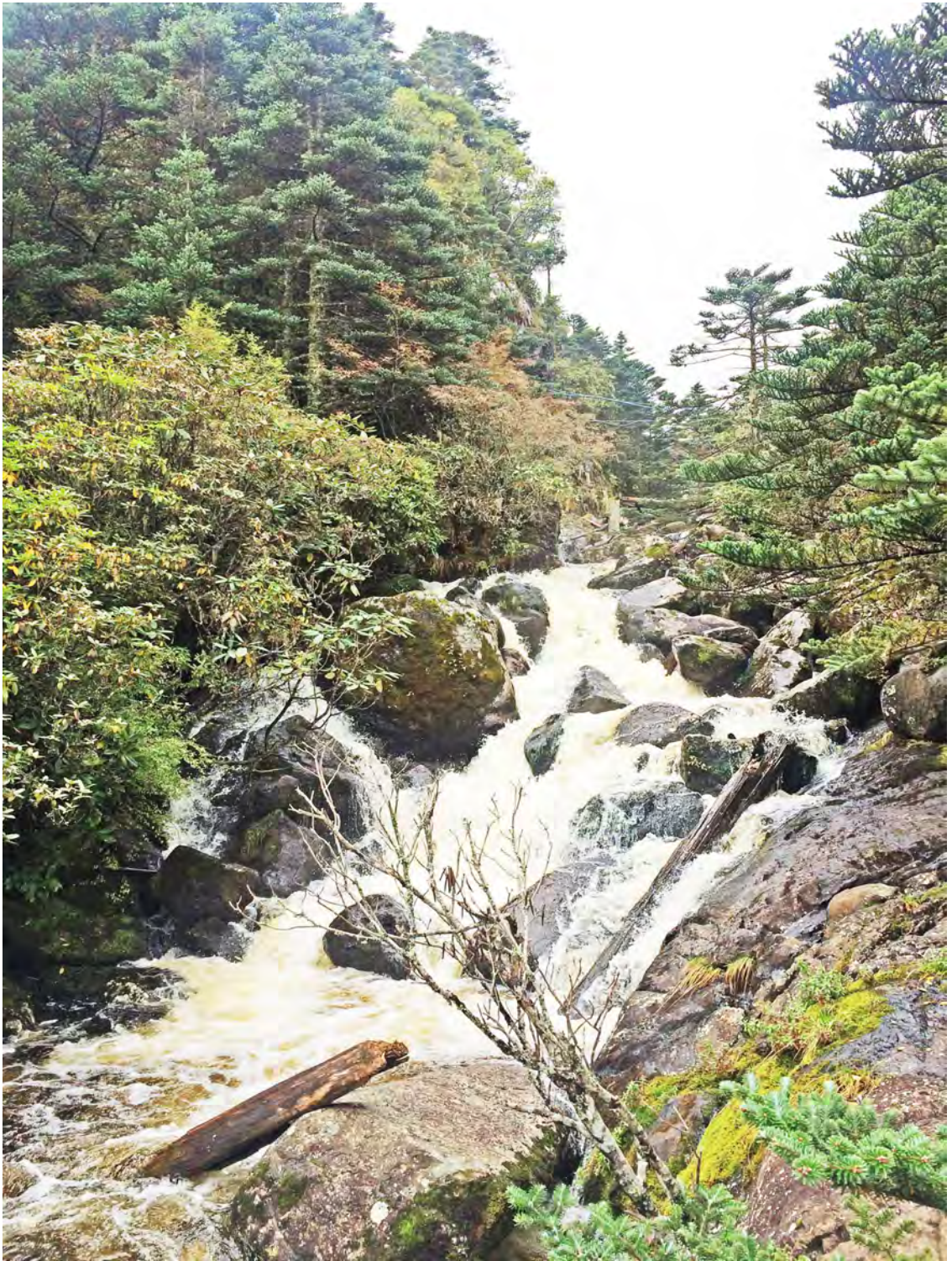
### 3. Public participation in environmental decision-making

(1) Issue national regulations for legal channels of public participation in environmental policy making, planning, location decisions, project approval, investigation, construction, acceptance and operational supervision (guided by Legal Affairs Office of the State Council).

(2) Integrate all institutions that maintain public relations within environmental departments and establish institutions to provide basic conditions for public participation services (Ministry of Environmental Protection and State Commission Office of Public Sectors Reform).

(3) Strengthen support to environmental civil society organizations, develop a mechanism for the sound and long-term development of these organizations and create favorable conditions for their growth (Ministry of Environmental Protection and Ministry of Civil Affairs).









(4) Further develop legislation on environmental education, improve understanding among all actors in society of protection and development and make forward-looking, active and integrated environmental communication strategies (National People's Congress and Ministry of Environmental Protection).

(5) Open an official Weibo of the Ministry of Environmental Protection and develop a Weibo system at national, provincial, municipal and district levels that covers the whole nation to remove the barriers between the public and the government, alleviate conflicts between them and regain government credibility (Ministry of Environmental Protection and Cyberspace Administration of China).

(6) Establish and improve the prevention and emergency response mechanism for environmental accidents and mass incidents (Ministry of Environmental Protection).

#### 4. Recommendations for environmental access to justice

(1) Promote independent and just exercise of environmental judicial power (led by Supreme People's Court and participation by Ministry of Finance and Organization Department of CPC Central Committee)

(2) Establish a system for environmental administrative public interest litigation (led by National People's Congress Standing Committee).

(3) Enhance access to justice for the public's right to know and to participate (led by Supreme People's Court).

(4) Improve the ecological and environmental damage assessment system (led by Ministry of Environmental Protection and participation by Supreme People's Court and Ministry of Justice).

(5) Accept, investigate and implement applications for enforcement cases from

environmental departments or other departments in charge of environmental supervision or management, in accordance with the law (led by the Supreme People's Court)

(6) Improve the link between environmental administrative law enforcement and criminal justice, strengthen supervision on suspected criminal cases transferred from environmental departments to prevent environmental departments from replacing punishment with fines (led by Ministry of Environmental Protection and participation by Ministry of Public Security).

## 5. Enhancing corporate environmental responsibility

(1) Strictly enforce environmental laws, promote corporate environmental information disclosure and increase the cost of violations (Ministry of Environmental Protection).

(2) Encourage enterprises to fulfill environmental responsibility through management of green supply chains, eco-labeling mechanisms, and green finance (Ministry of Environmental Protection).

(3) Cultivate future business leaders with a sense of sustainable development (Ministry of Environmental Protection and Ministry of Education).

(4) Implement the Environmental Responsibility Fulfillment Pioneer Plan (improving and replacing the Environmental Protection Pacemaker Plan) (Ministry of Environmental Protection and Ministry of Industry and Information Technology).

(5) Launch plans to assist SMEs to abide by environmental laws (Ministry of Environmental Protection and Ministry of Industry and Information Technology).



