

ACCESS TO JUSTICE IN ENVIRONMENTAL DISPUTES:
*OPPORTUNITIES AND OBSTACLES FOR CHINESE POLLUTION
VICTIMS*

Kathinka Fürst



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Centre for Development and the Environment

University of Oslo

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One of the pollution victims in this case study, Damulinzhabu, in front of the Dongwu Banner County Paper Mill's 686.88 acres of artificial "wastewater lake" in the 2001. His hands are covered with sewage water from a Paper Mill. **Source:** Woodrow Wilson International Centre for Scholars.



Dongwu Banner County Paper Mill's 686.88 acres of "wastewater lake" in 2007. After Damulinzhabu won a lawsuit against the paper mill in 2004, the paper mill has been relocated. However, damage on nature caused by the pollution has been left untreated. **Source:** Private photo

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Preface

Writing this thesis has been like a journey into unknown waters, leading me to new acquaintances, interesting places and mesmerizing discoveries. A number of people have been instrumental in guiding me through this journey, without their insightful advice, wholehearted support and caring accompanying I am not sure I would have been able to reach this final destination.

Embarking on this journey had not been possible without the scholarship provided by The China Programme at the Norwegian Center for Human Rights. I am grateful for all the invaluable feedback and positive support from Cecilie F. Bakke, Camilla Wedul, Elisabeth Bjørnstøl and Maria Henoeh. A special thanks to Otto Malmgren for precious comments and feedback.

I would like to express my sincere gratitude to the Chinese Legal Assistance Center for Pollution Victims, especially Zhang Jingjing, for providing me with very useful guidance and Wang Canfa for allowing me to attend his lectures in Chinese Environmental Law. Thanks also to Chen Jicun for providing me with information and knowledge on the Donwu Banner County Paper Mill case.

This research would not have been possible without the pollution victims' willingness to share their stories, experiences and reflections with me. I genuinely thank Liu Hai, Li Shuxian, Han Xiang, Gao Guizhen, Wen Quanlai, Damulinzhabu and a number of people whom I cannot mention my name, for generously opening their homes and hearts for me.

Furthermore, I am sincerely grateful for all the support from my advisor, Ole Kristian Fauchald. His insightful comments have provided me with clear directions throughout this project. And whenever I got lost, he brought me back on track.

Finally I would like to thank my family and friends for all their support and encouragements during this last year. Here I would especially like to thank my

sister Henriette, for loving help and support. Last, but not least I am particularly thankful to Tie Qiao, for accompanying me during this journey. His support, perspectives and encouragements have been very much appreciated.

The views expressed in this thesis are those of the author alone, and do not necessarily reflect the perspectives of the people who are mentioned here. I am responsible for all errors and omissions.

I would like to thank all of you for making this journey so full of instructive experiences and unforgettable memories. This thesis marks the end of the journey for me, but at the same time it is the beginning of a journey for the reader. Before the journey begins, one practicality should be mentioned. This thesis makes a lot of references to Chinese sources, and in order to separate them as clearly as possible, I have included both the last name and first initial of the given name when making references to them.

Bon Voyage!

Kathinka Fürst
Oslo, 12.06.08

Acronyms and Abbreviations

ALL	Administrative Litigation Law
ACLA	All China Lawyers Association
CCTV	China Central Television
CLAPV	Chinese Legal Assistance Centre for Pollution Victims
CNY	Chinese <i>Yuan</i> (also <i>Renminbi</i> (CNY)- People's Money, Chinese currency)
COD	Chemical Oxygen Demand
CPC	Communist Party of China
CPL	Civil Procedure Law
CCPR	International Convention on Civil and Political Rights
DLV	Department of Letters and Visits
EIA	Environmental Impact Assessment
EPB	Environmental Protection Bureau
EPL	Environmental Protection Law
FON	Friends of Nature
FYP	Five Year Plan
GDP	Gross Domestic Product
HRW	Human Rights Watch
IMAR	Inner Mongolia Autonomous Region
NCHR	Norwegian Centre for Human Rights
NGO	Non Governmental Organization
NPC	National People's Congress
PMC	People Mediation Committee
PRC	People's Republic of China
SEPA	State Environmental Protection Administration

SPC

Supreme People's Court

UDHR

Universal Declaration of Human Rights

1. Introduction

1.1 Rationale and research question

Research of the legal development in China and challenges related to this subject has proliferated in recent years.¹ Studies focusing on environmental issues and environmental law have also developed rapidly.² However, there has not been a strong focus on the combination of the two.³ As there has been an increase in the number of rights based approaches to environmental disputes in China over the few past years, this is an area that deserves more attention. Through a comprehensive analysis of challenges Chinese pollution victims face in environmental dispute settlement processes, this thesis endeavours to fill some of that gap.

The main framework of the thesis is based on the ‘dispute pyramid’ approach (Felstiner et al 1980-81, Wouters and Van Loon 1992); a representation of what measures an injured party may employ to solve a dispute.⁴ Based on the ‘dispute pyramid’ and drawing on the Chinese judicial framework the thesis asks *what are the theoretical legal and extra legal opportunities available for injured parties in environmental dispute settlement process?* In this regard, opportunities will be used as a reference to formal legal dispute settlement mechanisms as well as extra legal channels used by the pollution victims to put pressure on either the polluter or a third party involved in the dispute

¹ The number of publications is too comprehensive to account for in detail here. See for example: (Brown 1997, Chen, J. et al. 2002, Peerenboom 2002, Grimheden 2004, Diamant et al. 2005).

² For general introduction on the state of the environment see for example: (ADB 2007, WB and SEPA 2007). On water pollution see for example: (Economy 2005). For air pollution see for example: (Mun, H. et al. 2007).

³ For some recent development in this field see: (Zhao 2004, van Rooij 2006, Palmer 2007, Brettell 2008).

⁴ For a more in depth explanation on the ‘dispute pyramid’ see: 1.4.2 in this chapter.

settlement process. Based on a comparative case study of pollution victims' approaches to environmental disputes settlements in Inner Mongolia Autonomous Region (IMAR) the thesis explores what happens when these opportunities are put into practice by asking *what obstacles Chinese pollution victims face in the different stages of the dispute pyramid*. Based on the incongruity between theory and practice, the thesis tries to answer the following question: *what causes the obstacles for pollution victims in obtaining access to justice?* And finally the thesis asks, *given the current situation, what can be done to aid Chinese pollution victims in their process of obtaining access to justice?*

1.2 Terms and definitions

For the purpose of this paper, “*pollution victims*” (*wuran shouhai zhe*) will be understood as those negatively affected by damage caused by pollution outlets.⁵ The concept includes agents who have been affected through either loss of property or source of income, for example polluting outlets causing the death of animals, reduced development of crops etc., physically affected, i.e. by suffering physical impacts such as cancer, respiratory diseases or other disease, and individuals whose daily activities are affected by pollution, such as noise pollution influencing peoples ability to sleep etc.

The term “*environmental dispute*” refers to disputes between pollution victims and the party responsible for the pollution. Generally environmental disputes occur between pollution victims and one or several enterprises, industries and/or companies. In cases where the activities leading to pollution have been

⁵ The definition is based on (Wang, C. 2007:26)

made possible by governmental agencies, these governmental agencies might also be involved in the environmental disputes.

The thesis considers access to justice not only as a formal legal right, but instead the definition of the concept emphasis on what is obtained when access to justice have been achieved. The thesis provides a number of criteria which will be used as a basis for a comprehensive evaluation with regards to what extent access to justice have been achieved in the sample cases. The criteria focus on pollution victims' right to seek remedy before an independent court, the amount of compensation, elimination of future pollution risks and restoration of damage caused by pollution. The usage of the concept access to justice is elaborated in section 2. 2, pertaining to access to justice in environmental disputes.

1.3 Overview

In chapter one the context and rationale for studying pollution victims' opportunities and obstacles in achieving access to justice in environmental disputes is introduced. Explanation of the methodological approach is presented and challenges of conducting fieldwork in China, as well as a discussion on the sample and selection of cases are discussed. The second chapter starts with creating an explanatory backdrop on the increase in environmental disputes in China. Secondly, the chapter briefly introduces the concept of access to justice in environmental disputes in China. Furthermore, drawing on the dispute pyramid, chapter two describes which legal and extra-legal opportunities are available for Chinese pollution victims at each stage of the pyramid. Chapter three is devoted to the six cases from Inner Mongolia Autonomous Region. Each environmental dispute is presented with a brief introduction of the case, followed by a time outline accounting for the

development in the case. Chapter four provides a chronological and inclusive analysis of the various obstacles pollution victims experience in the dispute resolution process. The fourth chapter then point out the underlying reasons causing the various obstacles. Furthermore, the chapter comments on current developments in China which might have an effect on alleviating the obstacles Chinese pollution victims face in the dispute resolution process. Chapter five opens with a comprehensive evaluation addressing the question to what extend was access to justice achieved in the six cases. Then the chapter provides a complete summary of the obstacles pollution victims experienced in the dispute resolution process. Furthermore, the chapter provides an overall analysis of the structural, political, scientific and financial impediments for pollution victims in obtaining access to justice. Chapter six concludes the thesis with a summary of the thesis, suggestions for further research in the field, and a general conclusion.

1.4 Research method and framework

1.4.1 Research method

(I) An open interdisciplinary research process

As a student at the interdisciplinary research institute, the Centre for the Environment and Development (SUM) at the University of Oslo, I have endeavoured to conduct this project from an interdisciplinary approach. The thesis aims at investigating structural, political, scientific and financial obstacles pollution victims face in both the legal and extra-legal process seeking to achieve access to justice. In this regard, an interdisciplinary

approach allows the research to look for reasons causing these obstacles across and beyond traditional disciplinary boundaries. Given the complexity of the subject, such an approach is highly appropriate. Through an interdisciplinary analysis one is capable of obtaining a comprehensive understanding of the complexities of the situation.

That being said, the dispute pyramid which will be used as the overall framework for this paper, evolved within sociology of law. Still, in both chapter four and five, which provide an analysis of the obstacles pollution victims face in the process of solving environmental disputes, both quantitative and qualitative research and literature from a number of academic disciplines will be drawn on.

Furthermore, it is fair to say that writing this thesis has been an open interdisciplinary research process. In the process of completing this thesis I have been fortunate to have the possibility to discuss the project with academicians representing different disciplinary backgrounds. In June 2007 I was awarded a scholarship from the China Programme at the Norwegian Centre for Human Rights. This provided me with an excellent opportunity to present and discuss my research with staff of the China Programme whom all hold different academic backgrounds. Furthermore discussions with my supervisor have greatly contributed to my understanding of the subject. Moreover, during the time I conducted the fieldwork in China, I had the chance to discuss my project with Chinese environmental law experts and student. Moreover, conversations with the informants and activists supporting them provided me with yet another approach to the subject. Throughout the project I have redefined the research questions and my approach to the subject. I believe that through this process I have obtained a more holistic understanding of the situation I am investigating, than I would have if I had not allowed myself to engage in this kind of open research process.

(II) A qualitative approach

It has been argued that the case study approach is a methodology well suited for investigating contemporary phenomena within their real-life contexts (Yin 2003: 11, Brockington and Sullivan 2006:57). By focusing on multiple-case study analysis of how pollution victims in the selected cases experience the different stages of the dispute handling process, I try to gain an in-depth understanding of the opportunities and obstacles Chinese pollution victims face in the process of addressing environmental disputes. There are a number of challenges related to the process of conducting such research, however. Perhaps most prevalent is the question concerning the validity of generalize findings from a single case (Yin 2003:10). Yet, the goal of a case study is not to enumerate frequencies and provide a statistical generalization, quite the contrary it aims at expanding and generalizing theories and thus provide an analytic generalization (Ibid.). And thus the question of the validity of generalizing findings from a single case should not be a major concern for researcher adopting this approach. Another general critique of the case study method have been that the presentation of the empirical data often are synonymous with the narrative presented by the researcher and the critical reader has no recourse if he or she wants to inspect the raw data that led to the case study's conclusion (Yin 2003: 101). I personally encountered this critique when I told Chinese students that I would base my thesis on findings obtained through interviews with a number of people. Some responded by asking me how the reader could be sure that I gave an accurate account of what the informants had told me. Could I not just be making things up? In order to avoid this situation Yin (2003) suggests that each case study include a formal, presentable database, so that in principle, other investigators can review the evidence directly. In this manner, Yin claim, a case study database markedly increases the reliability of the entire case study (Yin 2003: 102). Drawing on Yin (2003) suggestions, this study present a database of all the Chinese

documents which have been obtained in the data collection process, and which is not available through other means, is listed on the appendix. Moreover, a list of all the recorded interviews with reference to number of the recoding and the interview guide can be found in the appendix. All this information is on file with the author.

Concerning the reliability of case studies it has been claimed that if under varied circumstances one can arrive at common conclusions from several cases, such findings will immeasurably expand the external transferability of the findings, compared to a single case alone (Yin 2003:53). Thus, in order to increase the reliability of the findings of this study I have carried out a multi-case study represented by six environmental dispute cases in IMAR. As pointed out by Stake, the selection of cases to be studied is perhaps the most unique aspect of a case study (Stake 1994: 243). It is vital important that the researcher determine a strategy for the purposeful sampling of individuals or sites from the cases which should be included in the study (Creswell 1998: 110). Before developing such a strategy it was necessary to define some external criteria for the cases. Initial I had decided that the cases should be from different places in IMAR, the environmental disputes in the cases should be resolved, the cases should preferably include informants from environmental disputes which were solved through litigation and cases which were solved though other means, I should be able to interview the pollution victims in Mandarin, and the cases should be reasonably recent.⁶ However, in the process of developing a strategy to identify the cases, I soon realized that I had to let go of my strict demands for validity as access to information proved to be difficult. Adjusting the criteria for the selection of cases was partially

⁶ Mandarin (*Putonghua*) is the official spoken standardized Chinese language.

related to some of the many challenges in conducting research in China.⁷ Conducting fieldwork in the country can be challenging, especially when investigating comparatively sensitive issues. For such type of studies it can be particularly difficult to obtain admittance to information and informants. Often this creates a situation in which one have to rely heavily on *guanxi*⁸ (network) to get access to informants. As dissatisfactory as this might be from a methodological perspective, well known scholars in Chinese law and legal development claim that it is impossible to carry out sensitive social scientific research in China without sacrificing in terms of validity and representativeness (van Rooij 2007:17). But, this is not a problem only in China. It has been argued that access to information typically begins with a “gatekeeper”, an individual who is a member of or has insider status within a certain group (Creswell 1998:111, Scheyvens and Storey 2006:153-55). The contact with the gatekeeper can lead to the researcher to relevant cases and other informants. One such gatekeeper in this research was the legal aid institution Chinese Legal Assistance for Pollution Victims (CLAPV) at the Chinese University of Political Science and Law.⁹ CLAPV was able to provide information for three of the cases (the Jinshan cases) in this study. I believe that in the process of obtaining information on the cases in IMAR, my language skills, understanding of the Chinese culture and persistence were important factors leading me to access to information on the cases. However, in order to ensure, to the largest extent possible, the representativeness of the cases in this study, I also wanted to include cases from other sources. By

⁷ For challenges in conducting fieldwork in China see :(Heimer, M. and Thøgersen, S.2006)

⁸ *Guanxi*: a person’s connections, relations and network.

⁹ CLAPV was established in 1998. It is a non-governmental environmental protection organization registered with the Chinese Judicial Ministry, located at China University of Political Science and Law (CUPL). The centre is managed by professors and assistant professors in environmental law at CUPL. These professors volunteer their time, as do a number of legal experts, scholars from a number of other institutes in Beijing with interested in environmental and natural resources law, as well as student in environmental law at CUPL.

browsing the site www.chinalawinfo.com, I was able to identify one environmental litigation case in Baotou, referred to as “Baotou Water Supply company case” in this thesis. Furthermore, in the article “Dongwu Banner County Paper Mill: Polluting and Violating Legal Rights” (Chen, J. and Li, J. 2005) from a publication published by Friends of Nature (FON) in China I was able to identify the “Dongwu Banner County Paper Mill case”.¹⁰ The last case, the “Weihang Cement factory case”, I more or less stumbled upon during the fieldwork in Jinshan.

The informants in the cases have mainly been plaintiffs and petitioners in environmental disputes. However, petitioners’ lawyers and journalists reporting on the cases have also been interviewed. The interviews took place in Beijing, Dongwu Banner County, Jinshan Township and Baotou City in the period between October 2007 and January 2008.¹¹ All the interviews were conducted under informed consent and later transcribed in Chinese. The interview questions were designed using the standard open-ended approach.¹² Most of the interviews were conducted in Mandarin; in one of the cases involving Mongolian minorities, a local Mongolian-Mandarin translator translated questions and answers.

(III) Some reflections of the choice of topic

Critical readers might accuse me of sympathizing with the claimant in environmental disputes, by addressing them as pollution victims. Moreover, some might believe that such sympathy will influence the description and analysis of Chinese pollution victims’ process of obtaining access to justice in

¹⁰ A friend of nature (FON) is the oldest environmental non-government organization (NGO) in China, established in 1994, officially registered under the Ministry of Civil Affairs.

¹¹ A banner is an administrative division equivalent of the county used in IMAR

¹² See appendix 3, Interview Guide.

this thesis. However, as pointed out by Scheyvens and Nowak (2006) judgement in the social sciences is never value free, and that in research which involves evaluation, the researcher should firstly identify and make explicit the values behind the judgements that are being made (Scheyvens and Nowak 2006:106). My decision on the topic of pollution victims access to justice is based on a belief that the injustice these people experience is dire, both in the sense that they are victimized by the actual pollution, but more importantly I find it very disturbing that these people experience great difficulties in their efforts to exercise their legal rights. In this regard it should be pointed out that this thesis most probably could be identified as “critical research” which is based on, *inter alia*, a moral dimension (Murry and Overton 2006: 21).

The purpose of such research is, according to the two scholars to uncover non-explicit processes and relations and communicate these to people so that they may act upon them in order to improve society, a process referred to as emancipation”(Ibid.).

However, this moral dimension of the subject, does not translate into a belief that the agencies representing the obstruction in the process of achieving access to justice for the pollution victim are perceived to be immoral. Quite the contrary, instead of placing blame at the agencies creating these hindrances, the thesis attempts to explain the behaviour of the agencies by identifying political and structural reasons causing them to act the way they do.

1.4.2 Research framework: the dispute pyramid

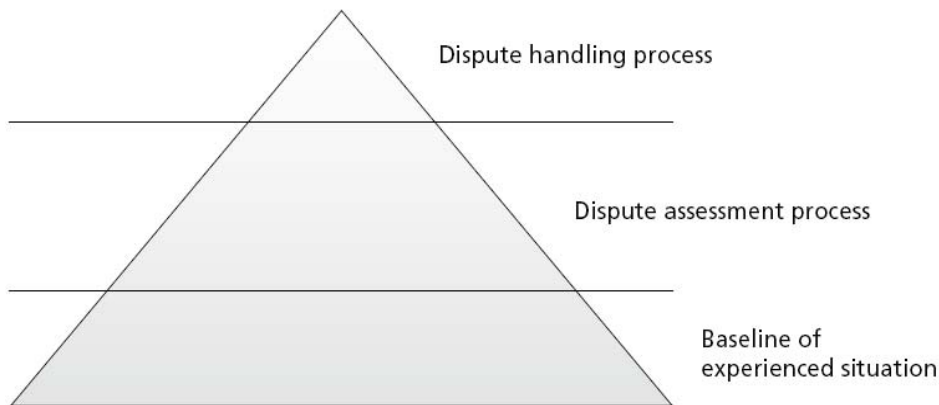


Figure 1: Felstiner, Abel and Sarats Dispute Pyramid

In the article “The Emergence and Transformation of Disputes: Naming, Blaming and Claming” Felstiner, Abel and Sarats provided a framework describing the process in which disputes emerge and transform (1981: 632). In this work, the three scholars introduced the idea of the dispute pyramid, as a framework, illustrated in figure one, of the various steps a claimant might choose in the process of addressing a dispute. In the first stage, at the bottom of the pyramid, they identify the process in which individuals come to understand that an experience was injurious; this step is often referred to as the *naming* process. In this process the injured decides how he or she is going to address the problem. The second step, the *blaming* process occurs when a “person attributes an injury or fault to another individual or social identity” (Felstiner et al. 1981: 635). The third step is when somebody with a grievance voices it to the person or entity which is believed to have caused the situation and asks for some remedy and to obtain retributive justice (Ibid.). Drawing on Felstiner et al. Pouters and Van Loon have developed a more complex

pyramid (Wouters and Van Loon 1992).

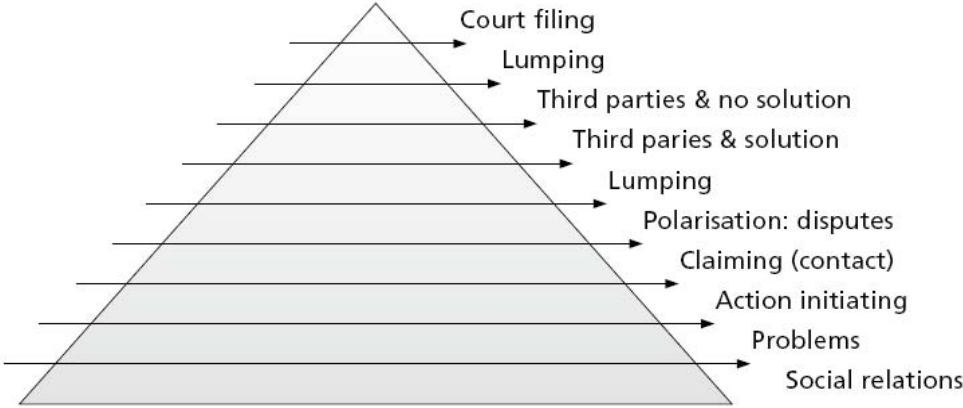


Figure 2: Wouters and Van Loon’s Dipute Pyramid

Figure two illustrates Wouters and Van Loon’s dispute pyramid. Their version of the pyramid also has three basic levels. The first step is similar to the one referred to by Felstiner et al., namely the claimant’s perceived experience of injury. Yet, in Wouters and Van Loon’s dispute pyramid, the second (*the dispute assessment process*) and the third layer (*the dispute handling process*) each have four sub-layers. According to the two scholars, the dispute assessment process is made up of the following four steps: *naming* (the transformation of the unperceived problems into perceived problems), *action initiation stage* (in which the choice is made if he or she is going to do something about it); if the injured party decides to “lump it”¹³ (avoid or ignore the dispute), the problems will end at this stage. If the injured party decides to take action within the second stage, then the process of climbing the dispute

¹³ The word to lump is used to signify avoiding or ignoring disputes. The Chinese version of the concept is to ‘*chi dian’r ku*’ or ‘*ren le suan le*, which translates into to ‘swallowed the loss’ (Michelson 2008:48).

pyramid progresses. The third step is the *claiming stage* (in which the injured party approaches the party considered to be responsible for the problem, and blame the perceived transgressor for causing the problem).¹⁴ The final stage in the dispute assessment process occurs if or when the other party refuses to meet the wishes of the claimant, this is referred to as *the polarisation process* (Wouters and Van Loon 1992: 224-225). The third level of the dispute pyramid, the dispute handling process, contains four steps; the first step occurs if the claimant decides to drop the case. The second step the claimant may take, if her or she decided to proceed in the dispute resolution process is seek help from *third parties*.¹⁵ If third parties can help the claimant to solve the conflict, the claimant will end the climbing of the dispute pyramid at this stage. However, if the claimant decides to “lump it”, the dispute resolution process will also end at this point, which is represented by the third step: *resolution or lumping*. The last stage is to take the dispute to *court*.

¹⁴ To reach this stage, first another party must be assignable, and second the claiming has to be considered by the claimant as possibly leading to the solution of the problem (Wouters and Van Loon 1992: 225).

¹⁵ Wouters and Van Loon have identified three groups of “third parties”. These are: members of peer groups including family, friends and neighbours, the second category include member of groups with some familiarity, though less familiarity than a peer groups, and member of groups with whom the actor has a slightly more formal relation like social official/representatives. The third category is formed by legal scholars, mainly lawyers and judges etc. (Wouters and Van Loon 1992: 225).

2. Opportunities to obtain access to justice in environmental disputes

2.1 General introduction

The first section of this chapter provides a backdrop to the increase of environmental disputes in China. Second, the chapter introduces the concept of access to justice and accounts for the definition of the concept as used in this thesis. Third, based on the dispute pyramid, the chapter accounts for what legal and extra-legal mechanisms Chinese pollution victims have in obtaining access to justice at each step of the pyramid.

2.2 Environmental disputes in China

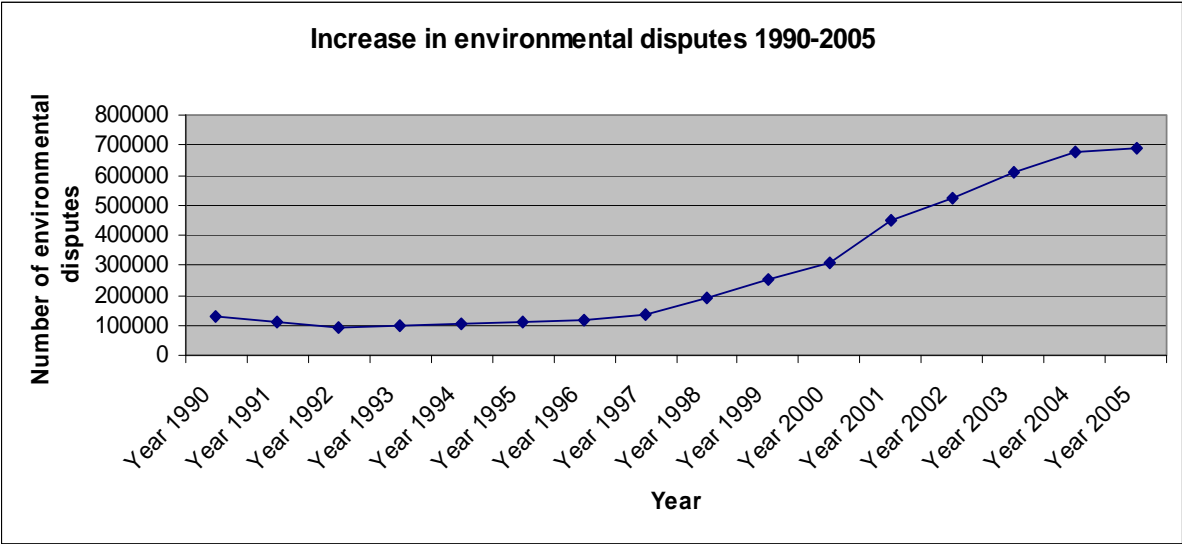
2.2.1 Increase in environmental disputes

Statistics accounting for situations of environmental disputes in China vary considerably. State Environmental Protection Administration (SEPA) claim that in 2006 they received more than 600 000 complaints regarding environmental issues, which is a 30 percent increase from 2005 (Xinhua 11.01.2007).¹⁶ Furthermore, SEPA states that in 2005, 161 pollution accidents were reported, which amounts to one pollution accident every other day

¹⁶ In March 2008 SEPA was replaced by the Ministry of Environmental Protection (MEP) by the National People's Congress. MEP is now the nation's environmental protection department charged with the task of protecting China's air, water, and land from pollution and contamination. Directly under the State Council, it is

(Ibid.). The All China Lawyers Association (ACLA) claims that in 2007 there were more than 100 000 environmental disputes in China. According to the same source less than one percent of the disputes reached the final level of the dispute pyramid, litigation (Li, J. 16.01.2008). Furthermore, the tenth Five Year Plan (FYP) also indicates that Chinese citizens are growing discontent with the state of the environment.¹⁷ The report states that since 2003, environmental authorities at various administrative levels in China have received more than 1.148 million complaints on environmental pollution (WHITEPAPER 2006:19). Professor in Environmental Law at the Chinese University for Political Science and Law, Wang Canfa, confirms the lack of reliable data on the subject. He argues that currently there are no statistical sources which can provide detailed information on the number of environmental disputes in China (Wang C. 2007: 26). But even though the statistics varies, all the sources indicate that there has been an increase in the number of environmental disputes.

Table 1: Increase in Environmental Disputes 1990-2005



empowered and required by law to implement environmental policies and enforce environmental laws and regulations.

Source: 2005 State Council for Environmental protection administrative department (Wang, C. 2007: 27).

Not only are the number of environmental disputes increasing, protests related to such disputes are also on the rise. In the spring of 2006, China's top environmental official, Zhou Shengxian, announced that there had been 51,000 pollution-related protests in 2005, which amounts to almost 1,000 protests each week (Economy 2007:4). Most pollution related protests are relatively peaceful, but in recent times the intensity of the disputes has also increased. At times these disputes have exalted into violent and heated situations, resulting in very drastic results of the people involved. In December 2006, at least three people were killed in a violent clash when police opened fire at a mob of ten thousands angry villagers protesting against the construction of wind power plant on their land without sufficient compensation (Van Rooij 2006: 363). In January 2008 Wei Wenhua, a by passer documenting a clash between villagers and police in Wanbei Village, Hebei Province, due to villagers protests against dumping of waste on their land died after severe beating from the police. According to eyewitnesses the beatings started when Wei Wenhua refused to hand over the camera he had been taking pictures with to the police (Wang, X. 09.01.08). In April 2005 thousands of people Huaxi Village in Zhejiang Province rioted against pollution from a chemical plant and the local government lack of action to stop is, by overturning police cars and driving away officers who had tried to stop villagers in their protesting against the factory (Yardley 04.09.06). In May this year hundreds of people demonstrated against the construction of petrochemical factory and oil refinery in Chengdu, Sichuan (Wong, E.

¹⁷ Five Years Plan refers to plans related to the economic development in China. The tenth FYP included the

05.05.2008). In Beijing a number of residents in the real-estate area named Baiwangjiayuan demonstrated against the construction of a series of high-voltage electric towers running through the north-western part of Beijing. In fact, the situation has become so serious that recently the Ministry of Public Security ranked pollution among one of the top five threats to China's peace and stability (Larson 2008:1).

Why do we see this increase in environmental disputes in China?

Unfortunately it is not within the scope of this thesis to explore this question in detail. However, the recent increase in environmental disputes is similar to increase in disputes related to other issues. In recent years, China has witnessed a sharp increase in social protests and social rights based

years from 2001 to 2005.

movements.¹⁸ Zhao Yuhong argues that the increase of environmental disputes can be explained by a combination of China's economic take-off and a growing environmental awareness of the general public (Zhao 2004: 158). Wang Canfa believes that the increase of environmental disputes can be explained by a combination of a continuously deterioration environment and a general increase among the general public concerning their legal rights (Wang, C. 2002: 11).

One major environmental dispute which has received a lot attention in the media was a well organized massive demonstration in the spring of 2007 against a planned construction of a USD 1.4 billion petrochemical plant on the outskirts of Xiamen, the provincial capital in the southeast province of Fujian. The number of demonstrators reported ranges between seven to twenty thousand. In a commentary of the rise of environmental movements in China, Elisabeth Economy, an expert on environmental pollution in China, claims that the Xiamen protest was captured on video and uploaded to YouTube (Economy 2007: 5).¹⁹ One of the videos to be found on YouTube features a voice-over that links the Xiamen demonstration to an ongoing environmental crisis near Tai Hu, the third largest lake in China, some 400 miles away. In May 2007 a poisonous algae bloom the lake contaminated water supplies for several days in Wuxi, the algae bloom was caused by pollution from caused by industrial wastewater and sewage dumped in the lake. According to the narrator of the video, the Xiamen demonstration was perhaps "the first genuine parade since Tiananmen" (Ibid.). Some have gone so far as to call the Xiamen a victory to the masses, as the massive demonstration followed by a

¹⁸ See for example: (O'Brian and Li, L. 2006, Goldman 2005).

¹⁹ YouTube is a video sharing website where users can upload, view and share video clips. YouTube was created in February 2005.

meeting between the 'people' and a temporary postponement of the project (Elegant 2007).

2.2.2 Rapid economic growth at a high cost to the environment

The Chinese economy has developed at an impressive pace since the beginning of the economic reforms initiated by Deng Xiaoping in 1978, commonly referred to as the 'opening up policies'. Through developing a number of economic zones in a number of designated areas in China, the opening-up policies marked the beginning of reforms emphasising economic development.

In the recent decades, China has achieved rapid economic growth, industrialization, and urbanization. Annual increases in GDP of 8 to 9 percent have lifted some 400 million people out of dire poverty. Between 1979 and 2005, China moved up from a rank of 108th to the 72nd on the World Development Index (WB and SEPA 2007:xi). However, the high economic development and the benefits it has brought with it for the Chinese have come at a high cost to the environment. As pointed out by Haruhiko Kuroda, the president of the Asian Development Bank:

[There are] impressive accomplishments indeed. Yet, we cannot ignore some of the problems that have emerged as a result of rapid economic growth and development. These include issues such as macroeconomic and financial sector overheating in the short term, and the environmental damage and widening social disparities that need to be tackled from the medium-term perspective for sustainable growth. The country faces major challenges in improving urban and rural environments. Rising energy use contributes to environmental stresses and puts strains on the country's resources (Haruhiko 2008:2).

Environmental pollution and degradation does pose a high costs to the economy. Valac Smil was one of the first scholars to estimate the economic cost of environmental problems in China. Smil claims that

it is extremely unlikely that the economic cost of China's environmental pollution and environmental degradation was less than 5 percent of the country's GDP in 1990. A range of 6-8 percent is the most likely conservative estimate. Values [of] approximately 10 percent would be consistent with a more comprehensive, although still not necessarily complete, coverage, whereas inclusion of a number of elusive factors could raise the rates to about 15 percent of the country's annual GDP (Smil 1996:56).

It was not until 2005 that estimating the monetary cost of pollution was formally implemented in China, under the project Green GDP (*Liuse GDP*). The Green GDP deduct the cost of resource consumption and environmental loss due to economic activities and thus reflect a more comprehensible picture of the national economic growth in the country compared to GDP figures. The first 'Green GDP' which was released in China in September 2006 by SEPA and the National Bureau of Statistics, indicates that environmental pollution cost China CNY 511.8 billion (US\$64 billion) in economic losses in 2004, amounting to 3.05% of total economic output in 2004 (Xinhua 05.03.07). Statistics on the percentage of the annual loss of GDP growth to environmental pollution and degradation varies. According to Niu Wen, chief scientist on sustainable development strategies at the Chinese Academy of Sciences, argue that the official reported average 8.7 percent GDP growth rate from 1985 to 2000 should have been reduced to 6.5 percent if social and ecological costs were taken into account (Ibid.). However, some estimate the cost of environmental damage to be much higher: from 8 to 13 percent of China's GDP growth every year (Pan, Y. 04.12.06).

2.2.3 State of the environment and development of environmental law

Numbers accounting for the state of the environment in China are devastating. Air and water pollution levels rank among the top of the world's most serious,

and emission of greenhouse gasses, acid rain, land degradation, soil erosion, desertification, etc. all pose serious problems in China today.²⁰

Although environmental degradation has increased rapidly in the last decade, over-exploitation of natural resources and environmental pollution started to occur with soviet-style plans for rapid development of heavy industry (Shapiro 2001: 2-3). The ‘Great Leap Forward’ (1958-60) marked the beginning of modernized industrialization in China, a period where environmental impact assessment was not given a lot of consideration. During the Cultural Revolution (1966-67) projects and campaigns affecting the environment were driven less by utopianism than by coercion and chaos; environmental impact assessments and emission standards were seldom considered (Ibid.).²¹ This resulted in the construction of factories with high emission of polluting outlets in cities, seriously affecting the standard of living of the residents up until today. According to a recent report published by SEPA, the total amount of wastewater discharges in 2005 reached 524 million tons, an increase of 26% from 2000. Eighty percent of this wastewater was discharged in rivers or lakes without appropriate discharge processing. Seventy-five percent of the lakes in China suffer from severe pollution. The report also investigated the water situation in 118 cities. The report found that among the 118 cities, in 64 % of the cities ground water was severely polluted, and in 33 % of the cities the groundwater was mildly polluted; only 3 % of the investigated cities had groundwater reaching the national standards for safe drinking water (Sun, Y. 2006: 3).

²⁰ See *Supra note 2*.

²¹ On environmental pollution and degradation under Mao Zedong see for example: (Shapiro 2001).

A World Bank Report released in 2007 identifies 16 of the world's 20 most polluted cities to be in China (WB and SEPA 2007: 174-75). Moreover, according to China's own evaluation, two-thirds of the 338 cities for which air-quality data are available are considered polluted, two thirds of them moderately or severely so (Sun, Y. 2006: 4).

Severe pollution and a deteriorating environment are seriously affecting people's lives. In the urban areas air, water and noise pollution constitute a major problem. Respiratory and heart diseases related to air pollution are considered to be the leading causes of death in China.

According to conservative estimates, the economic burden of premature mortality and morbidity associated with air pollution was 157.3 billion CNY in 2003, or 1.16 percent of GDP. This assumes that premature deaths are valued using the present value of per capita GDP over the remainder of the individual's lifetime (WB and SEPA 2007:xiii).²²

Numbers accounting health impact caused by water pollution is also disturbing. According to Economy, the less well-documented but potentially even more devastating health impact of pollution in China is to be found in problems related to water pollution. Economy claims that in 2007 190 million Chinese became sick from drinking contaminated water. All along China's major rivers, villages report skyrocketing rates of diarrhoeal diseases, cancer, tumours, and leukaemia (Economy 2007:4).

Contrary to what one might think given the poor state of the environment, China is not in lack of environmental laws and regulation aimed at protecting the environment. Since China started to develop environmental laws in the

²² In relation to the publication on the report on the economic cost of China deterioration environment a number of articles was published describing that the Chinese government had forced The World Bank to censor the study's findings regarding the number of number that die in China related to pollution-related illness. Reports claim that the number was a high as 750,000 people and that the Chinese government feared that such information could cause social unrest if it was released. See for example: (Coonan 2007).

1970's it has strengthened its environmental legislation and developed a rather sophisticated web of environmental laws. In the 1990's China undertook new efforts to strengthen its environmental laws and to bring them into closer compliance with the principles of sustainable development introduced after the 1992 United Nations conference on Environment and Development (Beyer 2006: 192). However, the implementation and enforcement of environmental laws is impeded by a number of obstacles in China, especially at the local level. Benjamin van Rooij's study of compliance and enforcement of natural resource laws shows that "weak enforcement arises out of local protectionism, a lack of resources and close relationship between the enforcement agents and the regulated actors" (van Rooij 2006:367).

2.3 Access to justice in environmental disputes

The 'Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters' of 1989, also known as the Aarhus Convention is arguably the most important document linking access to justice to environmental issues. It requires the parties to ensure that members of the public have access to information and are allowed to participate in and have access to judicial review. Further, the convention requires that States shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.²³ The convention also requires that States shall ensure that information is provided to the public on access to administrative and judicial review procedures, and that States shall consider the

²³ Aarhus Convention, art. 10 (4)

establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.²⁴

The Aarhus convention is primarily concerned with formal rights and not as much the process in which such rights can be obtained. However, in this thesis I am more concerned about the process and the result of the implementation of such rights. The overall aim of the thesis is to provide a comprehensive evaluation on the current situation of access to justice in environmental disputes in China. The thesis does this by setting up a number of criteria which will be used as a starting point to assess the situation for pollution victims. A number of factors will be taken into consideration. First of all the thesis adopts a very broad definition of the access to justice, drawing on Michelson's definition of the concept in a recent article investigating popular strategies for resolving grievances in rural China. Michelson claims that *access to justice* is "the lay notion of obtaining satisfactory help in efforts to resolve grievance" (Michelson 2008:43). As pointed out by Michelson such a broad definition requires that the researcher investigate all the methods and places to which, and all the methods by which, people pursue to ensure fulfilment of their rights (Ibid.). And as this thesis endeavours to investigate opportunities and obstacles pollution victims face in "all the methods and all the places" pursued to ensure fulfilment of their rights, Michelson's definition provides an excellent basis for the definition of the concept. Furthermore, the thesis draws on parts of the Florence project's definition of the concept of *access to justice* as "leading to results which must be socially and individually just" (Cappelletti and Garth 1978:6).²⁵ Moreover, the thesis incorporates the

²⁴ Ibid.: art. 10 (5)

²⁵ The Florence project on access to justice: comparative study on obstacles to access to justice, especially in lower income groups, in more than thirty countries. The aim of the project was "to analyze the legal, economic, social and psychological obstacles which makes it difficult or impossible for many to make use of the legal

methods for civil liability in General Principles of the Civil Law of the People's Republic of China which stipulates that main methods of bearing civil liability shall be, *inter alia*, cessation of infringements; elimination of dangers; restoration of original condition; compensation for losses. The methods of bearing civil liability may be applied exclusively or concurrently.²⁶ Drawing on the above mentioned factors, the four questions which will be used as a basis for the comprehensive evaluation access to justice for pollution victims in environmental disputes are as follows; did the pollution victims have the right to seek a remedy before a court of law or a tribunal which was constituted by law and which guaranteed independence and impartiality in the application of the law (Francioni 2007:3)? Was the compensation perceived by the pollution victims to be acceptable? Have the danger of pollution been eliminated? And finally have the nature been restored to the original condition? These elements will be used in an overall evaluation of the six cases in chapter five. The reader should keep these four questions in mind when reading about the cases. As this thesis will illustrate, the challenging process of achieving access to justice for Chinese pollution victims is influenced by a number of structural, political, technical, financial and even traditional factors. Thus, in order to gain a comprehensive understanding of Chinese pollution victims struggles towards access to justice it is vital to approach the subject from such a broad perspective. Furthermore, as all of the discussed environmental disputes cases have brought damage to the nature, it is important also to include an evaluation of the effect dispute settlement processes have had on the nature *per se*.

system, and, therefore, of their right to liberty" (Cappeliatti and Garth 1978: vii). See (Cappeliatti and Garth 1978).

²⁶ General Principles of the Civil Law of the People's Republic of China, art: 134

In relation to human rights, The Universal Declaration of Human Rights (UDHR), which stipulates a number of rights to secure citizens process of obtaining access to justice. The declaration recognizes that all citizens are equal before the law and that all are entitled, without any discrimination, to equal protection of the law.²⁷ Further, UDHR argues that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted the individual by the constitution or by law.²⁸ Perhaps most important when discussing ‘access to justice’ is article ten of UDHR, which states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him or her.²⁹ Furthermore, article fourteen in International Convention on Civil and Political Rights (CCPR), which has not yet been ratified by China is also highly are also relevant.³⁰ The article specify that

all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.³¹

Manfred Novak, have noted that the right to equality before should be understood pertaining to the general prohibition of discrimination under the Covenant and that all persons must be granted, without distinction as to race, religion, sex, property, etc. a right of equal *access to courts* (Nowak 2005: 308, original emphasis.).³² Francioni, conclude on the relationship between

²⁷ Ibid.: art. 7

²⁸ Ibid.: art. 8

²⁹ Ibid.: art. 10

³⁰ China signed CCPR in 1998.

³¹ CCPR. art. 14

³² CCPR. art 2 (1) states that “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant,

human rights and access to justice by arguing that effective access to justice can be seen as one of the most basic human rights of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all (Francioni 2007: 27). International human rights law has developed standards on the right of access to judicial and other remedies that serve as suitable and effective grievance mechanisms against violations of human rights. It could be claimed that in that sense, States do not only have a negative obligation not to obstruct access to justice, but also they also have a positive duty to organize their institutional apparatus so that all individuals easily can access the remedies which will ensure them access to justice.

In the mid 1990s, the UN created the position of Special Rapporteur on Human Rights and Environment. The Rapporteur's report, known as the Ksentini Report, makes a strong case for linking human rights and the environment directly, but recognizes that international environmental law and human rights law remain isolated from one another – and this needs to change both legally and politically in order to make the two meet (KSENTINI 1994). The Ksentini report sets out a number of fundamental procedural rights related to the environment, such as the right to effective remedies and redress in administrative and judicial proceedings for environmental harm or the threat of such harm (Cameron and Mackenzie 1997: 133). In line with this, Redgwell argues that “access to justice in environmental matters is most likely to be achieved through the right to a fair trial” (Redgwell 2007:153-55).

When discussing access to justice and environmental disputes it is natural to mention the environmental justice movement, which surfaced in the 1980's in

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national

the United States. The environmental justice movement seeks to redress inequitable distributions of environmental burdens (pollution, industrial facilities, crime, etc.) and access to environmental goods (nutritious food, clean air and water, parks, recreation, health care, education, transportation, safe jobs, etc.) in a variety of situations. Self-determination and participation in decision-making are key components of environmental justice (Scolberg 2002). Originally I wanted to use theories related to this movement as an overall theoretical approach in this thesis. However, during the course of working with subject, I realized that there are a couple of factors in the theories which do not apply to the situation of environmental disputes in China. Furthermore, the environmental justice movement is mostly concerned with the prevention of environmental injustices. As the cases studied in this thesis are instances where environmental injustice already have occurred, it appears that that theories related to the movement would not be a well suited tool for analyzing the empirical findings from the cases. However, the idea put forward by scholars emphasizing that the achievement of environmental justice will come only with confronting the fundamental underlying processes (and their associated power structures, social relations, institutional configurations, discourses and belief systems) that generate environmental and social injustice (Scolberg 2002:523) is a good starting point for understanding some of obstacles Chinese pollution victims experience in the process of endeavouring to obtain access to justice.

As discussed above, the thesis is concerned with the process of obtaining access to justice and one of the prevailing conditions in this process is judicial

or social origin, property, birth or other status.”

independence. As pointed out by Michael Anderson, the following components will allow for judicial independence:

Impartiality (the judge makes decisions based upon a dispassionate application of law to the facts rather than bias in favour of one party), Political insularity (the judge is not subject to removal from office or threats for reaching decisions unpopular with government), Institutionalized autonomy (the judiciary is largely self-governing, is not subject to political cuts to its budget, and is free from administrative interference), legal authority (the judiciary possesses genuine powers to determine questions of law and fact in all cases; including those involving the executive branch), legitimacy (the judicial branch is recognized by the constitution, other political branches, and civil society as a separate entity with the legitimate purpose of upholding the rule of law) and finally, probity; the judge is immune to bribes, favours and other forms of influencing which might affect impartiality (Anderson 2003:13).

In light of the subject of this thesis it is vital for the reader to have an understanding of the situation for judicial independence in China. Presented here is a very brief introduction.³³

In ancient China a well-developed legal system was in place with detailed legal codes, procedures for law-making. In the middle kingdom a multi-level court system, and procedural rules covering all aspects of litigation from filing of complaints to pre-trial investigation, the process of the trial itself, the issuance of the judgment, and rules for the process of filing for an appeal was in place (Peerenboom 2002: 36). However, with the establishment of the New China the CPC abandoned the old legal system in favour of a new socialist legal system.³⁴ According to Peerenboom, the development of the legal system's brief heyday came to an abrupt end with the anti-rightist movement in 1957 (Ibid.:45). During the "let a hundred flowers bloom, a hundred schools of thought contend" (1956-57) campaign lawyers and legal scholars

³³ For an in-depth discussion on the topic see: (Peerenboom 2002).

³⁴ New China refers to the establishment of the communist china under Mao Zedong in 1949.

called for judicial independence from the Party.³⁵ The response from Mao was brutal; many lawyers were persecuted and sent to the countryside to learn from the peasants.³⁶ Moreover, the Ministry of Justice was dismantled in 1959; the procuracy was downgraded, with much of the work for law enforcement turned over to Public Security. And even though law schools were completely closed down, the content of the curriculum was more focused on politics than law (Ibid.:45). The situation for the development of rule of law and the status for lawyers only got worse during the Cultural Revolution, a period in which the legal system was under attack, and legal professionals were again persecuted (Ibid.).

Since the Deng Xiaoping era and the opening up policies, China's legal system has developed dramatically. Peerenboom suggests that:

Despite numerous obstacles, the legal regime will most likely continue to develop toward some form of rule of law that meets the requirements of a thin rule of law.³⁷ Yet there is little evidence of a rule of law understood to entail democracy and a liberal version of human rights that gives priority to civil and political rights...China is more likely to adopt a Statistic Socialist, Neoauthoritarian, and Communitarian version of rule of law than it is to adopt a Liberal Democratic one (Peerenboom 2002: 558).

With this in mind, let us now look at what opportunities Chinese pollution victims have in obtaining access to justice in theory, before we move on to

³⁵ The Hundred Flowers Campaign occurred during 1956 to 1957. During the campaign CPC authorities encouraged the public to express a variety of views and suggestions to ongoing problems facing China under the slogan "Let a hundred flowers bloom, let the hundred schools of thought contend."

³⁶ Down to the Countryside Movement (literary "Up to the mountains and down to the villages") was a part of anti-bourgeois campaigns during the late 1960s and early 1970s in China. Mao Zedong sent "privileged urban youth" to the farming villages mountainous areas so to give them a chance to learn anti-bourgeois thinking and lifestyle from the workers and farmers there. A great number of scholars were also sent to remote areas with the same purpose under this period.

³⁷ According to Peerenboom; "theories of rule of law can be divided into tow general types: thin and thick. A thin theory stresses the formal or instrumental aspects of rule of law-those features that any legal system allegedly must possess to function effectively as a system of laws, regardless of whether the legal system is part of democratic or non-democratic society, capitalist or social, liberal or theocratic. Laws must be general, public, prospective, clear, consistent, capable of being followed, stable and enforced (Peerenboom 2002:3).

investigate how and why pollution victims face a number of obstacles when endeavouring to put these opportunities into practice.

2.4 Opportunities to obtain access to justice

The first step of the dispute pyramid occurs with the feeling of injury. In other words, there has to be a problem before there is a dispute. In environmental disputes this first step commonly occurs as a result of activities causing damage on the injured party or as a reaction against future activities that might cause damage on the injured (or potentially injured) party.

2.4.1 Dispute assessment process

The dispute assessment process is constructed by four stages: the naming stage, the action initiation stage, the claiming stage, and the polarisation process.

The naming process occurs when an unperceived problem is transformed into a perceived problem. This situation occurs when pollution victims realize that they have been or are being victimized by pollution. In the second stage, the action initiation stage, pollution victims decide if and how they will address the problem. In the next stage, the claiming stage, pollution victims will blame the party considered to be responsible for the pollution. This is the first step in confronting the party responsible for the inflicted damage; in this stage the pollution victim will normally raise a demand to the polluter. The first initiative from the injured in this stage of the process is commonly to pay a visit to the polluter to try and reach a settlement with the polluter directly.

CPL allows for the two parties to reach a compromise on their own initiative.³⁸ Should the two parties come to an agreement, the pollution victim's climbing on the dispute pyramid ends at this stage. However, pollution victims in China are seldom able to end a dispute at this stage (Wang, C. 2002:11). Most environmental disputes are taken to the fourth stage in the dispute assessment process – the polarization process, in which the other party (the polluter) refuses to meet the wishes of the claimant.

2.4.2 The dispute handling process

It is in the dispute handling process of the dispute pyramid that we find most of the opportunities available for Chinese pollution victims to solve the dispute and obtain access to justice. The dispute handling process is made up of four steps. First the claimant has the opportunity of dropping the case if they are not able to reach an agreement with the other party; if they do not do so, they might continue to the next step, in which they try to solve the conflict with the assistance of a third party. If they succeed in this, the climbing of the dispute pyramid ends at this stage. However, if the claimant is not successful in solving the dispute at this stage, they might decide to drop the case, a choice which would also end the conflict at this stage of the pyramid. Litigation is the final stage in the dispute handling process, which is also the highest level of the dispute pyramid.

(1) Assistance of a third party

Wouters and Van Loon recognize three kinds of third parties: “the first category of third parties is formed by members of peer groups, such as family,

³⁸ CPL, art 51: “The parties can reach a compromise on their own initiative”.

friends and neighbours. The second category of third parties includes member of groups with some familiarity, though less familiarity than a peer groups, and members of groups with whom the actor has a slightly more formal relation like social officials/representatives, or familiar members of socio-cultural organisations. The third category is formed by legal scholars (mainly lawyers, judges and process-servers)” (Wouters and Van Loon 1992:225). However, in environmental disputes, pollution victims will commonly seek assistance from the third category. However, it is possible to make a distinction between third parties as mediation facilitators with no legal authority and mediation facilitators with legal authority to issue a legally binding decision in the dispute.

Pollution victims who proceed to this stage of the dispute pyramid have a number of options to choose from. The pollution victims for example can request that the polluter takes part in a mediation meeting conducted by the People’s Mediation Committee (PMC). PMC are under the guidance of the grassroots level of people’s governments and the lowest level of people’s court that can conduct mediation in civil disputes.³⁹ PMC does only play a role as a facilitator in a mediation process and will attempt to help the two parts reach an agreement through a voluntary mediation process.⁴⁰ Those who decline mediation, are dissatisfied with a mediation decision or who have backed out of the agreement can bring a lawsuit before a people’s court.⁴¹ This kind of dispute settlement is relatively accessible for pollution victims as it is free of charge and PMC are available at the local level. However, PMC mediation might be better suited for ‘personal conflict’, such as neighbours

³⁹ CPL, art: 16

⁴⁰ Ibid.

⁴¹ Ibid.

disputes and marriage conflicts; in the cases investigated for this thesis mediation through PMC have not been tried by the pollution victims.

Requesting assistance for administrative offices provides another alternative of seeking assistance from third parties. In environmental disputes, pollution victims commonly seek assistance from the Environmental Protection Bureaus (EPB), also referred to as Environmental Protection Administration. EPB can act as facilitator in a mediation process leading to an agreement between the two parties, or according to the Environmental Protection Law (EPL), “The competent department of environmental protection administration may, at the request of the parties, settle a dispute over the liability to make compensation or the amount of compensation”.⁴² Further the EPL also stipulates that other departments invested by law with power to conduct environmental supervision and management have the authority to carry out such mediation.⁴³ Mediation meetings organized by EPB are free of charge, and the pollution victims do not have to hire a lawyer. Neither do they have to provide evidence, since the EPB either have documentation on the incident(s) that have caused the dispute, or if such documentation is not available, the EPB have the authority and in most cases the technical equipment to conduct tests. If a party refuses to accept the decision on the settlement as defined by the EPB, it may bring a suit before a people's court. The party may also directly bring a suit before the people's court.⁴⁴ However, before moving to the last step of the dispute pyramid, pollution victims might try to solve the conflict by lodging complaints about the dispute and to other third parties by appealing to higher officials.

⁴² EPL, art. 41

⁴³ Ibid.

⁴⁴ Ibid.

(II) Lodging complaints

Administrative Reconsideration law (1999) opens for to pollution victims who consider that his lawful rights and interests have been infringed upon by a specific administrative act to file application for administrative reconsideration.⁴⁵ In pollution cases this might be appropriate in cases where an administrative organ is considered to have illegally handled issuing a certificate (for example discharge certificates for enterprises), examining or approving (such as environmental impact assessments) or in cases where an administrative organ is considered to have failed to perform its statutory duty, for example according to EPL art. 38 which stipulates that cases violation of EPL the competent department of environmental protection administration or another department invested by law with power to conduct environmental supervision and management shall fine the enterprise or institution.⁴⁶ The administrative reconsideration is handled by an administrative reconsideration organ. If the organ finds that a specific administrative act has been undertaken due to ambiguity of essential facts, and inadequacy of evidence; erroneous application of grounds; violation of legal procedures; excess of authority or abuse of powers; obvious inappropriateness of the specific administrative act the act shall be annulled, altered, or confirmed as illegal by decision; if the specific administrative act is altered, or confirmed as illegal by decision, the applied may be ordered to undertake a specific administrative act anew within a fixed time.⁴⁷ However, as pointed out by Peerenboom and Xin, although administrative reconsideration is free of charge, the success rate of dispute handling through administrative reconsideration is relatively low (Peerenboom and Xin 2008:17). Furthermore, the Administrative Procedure Law of (1989)

⁴⁵ Administrative Reconsideration Law, art. 2

⁴⁶ Ibid. art 6(8-9)

⁴⁷ Ibid. art 27 (3)

which stipulates that a citizen have the right to initiate an action to a people's court if a concrete administrative action or administrative personnel has infringed upon his or her or its lawful rights and interests.⁴⁸ Administrative reconsideration or administrative litigation have not been a part of the dispute handling process in neither of the six environmental disputes discussed in this thesis.

Another options for pollution victims of lodging complaints is to appeal to the Department for Letters and Visits (DLV) also referred to as *xinfang*. The purpose of the DLV is to open for citizens, legal persons or other organizations to give information, make comments and suggestions, or to lodge complaints to the people's governments at all levels and through relevant departments correspondence, e-mails, faxes, phone calls, visits, and so on. The requests are to be dealt with by the relevant administrative departments according to law.⁴⁹ According to the State Council⁵⁰ Regulations for Letters and Visits DLV should accept the communication from the letter-writer or visitor, transmit it to another organ, or assign another organ to handle it.⁵¹ DLV also has the mandate to conduct investigations related to communication by the letter-writer or visitor and to make suggestions on improving policies and work to the people's government at the corresponding level.⁵² Carl Minzner is an expert on the legal development in China, he claims that petitioning at DLV is a traditional way of seeking justice firmly rooted in Chinese history. Defined broadly as an effort to "go past basic-level

⁴⁸ Administrative Procedure Law, art (2)

⁴⁹ Decree of the State Council of the People's Republic of China No. 431 Regulations on Letters and Visits, 2005, art. 2

⁵⁰ The State Council is the chief administrative authority of the People's Republic of China, chaired by the Premier and includes the heads of each governmental department and agency.

⁵¹ Ibid.

⁵² Ibid.

institutions to reach higher-level bodies, express problems and request their resolution,” petitioning includes a variety of practices that parallel, overlap and in some cases replace formal legal channels(Minzner 2006a: 104).

However, DLV respond to citizen petitions in a variety of ways. In a small number of cases, DLV bureaus may decide to intervene directly either by sending their own personnel out to investigate or by recommending that Party or government authorities take action. More commonly, DLV bureaus simply refer individual petitions to other government agencies for action. Many petitioners who approach higher-level agencies with complaints about local officials merely have their grievances send back to the same officials whose conduct is the source of complaint. Moreover, as pointed out by Minzner, even when higher-level DLV bureaus give instruction in the referrals on how to resolve the citizens grievance, these referrals are often easily ignored by local officials, resulting in low rate of success for petitioners (Ibid.: 117). However, as lodging complaints to DLV is free of charge, the near availability of DLV makes it a popular choice for many pollution victims.

The 2005 DLV regulation provide that DLV bureaus should handle accusation ad to violation of the lawful rights of the petitioner, as well as reports over illegal behaviour of governmental officials. Both national and many provincial regulations address this conflict by explicitly directing petitioners that “legally may be resolved by litigation, administrative reconsideration, or administrative arbitration” to be raised with the appropriate judicial or administrative authority”.⁵³ However, many older, but still effective, provincial DLV regulation from early and middle 1990’s lack such a requirement. This creates an overlap between court and DLV jurisdiction. In

⁵³ See for example DLV 2005 regulations , art 151

this sense, Minzner claims, the DLV regulations create a multi-stage reconsideration procedure for administrative decisions that is apparently parallel to the Administrative Litigation law or the Administrative Reconsideration Law (*fuyi*) (Ibid:125).

However, as pointed out by Kevin O’Brian and Li Lianjiang, two experts on legal development in rural china, Chinese claimants commonly address a number of officials at various offices, party members or even journalist, in the hopes that somebody will help them solve address the conflict, creating what might appear to be an unstructured and random process of seeking assistance from third parties. As noted by O’Brian and Li in their study of administrative lawsuits in rural China:

Since [the aggravated parties] often are not precisely sure where their allies might be, villagers typically cast their net wide by appealing to all departments they can think of, including party committees, disciplinary inspection commissions, anti-corruption bureaus, letters and visits offices, and people’s congresses. They also seek to expose official malfeasance through media outlets such as TV stations, magazines, and newspapers, hoping that such attention will draw in high-level authorities (O’Brian and Li 2005a: 38-39).

If pollution victims are not able to solve the conflict by seeking assistance from third parties, they might take the matter to court. But, before ensuing to litigation the pollution victim might try to solve the conflict through court mediation or arbitration. Court mediation is more formal than mediation conducted by administrative agencies such as EPB. However, settlement through court mediation also has to be of the free will of both parties.⁵⁴ When an agreement is made the People’s court shall “make a mediation statement in which the claims, the facts of the case, and the result of the mediation shall be clearly set forth. The mediation statement shall become legally effective once

⁵⁴ CPL, art. 88

it is received by the two parties concerned”.⁵⁵ In the process of taking part in a court mediation pollution victims may consider hiring a lawyer to help them represent their case. This would require that they spend comparatively more resources on the dispute settlement at least in relation to the previously described options. However, in the cases I investigated, court mediation was only used as a means after an appeal from the defendant based on a court verdict in favour of the plaintiff.

(III) Litigation

If there is a contractual relationship between the injured and the accused, the two parties may try to solve the conflict through arbitration. According to article two in the Arbitration Law of the PRC, “Contractual disputes between citizens of equal status, legal persons and other economic organizations and disputes arising from property rights may be put to arbitration”.⁵⁶ However, as there seldom is a contractual relationship between the two parties in an environmental dispute, dispute resolution through arbitration is rare in such disputes.

In environmental disputes plaintiffs can seek redress for a number remedies provided for in the General Principles of Civil Procedure Law provide for ten primary forms of liability. These are *cessation of infringement, compensation for losses, removal of obstacle, elimination of dangers, and restoration of original condition*.⁵⁷ Furthermore, the EPL stipulates that “A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered

⁵⁵ CPL, art. 89

⁵⁶ Arbitration Law, art. 2

⁵⁷ General Principles of the Civil Law of the People’s Republic of China, art. 134

direct losses”.⁵⁸ Note that “If environmental pollution losses result solely from irresistible natural disasters which cannot be averted even after the prompt adoption of reasonable measures, the party concerned shall be exempted from liability.”⁵⁹ Further, the Supreme People’s Court’s interpretation concerning compensation liability for emotional damage in civil disputes opens for recovery emotional damages (*jingshen sunhai*), which are akin to pain and suffering.⁶⁰ Dispute settlement through litigation is the most expensive and time-consuming dispute settlement process. At this stage, pollution victims definitely have to hire a lawyer, collect evidence (which in some instances involves expensive and technical tests) and pay the fee for filing a case.⁶¹ In addition to civil procedure lawsuit, environmental disputes might also lead to administrative and criminal lawsuits. However, since this is not within the scope of this paper, such lawsuits will not be discussed here.⁶²

(IV) Extra-legal opportunities

In addition to the regular options available at the different stages of the dispute pyramid, pollution victims might try to solve the dispute, or to put pressure on the dispute handling process, through media coverage or by conducting demonstrations.

Through media coverage pollution victims are sometimes capable of exerting pressure on the polluter or the involved third parties to take action in the dispute handling process. As pointed out by an Benjamin Liebman, a high

⁵⁸ Ibid. art 41

⁵⁹ Ibid.

⁶⁰ Interpretation of the Supreme People’s Court on certain Problems Regarding the Ascertainment of Compensation Liability for Emotional Damage for Civil Tort Cases.

⁶¹ “Case acceptance fee” (*anjian shouli fei*), is calculated as a percentage of the total amount of relief requested according to the Notice of the Supreme People’s Court on the Printing and Distribution of Measures for Handling Lawsuit Fees for People’s Courts.

⁶² For administrative lawsuits in China, see for example: (O’Brian and Li, L. 2005).

profile scholar on legal issues in China, when people fail in solving their conflicts through legal channels, they might try to lure, or even hire journalists to come to their villages to look into their case and to get their case resolved via publicity (Liebman 2004: 15).

In general, media coverage is free of charge, but access to journalists, especially journalists working in national and influential media, can be difficult to obtain. Believing that local level media will not be able to put any reasonable pressure on the polluter or the local government, pollution victims might try to seek out attention from provincial or national level media. In these situations, they will have some travel expenses. It can also be a very time-consuming process to get the attention from media at a higher level.

Protests and demonstrations are other options victims of pollution might choose in an attempt to solve the environmental dispute, or as a means to put pressure on the polluter and/or third parties involved in the dispute handling process. As pointed out by O'Brian

authoritarian rule and relatively underdeveloped legal structures have meant that Chinese citizens must rely heavily on local protest movements and popular appeals for justice to find redress for their grievances, particularly in rural China (O'Brian 2005: 5).

In conducting protests, pollution victims do not have any financial burdens, but as conducting such protests might be perceived as a threat to social stability pollution victims opting for this opportunity may have to pay a high cost of detention or even imprisonment.⁶³

⁶³ Social stability is considered by the Chinese leadership to be the fundamental prerequisite for promoting reform and modernization. Thus, safeguarding social stability and state security is of top priority.

2.4.3 Concluding remarks

This short introduction has provided an outline for different opportunities pollution victims have in solving environmental disputes at various stages of the dispute pyramid. However, as the cases we are about to get to know will show, climbing the dispute pyramid is seldom as clear cut as described in this presentation. Pollution victims commonly engage a number of different dispute handling processes at the same time. As described by Liebman,

The formal legal system is not the only or most effective route available to citizens seeking redress in China. Individuals also often pursue their claims by government departments, letters and visits offices, the media... Indeed one defining characteristic of the Chinese legal system is that individual grievances often pursue their claims in multiple forums concurrently (Liebman 2004: 35).

With this in mind we shall now investigate how these opportunities work when they are put into practice by analyzing six cases of environmental dispute in IMAR.

3. The cases

3.1 Inner Mongolia Autonomous Region

IMAR is the third largest province/region in China; the 1.183 million square kilometre area covers one eighth of the total territory of China. The total population of IMAR is 23.924 million with a Mongolian population consisting of 4.2383 million, accounting for 17.7 percent of the total population.⁶⁴

During the 10th FYP, the region maintained an economic growth rate higher than the national average, and it had ranked first in the nation in terms of such growth rate for four consecutive years since 2003 (Jia, J. 18.08.07). The average income of rural residents in IMAR has increased from CNY 301 in 1978 to CNY 10,358 in 2006. The average annual income for peasants and herdsman in IMAR in 2007 was CNY 3,953 (Shang, J. 25.04.08).

Industrialization has expanded rapidly in IMAR, especially after the introduction of the “The Great Western Development Strategy” (*xibu da kaifa*).⁶⁵ With industrialization, environmental pollution and degradation have hit IMAR. Chinese leaders are well aware of this development. In a speech by Hu Jintao after an inspection tour in the region, he emphasized that IMAR really needs to pay attention to environmental protection (Ju, P.19.11.07).

IMAR’s comparatively recent transition towards high economic growth makes it an interesting place to study environmental disputes, as environmental disputes often occur as a result of weak implementation of environmental laws and regulations in pursue for economic development. In addition to this, the high

⁶⁴ Social and Economic Development of Inner Mongolia Autonomous Region (25.07.07)

presence of Mongolian minorities in the region provided a good opportunity to investigate to what degree pollution victims from minority groups have different experiences in solving environmental disputes compared to Han Chinese pollution victims in the same region. Moreover, to my knowledge, there has not been conducted any qualitative research on environmental disputes in this region.

3.2 General introduction to the cases

Six cases from three different places in IMAR were selected for this study: one case from Baotou in central IMAR, one from Dongwu Banner in the northeast of IMAR, and four cases from villages close to Jinshan town near Chifeng city in the southeast of IMAR. Three of the Jinshan cases were against the same defendant, but with different claimants. In all six cases, water and/or air pollution from one or several factories causing damage and economic loss for the petitioners constituted the core of the environmental dispute.

In two of the cases (Baotou and Dongwu Banner), the court made a decision in favour of the plaintiffs. In two cases litigation was rejected by the court, and in the last case the petitioners are planning to file a case during 2008. One case was solved through mediation hosted by the local EPB. Although the cases occurred in different settings, pollution victims in all the cases experienced very similar problems.

⁶⁵ The “Open Up the West” (xibu da kaifa) campaign was implemented in 2000, a major state project of nation-building directed at the inland provinces/regions in western China to develop economic growth, and to reduce socio-economic inequalities between coastal provinces situated in east China.

The following description is meant to give the reader a short introduction to the most important facts in the cases. In each case I provide a time outline to allow the reader to have an understanding of the development of the cases. Some of the cases have been going on for many years, and in the following description I have had to leave out a number of details. In chapter four and five, where I identify obstacles faced by pollution victims in the process of dispute resolution and analyze the reasons causing these obstacles, some episodes will be described in more detail.

3.3 Dongwu Banner County Paper Mill case

Plaintiffs: Originally 18 herdsman in the Dongwu Banner County area, Wuliyasitai Town and Jirigelanggecha Village. However, when the case was filed and accepted at the Intermediate People's Court of Xilinguole League, some of the plaintiffs withdrew their case, leaving only Damolizhabu, his brother and his son as the plaintiffs.

Defendants: Dongwu Banner County Paper Mill, Dongwu Banner County government.

Informants: Damolinzhabu (herdsman, main plaintiff), Chen Jiqun (organizer of an NGO working with anti-desertification projects and distribution of legal documents in the region), Wuretu (one of the plaintiffs who withdrew his case under pressure from the local government), Jiang Fei (journalist in China Daily).

Core of the case: Dongwu Banner County Paper Mill's sewage water caused the death of about 2,000 livestock of 18 herdsmen and the contamination of 4,293 *mu*⁶⁶ (686.88 acres) of grassland.⁶⁷ Herdsmen sued the mill demanding compensation for the loss of livestock and damage to the grassland (the herdsmen were the legal users of the land occupied by the paper mill). The local government was also put on trial because they had provided the paper mill with an illegal sewage water dike and not enforced regulations according to the EIA Law (Damulinzhabu: interview 26.11.07).

Current state of case: The case is closed. In August 2004, the Higher People's Court of IMAR issued a judgment in favour of the herdsmen, which included that the Dongwu Banner County Paper Mill and the government of Dongwu Banner should pay herdsmen CNY 360,000 as compensation for pollution and bear the costs of the case.⁶⁸ However, Damulinzhabu has only received about CNY 40,000 (Damulinzhabu: interview 26.11.07). The damage caused by the pollution has not been restored.

Timeline Dongwu Banner County Paper Mill case:

In the early 1990's: A trend of attracting business and investment swept IMAR. Local government officials placed great emphasis on attracting industrial investment to boost economic development. Encouraged by this policy, the government of Xilinguole League Town, Dongwu Banner introduced the paper mill program. The factory director of the Dongwu

⁶⁶ *Mu* is a Chinese measuring unity for land measurement; 10 fen equal one *mu*; 100 *mu* equals 600 square of *Zhang* or 666.7 square meters (Yuan, L. 2002: 1373).

⁶⁷ Inner Mongolia Autonomous Region Xilinhaote Intermediate People's Court, Civil procedure case, court verdict, document six of (2002), *Neimenggu xinlinhaote zhongyi renmin fayuan, minshi panjue shu (2002) xi min yi chu zi di 6 hao*.

⁶⁸ Inner Mongolia Autonomous Region Xilinhaote Higher People's Court, Civil procedure case, court verdict, document 82 of (2004), *Neimenggu zhongyi renmin fayuan gaoyi renmin fayuan, minshi panyueshu (2002) nei min yi zhong zi de 82 hao*.

Banner County Paper Mill had previously opened a paper mill in Anxin County, Hebei Province. But local government forced the mill to stop production at the end of 1999 because of the off-standard pollutant discharge from the paper mill (Chen: interview 14.10.07).

15.01.2000: The director of the former Anxin county paper mill came to Dongwu Banner County, signed the contract, leased the land, and opened the paper mill. In a contract between Dongwu Banner County government and the paper mill, Dongwu Banner County government agreed to provide sewage-draining ground for the factory.⁶⁹

10.03.2000: The paper mill started production. Compulsory environmental assessment was not carried out (Ibid.). The production started without any form of equipment for treating the sewage water. The government created a human made “fence of soil” which constitutes a dike where the sewage water was discharged, to provide the factory with a sewage water system (Damulinzhabu: interview 26.11.07). Local herdsmen in the area went to local government offices to protest against the creation of the dike and the opening of Dongwu Banner County Paper Mill (Ibid.).

2000-2001: The herdsmen tried to talk to the management of the factory with demands of compensation and that the pollution should end. The herdsmen also made numerous trips to the local, provincial and national government offices with similar appeals. In addition to this, they also made numerous trips to the local, provincial and national EPB and DLV(Ibid.).

⁶⁹ The contract between the owner of the paper mill previously situated in Anxin country, Hebei province and the Dongwu Banner county government have been obtained by Chen Jicun. See (Chen, J. and Li, J 2005).

14.12.2001: Expansion of the frozen sewage in the constructed dike caused the Dongwu Banner County Paper Mill sewage water dike to burst. The broken dike caused flooding and the spewing of black and brown sewage, leading to the loss of 2,000 livestock belonging to 18 herdsmen, and the contamination of 4,293 *mu* (686.88 acres) of grassland.⁷⁰ According to informants, the lands were burnt to greyness, leaving not even a blade of grass (Damulinzhabu: interview 26.11.07).

August 2002: The 18 herdsmen selected seven herdsmen to represent them in a case against Dongwu Banner County Paper Mill. The seven herdsmen, entrusting lawyers of the Beijing Deheng Law Office as their authorized agent, sued the paper mill for tort and pollution, demanding CNY 3.15 million as compensation.⁷¹ The Intermediate People's Court of Xilinguole League accepted the case. Since the Dongwu Banner County government had agreed to provide sewage-draining ground, the court also requested the Dongwu Banner County government to appear in court as the third party (Chen: interview 14.10.07).

December 2002: Some officials of the Dongwu Banner County and League government went to herdsmen's homes, trying to persuade them to withdraw their case. Suyalatu, then Secretary of Gazha Village, refused to submit to a superior officer's pressure to transfer the pastureland, which had been used as the sewage-draining ground, to state-owned assets (by doing so he would have lost his standing in suing the paper mill, since he would have given up his

⁷⁰ Inner Mongolia Autonomous Region Xilinhaote Intermediate People's Court, Civil procedure case, court verdict, document six of (2002), *Neimenggu xinlinhaote zhongyi renmin fayuan, minshi panjue shu (2002) xi min yi chu zi di 6 hao*.

⁷¹ Ibid.

right to use the land). As a result, Suyalatu was dismissed from his position (Ibid.).

January 2003: The Dongwu Banner County government divided the grassland area into parts, which included Dongwu Banner County Paper Mill, and 10,730 *mu* (1,716.8 acres) of surrounding pasture, based on a purported incorrect division of the grassland in January 1997 (Chen, J, and Li, J. 2005: 210). The government also signed and issued 5 copies of the State-owned Land-use Right Certificate, officially transferred the land to state-owned assets, and leased it to the Dongwu Banner County Paper Mill (Ibid.). With these manoeuvres, the herdsmen appeared no longer to be the legal users of the land, and consequently lost their litigation qualification. Under long-term pressure, four of the seven herdsmen withdrew their case (Damulinzhabu: interview 26.11.07).

February 2003: The three remaining herdsmen, headed by Damolinzhabu, filed a new case against the paper mill, demanding over CNY 1 million as compensation for tort and pollution in the Intermediate People's Court of Xilinguole League (Ibid.).

14.03.2003: *Jinri Shoufa* (Legal discussion) aired a program on the Dongwu Banner County Paper Mill case.⁷²

March 2004: The Intermediate People's Court of Xilinguole League ruled in favour of the three herdsmen, directing the Dongwu Banner County Paper Mill to compensate the herdsmen over CNY 170,000 and the Dongwu Banner government to compensate the herdsmen CNY 50,000 in addition to paying the legal fees. Not satisfied with the judgment, the plaintiffs appealed to the

IMAR Xilinhaote Higher People's Court, demanding increased compensation and the return of 11,000 *mu* (1,760 acres) of land collectively-owned by the herdsmen, but illegally occupied by the defendant (Damulinzhabu: interview 26.11.07).

August 2004: The IMAR Xilinhaote Higher People's Court issued a second judgment in favour of the herdsmen, which included that the Dongwu Banner County Paper Mill and the government of Dongwu Banner should pay the herdsmen CNY360,000 as compensation for pollution. However, as the plaintiffs did not provide a valid land-use right certificate, the court did not support the petition for “returning the occupied lands”.⁷³

August 2005: One year had passed since IMAR Xilinhaote Higher People's Court issued its judgement. During this period, the paper mill continued to operate and continued to occupy the land of the herdsmen. The second judgement ruled that compensation should be made for the herdsmen's loss and the livestock. There was no compensation for the pollution of the grassland (Damulinzhabu: interview 26.11.07).

May 2005: SEPA was entrusted to supervise and administer nine key polluting enterprises nationwide, including the Dongwu Banner County Paper Mill. SEPA's key supervisory and administrative requirement concerned the smoke discharged by the paper mill, rather than the wastewater (Lang, C. 05.09.06).

⁷² *Jinri Shoufa* (Legal discussion) is a daily program aired at CCTV's news channel.

⁷³ Inner Mongolia Autonomous Region Xilinhaote Higher People's Court, Civil procedure case, court verdict, document 82 of (2004), *Neimenggu zhongyi renmin fayuan gaoyi renmin fayuan, minshi panyueshu (2002) nei min yi zhong zi de 82 hao*

October 2005: Faced with pressure from various levels of society, the Dongwu Banner County Paper Mill suspended its production and moved to Xilinguole League Lanqi Banner Grassland (Damulinzhabu: interview 26.11.07).

November 2007: I visited Dongwu Banner to interview informants involved in the case. Pollution caused by Dongwu Banner County Paper Mill's sewage water dike had not been restored. Most of the people involved in the case had not received collective land certificates.

3.4 Baotou Water Supply Company case

Plaintiffs: Baotou Water Supply Company

Defendants: Inner Mongolia Saiwai Xinghuazhuan Paper Co. Ltd., Inner Mongolia Meili Beichen Paper Company Co. Ltd., Inner Mongolia Wulate Qilinghai Chemical Production Ltd., and IMAR Hetao Region Irrigation Administration Bureau.

Informants: Gao Guizhen, (office director and legal adviser at Baotou Water Supply Company), Wen Quanlai (professional lawyer, representing Baotou Water Supply Company together with Gao Guizhen).

Core of the case: At the end of June 2004, Baotou Water Supply Company had to shut down intake from the Yellow River due to hazardously high levels of COD.⁷⁴ The situation lasted for six days. In this period Baotou Water Supply Company had to transport water in trucks from water reservoirs to

⁷⁴ Chemical oxygen demand (COD) is a laboratory test used to measure the organic compounds in water and is commonly used to indicate the quality of wastewater.

residential areas in Baotou (Gao: interview 27.12.07). The situation caused Baotou Water Supply Company an estimated economic loss of around CNY 3.5 million. Baotou Water Supply Company filed a case against three upriver factories and IMAR Hetao Region Irrigation Administration Bureau demanding compensation for their economic loss (Gao: interview 27.12.07).

Current state of case: The case is closed. In December 2005, under the organization of IMAR Higher People's Court, a mediation agreement was reached between the plaintiffs and the defendants. It was agreed that two of the factories and IMAR Hetao Region Irrigation Administration Bureau would pay Baotou Water Supply Company a total compensation of CNY 2.8 million.⁷⁵ The plaintiff has only received around half of the compensation sum. The quality of the water at Baotou Water Supply Company Yellow River water station has improved. However, the pollution from the polluting outlets, according to the defendants, has reportedly not stopped (Ibid.).

Timeline for Baotou water supply company case:

29.6.2004: Polluted water with very high levels of COD levels from upriver sources entered the Baotou section of the Yellow River. Baotou Water Supply Company had to close the intake of water and reduce the supply of water to Baotou City. According to Gao Guizhen similar situations had occurred earlier on (Gao: interview 27.12.07). Baotou Water Supply Company had to transport water from reservoirs by trucks into residential areas in Baotou City. The situation continued for a total of six days (Ibid.).

⁷⁵ Inner Mongolia Autonomous Region Higher People's Court, Civil procedure mediation agreement 2005, document 54, *Neimenggu zizhiqu gaoji renmin fayuan minshi tiaojie shu*, (2005) *neimeng er zhong zi di 54 hao*.

3.7.2004: The crisis was put off as the quality of water in the Yellow River had reached a level in which it was possible for Baotou Water Supply Company to treat the water. Water was once again running from taps in residential areas of Baotou.

8.9.2004: Baotou Water Supply Company represented by Gao Guizhen and Wen Quanlai filed a case against Inner Mongolia Saiwai Xinghuazhuan Paper Co. Ltd., Inner Mongolia Meili Beichen Paper Company Co. Ltd., Inner Mongolia Wulate Qilinghai Chemical Production Ltd. and IMAR Hetao Region Irrigation Administration Bureau. Baotou Water Supply Company demanded a compensation of CNY 3.4 million in direct economic compensation, CNY 159 100 in extra economic costs caused by the water pollution and CNY 48 000 for expenses in the process of collecting evidence, that the defendants would pay for the cost of filing the case, and that all the defendants should be held responsible for the pollution.⁷⁶

16.12.2004: Baotou City Intermediate Court arranged a meeting between the two parts, in which the plaintiffs and the defendants exchanged evidence.

18.1.2005: Baotou City Intermediate Court heard the case.

25.7.2005: Baotou City Intermediate Court proclaimed a verdict. In the verdict, Baotou Intermediate People's Court ordered the defendants to pay a total compensation of CNY 2.88 million, and ordered that the defendants pay

⁷⁶ Civil procedure indictment (Inner Mongolia Baotou Water Supply Company), *minshi qisu zhuang (Neimenggu Baotoushi gongshui zong gongsi)*

the cost of the litigation.⁷⁷ The defendants were not satisfied with the outcome of the trial, they filed for an appeal.

26.12.2005: IMAR Higher People's Court published a civil mediation agreement. In the agreement it was decided that Inner Mongolia Saiwai Xinghuazhuan Paper Co. Ltd., Inner Mongolia Meili Beichen Paper Company Ltd. and IMAR Hetao Region Irrigation Administration Bureau would pay Baotou Water Supply Company a total compensation of CNY 2.8 million (this also included the cost of litigation).⁷⁸ Shortly after the mediation agreement Baotou Water Supply Company received around half of the compensation (Wen: interview 28.12.08).

April 2006: Gao Guizhen heard rumors that a sewage water dike was built upriver where wastewater containing high level COD sewage was lead into. He took a trip upriver to find that high winds threatened to push waste water from the sewage water storage ponds into the Yellow River. Rather than polluting the river again (and having to pay for the consequences that might cause), officials ordered part of a pond wall demolished to divert the toxic waste away from the river (Gao: interview 27.12.07).

January 2008: I visited Gao Guizhen and Wen Quanlai in Baotou. Baotou Water Supply Company still had not received the other half of the CNY 2.8 million as agreed in the IMAR Higher People's Court Civil Mediation agreement of 26.12.2005.⁷⁹ However, the water quality at the intake station

⁷⁷ Baotou city Intermediate People's Court, document number 7, *Batoushi zhongji renmin fayuan, bao min san chu zi di 7 hao*

⁷⁸ Inner Mongolia Autonomous Region Higher People's Court, Civil procedure mediation agreement 2005, document 54, *Neimenggu zizhiq gaoji renmin fayuan minshi tiaojie shu, (2005) neimeng er zhong zi di 54 hao*

⁷⁹ Ibid.

had improved and Gao Guizhen claimed that after the trial the company had not been forced to turn off the intake from the Yellow River again.

3.5 Jinshan cases

In Jinshan there are three parallel cases with different claimants against one defendant, the only large scale factory in Jinshan, Jinfeng Copper Metallurgy Co. Ltd. All the cases are related to compensation demands related to death or damage of trees that the plaintiffs depend on as a main source of income.

Although the cases are against the Jinfeng Copper Metallurgy Co. Ltd., I find it necessary to describe the cases separately; since the actual controversy in the disputes and the outcomes of the disputes are very different.

3.5.1 Han Xiang's case

Plaintiffs: Han Xiang represented by Professor Wang Canfa from CLAPV.

Defendants: Jinfeng Copper Metallurgy Co. Ltd.

Informants: Han Xiang and staff from CLAPV.

Core of the case: In the 1980's Han Xiang contracted 200 *mu* of land from the local government where he planted fruit trees. After the opening of Jinfeng Copper Metallurgy Co. Ltd. and the exposure of air and water pollution from the factory, Han Xiang's trees stopped producing apples (Hang: interview 30.11.07). With the help of Professor Wang Canfa at CLAPV, Han Xiang filed a case against Jinfeng Copper Metallurgy Co. Ltd.

Current state of case: Litigation rejected in the first trial; the plaintiff appealed against the first decision and at the second trial the court maintained the decision.⁸⁰ Han Xiang lives under relatively poor conditions. He has cut down all the dead fruit trees, which he has been forced to use as firewood.

Timeline for Han Xiang's case:

1980's: Han Xiang contracted from the Kalaqin Banner government 200 *mu* of barren hills where he planted fruit trees (Hang: interview 30.11.07).

May 1996: The local government in Jinshan town carried out efforts to attract investment to the area. Jinshan Stone Mining, China Gold Smelting Import and Export Liaoning Company and China Liaoning International Northern Resource Ltd. invested a total amount of ten million CNY and established Jinfeng Copper Metallurgy Co. Ltd. in Wangyefu township, Sishi Jiaqi village (Hang: interview 30.11.07).

28.12.1997: Jinfeng Copper Metallurgy Co. Ltd. factory started production.

1997-2000: Han Xiang's fruit trees suffered under air and water pollution from Jinfeng Copper Metallurgy Co. Ltd. He made numerous trips to the factory in attempts to receive compensation for his loss and stop further pollution. He also made frequent trips to the local, provincial and national government administrative offices with similar appeals. In addition to this, he made numerous trips to the local, provincial and national EPB and DLV (Han: interview: 30.11.07). During a petitioning trip to Beijing he got to know about CLAPV. Wang Canfa decided to help Han Xiang, and together they filed a case against Jinfeng Copper Metallurgy Co. Ltd. On the request from Han

⁸⁰ CLAPV (15.04.05): "Case of air pollution, Han Xiang v. Jinfeng Copper Metallurgy Co., Ltd., Chifeng."

Xiang experts from Forest Environment and Protection Research Institute of China Forest Academy carried out on site examination, sampling and analyzing, and concluded that Han Xiang's fruit trees had died from severe sulphur dioxide poisoning.⁸¹

According to the monitoring report from Chifeng Environmental Monitoring Centre, the only pollution source of sulphur dioxide in the area is Jinfeng Copper Metallurgy Co. Ltd.⁸²

January 2000: With the help of CLAPV Han Xiang filed a case against Jinfeng Copper Metallurgy Co. Ltd. demanding a compensation of CNY 1.4 million and that the defendant would prevent any further pollution from happening. Chifeng Intermediate People's Court made a request that a test would be conducted to find evidence for the cause of death for Han Xiang's trees before they the court decided whether or not to accept the case. Chifeng Intermediate People's Court entrusted the Fruit and Seedling Quality Testing Centre of the Ministry of Agriculture to appraise a test.⁸³

22.6.2000-24.6.2000: The Fruit and Seedling Quality Testing Centre of the Ministry of Agriculture concluded the test report. According to Han Xiang the conclusion of the report was written and sealed with an official stamp on the same day that the report was conducted, which would mean that the report was concluded *before* tests results were available (Ibid.). The report concluded that Han Xiang's trees had died as a result of an insect pest and poor location.⁸⁴

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Environmental pollution case: Han Xiang sues Jinfeng Copper Metallurgy Ltd. *Han Xiang su Jinfeng tongye. youxiangongsi huanjing wuran an*

21.8.2000: Chifeng City Intermediate People's Court made a decision based on the test report conducted by the Fruit and Seedling Quality Testing Centre of the Ministry of Agriculture and rejected Han Xiang's request to file a case against Jinfeng Copper Metallurgy Co. Ltd.⁸⁵

January 2001: With the help of CLAPV, Han Xiang appealed against the decision at the IMAR Higher People's Court. The court held a hearing and affirmed the original decision. Originally, Han Xiang and CLAPV were planning to appeal to the Highest People's Procuratorate for retrial (Hang: interview 30.11.07). However, as Han Xiang had used all of his personal finance and heavily indebted himself during the process of trying to solve the dispute, he decided to drop the case (Ibid.).

November 2007: I visited Han Xiang; he now lives under relatively poor conditions. He has cut down all the dead fruit trees, which he is forced to use as firewood. Pollution from Jinfeng Copper Metallurgy Co. Ltd. have stopped as the factory has closed down and reopened on another location in Jinshan township.

3.5.2 Li Shuxian's case

Claimants: Li Shuxian with the support of Xu Kezhu and Ma Yan at CLAPV.

Defendants: Jinfeng Copper Metallurgy Co. Ltd.

Informants: Li Shuxian, staff at CLAPV.

Core of the case: From 2002 until 2007 Jinfeng Copper Metallurgy Co. Ltd. has paid Li Shuxian a total compensation of CNY 28,000 for reduced growth

⁸⁵ Ibid.

and damage on poplar trees planted by Li Shuxian on contracted land close to the factory.⁸⁶ Compensation has been paid as a result of a number of negotiation meetings conducted by the local EPB. Li Shuxian believed that the compensation he received from Jinfeng Copper Metallurgy Co. Ltd. was too small. With the help of CLAPV, Li Shuxian filed a case against Jinfeng Copper Metallurgy Ltd. demanding CNY 434,000 in compensation at the Chifeng Intermediate People's Court.⁸⁷ His case was rejected with the recommendation that he tried to solve the dispute through mediation.

Current state of case: When Li Shuxian filed a case against Jinfeng Copper Metallurgy Co. Ltd., the file was rejected. Liu Shuqing, a student assistant at CLAPV, told me that they are trying to help Li Shuxian solve the case through mediation.

Timeline for Li Shuxian's case:

In the beginning of the 1980's: Li Shuxian contracted around 10 *mu* land on the outskirts of Sishi Jiazi Village where he planted around 2000 poplar trees (Li: interview 30.11.07).

28.12.1997: Jinfeng Copper Metallurgy Co. Ltd. factory started production, with only a fence between Li Shuxian's poplar tree field and the production site. The fence was raised by the Jinfeng Copper Metallurgy Co. Ltd. (Ibid.).

Winter 2002: Fifty-five of Li Shuxian's poplar trees died as a result of sulphur dioxide pollution and polluted water outlets from Jinfeng Copper Metallurgy Co. Ltd. Kalaqin Banner EPB arranged for a mediation meeting

⁸⁶ General introduction to Li Shuxian's case, *Jiben qingkuang jianjie (Li Shuxian de anli)*

between Li Shuxian and Jinfeng Copper Metallurgy Co. Ltd. Through mediation it was decided that Jinfeng Copper Metallurgy Co. Ltd. would pay CNY 5000 in compensation to Li Shuxian and that Jinfeng Copper Metallurgy Co. Ltd. would restore the damage done on Li Shuxian's poplar trees and would take measures to ensure that the soil would be fertile again.⁸⁸

Spring 2003: Kalaqin Banner EPB arranged for a new mediation meeting between Li Shuxian and Jinfeng Copper Metallurgy Co. Ltd. Through mediation it was decided that Jinfeng Copper Metallurgy Co. Ltd. would pay CNY 5000 in compensation to Li Shuxian for loss and damage of poplar trees.⁸⁹

17.3.2006: Li Shuxian signed a new compensation agreement with Jinfeng Copper Metallurgy Co. Ltd. in which it is stated that Jinfeng Copper Metallurgy Co. Ltd. should pay Li Shuxian a compensation of CNY 9115.⁹⁰ From 2002 until 2007 Jinfeng Copper Metallurgy Co. Ltd. and Li Shuxian have signed a number of mediation agreements; during this period Jinfeng Copper Metallurgy Co. Ltd. has paid Li Shuxian a total compensation of CNY 28,000.⁹¹

December 2007: With the help of CLAPV Li Shuxian filed a case against Jinfeng Copper Metallurgy Co. Ltd. The case was rejected with the

⁸⁷ Inner Mongolia Chifeng city Kalaqin Banner Li Shuxian vs. Jinfeng Copper Smelting Ltd. Air pollution damage compensation case (NRDC), *Neimenggu Chifengshi Kalaqin qi Li Shuxian shou Chifengshi Jinfeng tongye youxiangongsi daqi wuransunhai peichang an* (NRDC)

⁸⁸ Contract between Li Shuxian and Jinfeng Copper Metallurgy Co Ltd., *Xieyi shu* (Li Shuxian he Chifengshi Jinfeng tongye youxiangongsi)

⁸⁹ Report on the investigation of Li Suxian's case, *Diaocha jingguo* (Li Shuxian de anli).

⁹⁰ Ibid.

⁹¹ General introduction to Li Shuxian's case, *Jiben qingkuang jianjie* (Li Shuxian de anli).

recommendation that the tried to solve the case through mediation. CLAPV is preparing to help Li Shuxian solve the dispute through mediation (Liu: 2007).

3.5.3 Liu Hai's case

Petitioner: Liu Hai, Du Yelong and Li Zhong.

Defendant: Jinfeng Copper Metallurgy Co. Ltd. and the local government in Kelaqin Banner.

Informants: Liu Hai (main petitioner), villagers in Rounan Dong village and Henan Dong village, and Zhang Jingjing (lawyer at CLAPV).

Core of the case: Fruit production in villages surrounding Jinfeng Copper Metallurgy Co. Ltd. has decreased rapidly due to air and water pollution caused by Jinfeng Copper Metallurgy Co. Ltd. (Liu: interview 01.12.07). Village committees have previously reached a compensation agreement with Jinfeng Copper Metallurgy Co. Ltd. relating to loss of income in the autumn 2006 through mediation meetings conducted by Kalaqin Banner EPB, but the villagers were not content with the compensation.⁹² Pollution continued to occur; during 2007 the fruit production was so poor that the villagers were not able to sell any fruit and thus had very little income (Liu: interview 01.12.07).

Current state of case: Liu Hai is receiving help from CLAPV; they are planning to file a case against the factory and the local government after new tests of the fruit trees are performed during spring 2008. Du Yelong is imprisoned on the charges of disturbing the social peace. Pollution is

⁹² Who will help us appraise the environment we live in? The joint aspiration from tens of thousands of residents in Jinshan township, *Shui wei women de shencun huanjing pingjia ?-----Jinshan zhen shi wan shimin de gongtong xinsheng*

continuing. Villagers are constantly seeking help from local, provincial and national government offices, EPB and DLV.

Timeline for Liu Hai's case:

In 1981: Villagers contracted land and worked hard to develop the barren hills surrounding Jinshan town into a rich forestry area. Fruit trees, such as apple, pear, apricot and Hawthorn trees were planted. Villages surrounding Jinshan town became famous for their fruit trees, which was the main source of income for many of the citizens in the area.⁹³

In 2005: Jinfeng Copper Metallurgy Co. Ltd. invested around CNY 35 million and opened a new factory in Jinshan industrial zone. The old Jinfeng Copper Metallurgy Co. Ltd. in Wangyefu township, Sishi Jiaqi village was closed down.

22.8.2006: Jinfeng Copper Metallurgy Co. Ltd. formally started production in Jinshan town industrial zone. People from the surrounding villages working outside when production started reported that they felt dizzy and nauseous; three women fainted and were later sent to the hospital. Shortly after the production started seven oxen in the surrounding villages died. Villagers received compensation from the Banner government for the loss of the oxen; however, they did not receive information related to the cause of death for the animals (Liu: interview 01.12.07).

Autumn 2006: After the pollution incident on the 22nd of August 2006, villagers started to seek assistance from Kalaqin EPB and requested that the local EPB would take action to put an end to the situation. Villagers demanded

⁹³ Ibid.

to read the EIA of Jinfeng Copper Metallurgy Co. Ltd., as well as their pollution emission permit. Pollution victims were denied access to these documents.⁹⁴ Also, villages demanded that action should be taken to supervise the polluting emissions from the factory. The local government did not meet these requests (Liu: interview 01.12.07).

21.11.2006: Liu Hai, Du Yelong and Li Zhong paid a visit to the Section for Letters and Visits at IMAR EPB. They were received by the office director, Mr. Li. After collecting the material Liu Hai, Du Yelong and Li Zhong presented to him, office director Mr. Li promised to get in touch with them within a month. They never received an answer (Liu: interview 01.12.07).

27.12.2006: Kalaqin Banner Government organized a mediation meeting between the pollution victims and Jinfeng Copper Metallurgy Co. Ltd. Under the mediation meeting an agreement was made in which Jinfeng Copper Metallurgy Co. Ltd., would pay CNY 50 in compensation per *mu*. It was agreed that measurements of the total area affected by pollution should be conducted by representatives from the Banner Agricultural Administration, experts from the Banner Forestry Administration, representatives from Jinfeng Copper Metallurgy Co. Ltd., representatives from village committees, and representatives from the pollution victims.⁹⁵ However, according to informants in the villages, the measuring of the affected area was conducted by security guards from Jinfeng Copper Metallurgy Co. Ltd (Liu: Interview 01.12.07). The victims were not satisfied with the compensation. They claimed that the area they got compensation for was too small, and for some

⁹⁴ Inner Mongolia Chifeng city Kalaqin Banner environmental protection bureau document nr. 19 in 2007, issued by Kalaqin Banner EPB: Kalaqin Banner EPB reply to Du Yelong's report on Jinfeng Copper Metallurgy Co. Ltd. Pollution, *Neimenggu Chifengshi Kalaqin qi huanjingbaohu wenjian , ka huan fa (2007) 19 hao , Kalaqin qi huanjingbaohuju guanyu Du Yelong fanying Jinfeng tongye wuran wenti de dafu.*

crops (such as sunflowers and yellow beans) CNY 50 per *mu* did not even cover the expenses for buying the seeds (Ibid.).

27.3.2007: Liu Hai, Du Yelong and Li Zhong wrote a letter to the national SEPA describing their situation and urging them to take action.

Spring/summer 2007: Villagers in Rounan Dong and Henan Dong noticed that crops and fruit trees were developing very slowly. They feared that during autumn 2007 they would not have anything to harvest. It was commonly believed that the slow development of the crops and fruit trees was connected. Villagers started to seek help from the local government again to help them receive compensation for the loss of harvest. The factory claimed that the bad harvest was not connected to their production. The local government supported Jinfeng Copper Metallurgy Co. Ltd. The local government hired an agricultural specialist to conduct an investigation of the crops and fruit trees. The report stated that the decreased productivity of crops and fruit trees is not related to pollution (Liu: interview 01.12.07).

Summer 2007: Liu Hai visited the institute where the agricultural specialist worked. The office director explained to Liu Hai that the report was not valid as a legal document and that he strongly suspected that the report was falsified (Ibid.).

Summer 2007: Liu Hai met a pollution victim petitioner from Hebei at the National DLV. He told Liu Hai about CLAPV. Liu Hai visited CLAPV. They agreed to help him (Ibid.).

⁹⁵ Ibid.

November 2007: I visited Liu Hai in Jinshan. As Du Yelong was detained by the police, I was unable to talk with him.

24.12.2007: Liu Hai called me to tell me that many of the villagers had gathered in front of Jinfeng Copper Metallurgy Co. Ltd. He asked me to send some foreign journalist friends to report on the situation. After consulting with one of Zhang Jingjing's assistants from CLAPV I was urged not to inform any journalist to go to Jinshan town as it would probably upset Jinfeng Copper Metallurgy Co. Ltd. and the local government, which would be a disadvantage in solving the conflict in the future.

3.5.4 Mr. Gao's case

Petitioner: Villagers from Xiaofu village, Jinshan township.⁹⁶

Defendant: Weihang Cement Company Ltd.

Informants: Mr. Gao⁹⁷

Core of the case: The case was a dispute between a cement factory and villagers living close to the cement factory, in the Jinshan area. Dust from the factory settled on the farmers vegetables. Villagers claimed that they were not able to sell or eat the vegetables due to the layer of dust on the vegetables. Furthermore, villagers complained about respiratory problems which they believed to be caused by dust emission from the cement factory. The villagers demanded that the cement factory should pay the villagers a total

⁹⁶ Minutes from mediation meeting between Kalaqin Banner EPB and the villagers, as well as mediation agreement between the two parts was also provided by the informant, which made it possible to cross check the facts stated by the informant.

⁹⁷ On request from the informant this name is anonyms.

compensation of CNY 144,400 (including CNY 58 000 in compensation for damage on the crops for the last two years and CNY 86 400 in compensation for health damage pertaining to dust emissions.)⁹⁸

Current state of case: Through a mediation meetings organized by the Kalaqin Banner EPB, the villagers agreed to settle for an annual compensation of CNY 9000 paid by the Cement factory.

Timeline for Mr. Gao's case:

2004: Weihang Cement Company Ltd. was originally a state owned enterprise; in 2004 it was turned into a private company. It has an annual production of twenty tons of cement. Weihang Cement Company Ltd. had been in operation for the last thirty years.⁹⁹

2.3.2006: Villagers in Xiaofu village wrote a letter to Kalaqin Banner EPB demanding compensation from Weihang Cement Company Ltd.

20.3.2006: Kalaqin Banner EPB organized a mediation meeting between representatives from Xiaofu village and Weihang Cement Company Ltd. During the meeting the claimants stated their compensation demand of CNY 144,400. If the pollution continued the villagers would demand the same compensation sum annually. During the meeting Weihang Cement Company Ltd. recognized that the company was responsible for some pollution, but stated that the demand for compensation was too high; they were willing to offer an annual compensation of CNY 3000. Kalaqin Banner EPB stated that

⁹⁸ Kalaqin Banner EPB, concerning the "Weihang Cement" Pollution dispute, *Kalaqin qi huanjingbaohu ju weihang shuini wuran peichang jiufen tiaojie huiyi jiyao*

⁹⁹ According to Mr. Gao, Weihang Cement Company Ltd. had been polluting also when it was a state owned company. When I asked him why the villagers in Xiaofu had not demanded compensation before, he said that it

they believed an annual compensation of CNY 7000 would be appropriate. It was decided that representatives from Xiaofu village would discuss the offer with the other villagers.¹⁰⁰

28.4.2006: A second mediation meeting was arranged by Kalaqin Banner EPB. During the meeting it was agreed that Weihang Cement Company Ltd. would pay Xiaofu village an annual compensation of CNY 9000, starting from January 2005.¹⁰¹ The factory would give the compensation of CNY 9000 *only if* all 108 households in the village would sign an agreement in which they agreed not to demand additional compensation from the factory in the future. The compensation would be paid at the end of each year. After discussing the matter among themselves the villagers agreed to settle for the offer from Weihang Cement Company Ltd.

November 2007: I visited Jinshan. Mr. Gao told me that the villagers had received the first compensation from Weihang Cement Company Ltd. As the company had been producing during 2007, they were going to receive compensation at the end of the year. Pollution levels had not stopped.

was because of some new environmental laws which were implemented in 2005. He denied that it was because it was probably easier to get compensation from a privately owned factory than a state owned factory.

¹⁰⁰ Ibid.

¹⁰¹ Environmental dispute, Mediation agreement, *Huanjing jiufen tiaojie xieyi shu*.

4. Obstacles to obtain access to justice in environmental disputes

4.1 General introduction

The following analysis is based on Wouters and Van Loon's dispute pyramid, focusing on the common obstacles pollution victims experience at the different stages of the dispute pyramid. The obstacles are many and they may present themselves in different forms and shapes during different steps of the dispute pyramid. The chapter provides a step-by-step analysis of obstacles pollution victims experience at each stage of climbing the pyramid. An analysis of obstacles in the process of exerting pressure on the accused party or third parties involved in the dispute handling process will also be included. Drawing on relevant research and literature, the following analysis points to some political, structural, scientific, technical, financial and even traditional reasons causing obstacles for pollution victims in the dispute assessment and handling process. Subsequently, current and/or proposed suggestions which might alleviate the discussed obstacles will be introduced.

4.2 Obstacles in the dispute assessment process

The dispute assessment process consists of the following four steps: naming (the transformation of the unperceived problems into perceived problems), action initiation stage (in which the choice is made whether the individual is going to do something about the problem); if the injured party decides to 'lump it', the process will end at this second stage. The third step is the claiming stage (in which the injured party blames the party considered to be

responsible for the problem), and the fourth stage is the polarisation process, which occurs whenever the other party refuses to meet the wishes of the claimant (Wouters and Van Loon 1992: 224-225).

Given that none of the pollution victims experienced difficulties in the first part of the process, in which one understands that one has been victimized, there is no need to go into this stage in detail. However, in cases where pollution leads to health effects, this stage could be a problem as pollution victims might not comprehend the causation between health damage and pollution. However, Palmer claims that “for many Chinese people, especially those who live in the countryside and have only low levels of education attainment, environmental harms are either not perceived, or at least not perceived as constituting a problem in need of a solution” (Palmer 2007: 217). Palmer’s reflections suggest that there might be a large number of ‘potential’ environmental disputes in the country.

4.2.1 Obstacles in the action initiation stage

In the action initiation stage, the injured party decides if he or she is going to do something about the perceived injury. I have identified two major obstacles pollution victims experience in this stage of the dispute assessment process: a general lack of legal knowledge, and reluctance towards involvement in dispute resolution processes.

(1) Lack of legal knowledge

“If you don’t know the law, people will cheat you!”

-Wuretu, petitioner in the Dongwu Banner County Paper Mill case

In the cases I investigated, lack of knowledge was generally a problem in the initial stage of climbing the pyramid. Problems related to lack of knowledge about legal rights was most apparent in the cases taking place in rural areas.

(A) Language barriers

In the Dongwu Banner County Paper Mill case, victims' inability to obtain information about their legal rights was first and foremost related to a language problem. Herdsmen affected by the pollution from Dongwu Banner County Paper Mill were Mongolian minorities who had great difficulties communicating in Mandarin.¹⁰² In the process of deciding how they should deal with the problem they tried to identify legal documents that could guide them as to on what bases they could approach the polluter. But they were unable to find any such laws written in Mongolian. One explanation to this situation might be the 'soft law' framing on regulations related to translation of official documents into minority languages. Regulations encouraging the translation of official documents exist, but currently there are no 'hard laws' or strict regulations securing translation into minority languages. For example, article two of the Inner Mongolia Autonomous Region Mongolian Written Language Work Regulations states that: "various levels of people's government *should* popularize the use of standardized Mongolian pronunciation and written language..." (emphasis added).¹⁰³

It should be noted that as the herdsmen managed to get information on their legal rights by the help of friends who translated the relevant laws for them, language barriers continued to be a general problem throughout the process of dispute resolution. The herdsmen felt restricted by not being able to

¹⁰² Mandarin is the official language in mainland China. Most of the 55 minority groups in China have their own minority language.

communicate freely with those involved in the dispute handling process. However, if the laws were properly translated into Mongolian, it does not mean that the process of obtaining access to justice would have been easy. The herdsmen in the Dongwu Banner County Paper Mill case also experienced most of the difficulties the Han-Chinese pollution victims in the same region did. However, the language barrier made it even more difficult for the herdsmen to know about and exercise their legal rights.

(B) Lack of knowledge concerning legal rights

All of the informants in the rural areas explained that when they experienced pollution for the first time they did not know which laws or regulations the polluter had violated. However, in the process of climbing the dispute pyramid, the informants experienced a steep learning curve related to environmental laws and regulations in China. Most of them had gained impressive knowledge on the topic. As the informants in my case studies had already been through a complicated dispute settlement process, their knowledge on environmental law and regulations was probably not representative of the average Chinese citizen. To my knowledge, Li Zhiping's study of peasant's environmental rights during social transition in rural regions in the Guangdong province is the only current study which focuses on rural Chinese citizens' knowledge of environmental rights. Her investigation shows that most of the participants were unaware of which legal rights citizens have in the case that they should be exposed to pollution. When asked how they would react in the case of a pollution incident, most farmers stated that

¹⁰³ Inner Mongolia Autonomous Region Mongolian Written Language Work Regulations (2004), art. 2

they would try to solve the conflict by reaching an agreement with the polluter or through mediation (Li, Z. 2006: 340).

Why is there a lack of legal knowledge in China? This is a complex question which, given the scope of this project, I will not be able to explore in detail. However, the findings in Kevin O'Brian and Li Liajiang's study of national tax regulation in rural China might provide some answers to this question. A study conducted by the two scholars in 1997-98 in seven provinces in China showed that only one quarter of the 9,843 respondents knew that, according to a State Council Regulation from 1991, township and village fees must not exceed five percent of the average village income. Further, when asked about a ten-year-old law which enables villagers to elect grassroots cadres, only three percent of the respondents said that they understood it fairly well, while 28 percent said that they knew something about it, and 70 percent said that they knew nothing about it (O'Brian and Li, L. 2005a: 34). The two scholars have identified so called 'strong-arm tactics' as a reason for the lack of legal knowledge among rural populations.¹⁰⁴ According to O'Brian and Li, despite the nationwide efforts to increase popular legal awareness which have been ongoing since the 1980's, many villagers still remain unaware of laws and policies that can work to their benefit (Ibid.). However, this situation might be changing as more and more Chinese citizens are increasingly becoming aware of their legal rights and how to exercise them. Benjamin Liebman, a well known scholar on legal development in China, points to popular television shows discussing legal rights as one of the reasons for an increase in awareness on legal rights (Liebman 2005:28). O'Brian and Li further elaborate

¹⁰⁴ In the article 'Suing the Local State: Administrative Litigation in Rural China' O'Brian and Li describe 'strong-arm tactics' as illegal actions in which the local government confiscates legal material and/or detains people who are involved in distributing legal information (O'Brian and Li 2005: 34).

that migration might have a positive influence on Chinese citizens increased knowledge on their legal rights, as migrant workers bring back legal knowledge when they return to rural areas (O'Brian and Li, L. 2006: 40).

(II) Reluctance of involvement in dispute resolution processes

A second obstacle in the action initiation stage of the dispute assessment process is based on pollution victims' reluctance towards involvement in the disputes resolution process. In the Weihang Cement factory case, the informant identified maintaining a good relationship with the local government as one of the main reasons why the villagers did not pursue the case further up the dispute pyramid and thus agreed to settle the case based on an unfavourable mediation agreement (Mr. Gao: interview 28.11.07).

Reluctance to get involved in a tough conflict resolution process was based on fear of possible future consequences of a negative relationship with the local government, and/or a genuine fear of harsh retaliation (Ibid.). Such reluctance is not difficult to understand. As pointed out by O'Brian and Li in their study of Administrative Litigation Law (ALL) cases, in rural areas where villagers prevailed in lawsuits against the government and the verdict had been duly executed, the villagers' gain was lost when local officials they had bested retaliated against them (O'Brian and Li, L. 2005a: 41). Furthermore, Ethan Michelson's quantitative study of dispute resolution in rural areas in China reveals a high percentage of drop-outs at an early stage of the dispute pyramid. Michelson found that out of all 4,575 reported grievances, 33 percent were lumped, 47 percent were resolved through bilateral negotiation and 20 percent were brought to third parties (Michelson 2008: 48). Michelson's findings indicate that a large percentage of rural Chinese either decide not to get involved in a conflict or to solve in through informal negotiation.

Palmer argues that Chinese reluctance towards involvement in dispute settlement process has roots in ancient Chinese traditions (Palmer 2007: 216). He claims that Chinese traditionally have preferred to solve conflict through negotiation and mediation and that this reluctance to formal dispute settlement procedures, especially dispute settlement through court, is based on a mixture of long influence by Confucian values and Maoist principles, in addition to the recent focus of building a “harmonized society” (Ibid.). However, the recent increase in rights based approaches in the country might be intricate that this trend changing and that the Chinese are becoming more comfortable in exercising their legal rights, also when it demands a lot from them.

4.2.2 Obstacles in the claiming stage

In the claiming stage, the first thing the victim must do is to identify the source of the problem. In instances where there are multiple sources of pollution this process can be very complicated, as pollution victims may not be able to identify who they should hold responsible for the damage. Furthermore, pollution victims most often have to prove the causation of the damage and the pollution in order to prove the responsibility of the polluter. Obstacles related to obtaining and providing evidence also constitute a problem for those who decide to take the dispute to court, but will only be discussed under this section. In environmental disputes there are normally two kinds of important evidence: scientific evidence accounting for the actual pollution and/or the causation of the pollution, and official (governmental) documents such as reports from the EPB, providing information on the enterprise. Pollution victims experience difficulties in obtaining both.

(I) Scientific evidence

In the Baotou Water Supply Company case, pollution occurred upriver and thus it was difficult for the company to establish the sources of pollution. Nevertheless, the company was able to use their own equipment to conduct a number of sample tests at various places upriver from the water intake station (Gao: interview 27.12.07). Based on the test results the company managed to identify three sources of pollution. These scientific tests were later used as evidence under the trial. In the Dongwu Banner County Paper Mill case and the Jinshan cases there was only one factory which could have caused the pollution, thus identifying who to hold responsible did not pose a challenge in these cases. In the Dongwu Banner County Paper Mill case, the herdsmen was able to use reports conducted by scientists on the request CCTV's *jinri shoufa* in the process of making a program on the case as evidence against the paper mill. However, a number of other problems related to obtaining evidence caused major obstacles for the pollution victims in these cases. This situation was most serious in the Jinshan cases, where pollution victims have faced, and are still facing, obstacles in proving evidence pertaining to the causation of the damage and the amount of the lost profits as a result of the damage. In order to estimate compensation demands, these two pieces of evidence must be obtained. Providing documentation which can be used to estimate the future loss of profits is especially difficult. Li Shuxian's case illustrates the complexities of this process.

Up until now, Li Shuxian has engaged in a number of mediation meetings with Jinfeng Copper Metallurgy Co. Ltd. resulting in compensation sums between CNY 5000 – 9000. The mediation processes have been based on uninformed estimates. Li Shuxian believes that the compensation he has received is far too low, and the annual mediation meetings are not leading to the results he would like to see. Thus he has decided to file a case against the

factory demanding more than CNY 400,000 in compensation including future economic loss caused by the reduced growth rate which is a direct result of the outlets from Jinfeng Copper Metallurgy Co. Ltd. But Li Shuxian is having a hard time trying to prove *how much less* the poplar trees are growing each year as a result of the pollution and in transferring such loss into in monetary terms. A number of factors make it particularly difficult to provide such evidence. How long will the trees be affected as they are today? Is it possible that as time goes by the trees will gradually be able to develop in the average growth rate again? If so, when will that happen? CLAPV are currently trying to identify researchers who would be able and willing to conduct tests which can be used as evidence proving the reduced growth rate of the poplar trees. Until he is able to provide such evidence, Li Shuxian's compensation demands will be based on his own estimates. However, in the process of requesting a scientist to conduct tests to provide the evidence they need pollution victims also experience financial obstacles, as it can be very expensive to conduct such test. Even in the cases in which the pollution victims are receiving legal aid from CLAPV, the high expense of conducting scientific tests to be used as evidence is a problem. As a non-profit organization, CLAPV can provide legal assistance for free, but they are dependent on financial support from outside sources when they take on different cases. Therefore CLAPV might also lack the financial means to pay for expensive scientific test reports. With regard the financial burden of providing evidence in environmental disputes, Alex Wang, attorney at the Nature's Defence Council office in Beijing, has noted that appraisal fees in pollution compensation cases can be prohibitive.

In pollution compensation cases, appraisals by a certified, court-appointed entity typically provide the key court evidence regarding damages and causation...such fees can be of a very high magnitude and may equal many years of salary for an average individual in China (Wang, A. 2007: 207).

In an attempt to reduce the problems caused by the difficulties in providing scientific evidence, the China Environmental Science Institute has established

the China Environmental Science Institute Environmental Damage Certification and Evaluation Centre. SEPA formally approved the Centre in October 2007. One of the main purposes of the Centre is conduct tests examining the causation between environmental pollution and damage, examining and asserting the degree of the damage, and presenting reports concerning the tests and evaluation.¹⁰⁵ However, it is difficult to predict how much this centre can do in assisting pollution victims in providing evidence as the centre is newly established and have only conducted tests in two environmental dispute cases on the request of the court handling the case.¹⁰⁶

Furthermore it should be noticed that if the pollution victim ends up taking the case to trial, the burden of providing such evidence might not be as heavy. China has, like many other countries, adopted the principle to reverse the burden of proof in environmental litigation. According to the Supreme People's Court, "in action for compensation as a result of the environmental pollution, if the defendants object to tortuous allegations of the plaintiff, the defendant bears the burden of proof."¹⁰⁷ However, the plaintiff still has the burden to prove that he suffered 'loss', including both actual loss and the loss of profits that can be reasonably anticipated as a result of the environmental pollution, and that the defendant carried out the act leading to the environmental pollution (Zhao, Y. 2004: 181). Furthermore, as recognized by Palmer (2007) it is necessary for the plaintiff to show that the defendant has breached national standards for the discharge of pollutants, and it is sometimes

¹⁰⁵ China environmental science institute, China environmental science institute letter concerning the establishment of environmental damage certification and evaluation centre (*Zhongguo huanjing kexue xuehui guanju kaizhan huanjing sunhai jianding ha pinggu gongzou de han, zhong huan xue* 2007, 118 hao.

¹⁰⁶ Ibid.

¹⁰⁷ The Supreme People's Court's Opinion on Several Issues in Applying the Civil Procedure Law of the People's Republic of China (1992): art. 74.

difficult to gather evidence to demonstrate conclusively that there has been a breach (Palmer 2007: 230).

(II) Non-scientific evidence

In addition to scientific evidence, non-scientific evidence, such as documentation from governmental offices is valuable piece of information which can be used as evidence in environmental dispute settlements.

Nevertheless, such documentation may be difficult to obtain.

As already mentioned, in the Baotou Water Supply Company case, the company managed to identify the sources of pollution by conducting their own tests. However, as the tests were carried out by the claimant and not an independent third party, the validity of the tests might be questioned. Thus Gao Guizhen and Wen Quanlai were dependent on documentation from the upriver EPB as evidence to prove their case. One crucial piece of evidence was an investigation report from Wulaqian Banner EPB relating to the source of pollution causing the 6.29 incident. The report also identified three factories (the same three factories as those identified by Baotou Water Supply Company) as the sources of the pollution, and stated that these factories had conducted illegal outlets of wastewater.¹⁰⁸ Furthermore, documentation from Baotou City EPB regarding the economic loss caused to Baotou Water Supply Company as a result of the pollution was an important source of information for the company to state their compensation demands.¹⁰⁹ This information was crucial for the successful outcome of the case (Gao: interview 27.12.07).

¹⁰⁸ Wulaqian Banner Environmental protection bureau published (2004) number 45 “Investigation report concerning the water pollution accident in the Yellow River”, (*wulanqian zhen huanjing baohu ju wuhuan fa (2004) 45 haon* “*guanyu huanhe shui wuran shigu de diaocha baoga*) was accounted for in the list of evidence and intention of collecting evidence (Inner Mongolia Baotou Water Supply Company, (*Zhengju mulu he juzheng yitu (Neimenggu Baotoushi gongshui zong gongsi)*).

¹⁰⁹ Ibid.

However, according to Gao Guizhen and Wen Quanlai, obtaining this information was very difficult; it was especially challenging to obtain documentation from the upriver Wulante Qian Banner EPB. Wulateqian Banner EPB simply refused to provide them with the documents. If Gao Guizhen and Wen Quanlai had not had a well developed network of *guanxi* they would not have been able to obtain the documentation (Wen interview: 28.12.07, Gao: interview: 27.12.07).

In the Jinshan cases the claimants did not have the kind of *guanxi* they need to obtain documentation from Kalaqin Banner EPB. They have tried to get access to the EIA report of Jinfeng Copper Metallurgy Co. Ltd. for a long time, but Kalaqin Banner EPB has not given in to this demand (Liu: interview 1.12.07). In 2007 Du Yelong addressed Kalaqin Banner EPB in a letter, demanding to receive a copy of Jinfeng Copper Metallurgy Co. Ltd. EIA report. Kalaqin Banner EPB replied by stating that the EIA report of Jinfeng Copper Metallurgy Co. Ltd. had been conducted according to the regulations.¹¹⁰ However, Kalaqin Banner EPB has not given the pollution victims access to the actual report.

A new set of regulations might make it easier for pollution victims to obtain governmental information. In May 2008 SEPA announced that trial regulations concerning “Access to Government Information” and “Methods of Public Access to Environmental Information”. According to Ma Jun, the director of the Chinese Institute of Public and Environmental Affairs, these regulations are a milestone on the path to guaranteeing the public’s right to

¹¹⁰ Inner Mongolia Chifeng city Kalaqin Banner environmental protection bureau document nr. 19 in 2007, issued by Kalaqin Banner EPB: Kalaqin Banner EPB reply to Du Yelong's report on Jinfeng Copper Metallurgy Co. Ltd. Pollution (*Neimenggu Chifengshi Kalaqin qi huanjingbaohu wenjian , ka huan fa (2007) 19 hao, Kalaqin qi huanjingbaohuju guanyu Du Yelong fanying Jinfeng tongye wuran wenti de dafu*)

access environmental information.¹¹¹ Ma applauds SEPA for implementing these new regulations, as it is the first Chinese department willing to give the public the legal tools to supervise the department (Ma, J. 09.05.08). However, the effects of these new regulations are dependent on how they will be implemented, which ultimately depends on whether the various environmental departments enter into the spirit to make disclosure the rule rather than the exception (Ibid). For example, the regulation sets some limits to public disclosure, saying that official information released "should not cause social instability and threaten the safety of the state, the public and the economy", a regulation which can be used to withhold information (Xinhua 24.04.07). Furthermore, these new SEPA regulations will most probably not be able to prevent the problem of falsification of evidence, which was a difficulty in both the Dongwu Banner County Paper Mill case and in two of the Jinshan cases. In these cases the local government not only refused to provide relevant documentation to the pollution victims, they actually undertook illegal activities resulting in inaccurate documentation in support of the polluting industries (Damulinzhabu: interview 26.11.07, Liu: interview 1.12.07, Han: interview 30.11.07). This produced documentation was actually used to protect the defendant from the claimants. In one of the Jinshan cases, Liu Hai was actually able to prove that a report conducted by an agricultural specialist on behalf of the Kalaqin Banner EPB stating that there was no relationship between the decreased productivity of crops and fruit trees and outlets from Jinfeng Copper Metallurgy Co. Ltd. was falsified. On one of his many visits to

¹¹¹ The Institute of Public and Environmental Affairs has developed the China Water Pollution Map (zhongguo shui ditu), the first public database of water pollution information in China available online. The map embodies abundant information on China's water quality, waste water discharge and environmental violators. The Map compiles environmental data that scatters in thousands of government reports and displays them in a user-friendly way. According to the database, IPE is exploring an approach to help the public participate in environmental policy-making and environment management, and harness their own individual purchasing power,

the Kalaqin Banner EPB, Liu Hai was given a copy of this report. As the report did not have an official stamp nor carry the signature of the persons who had carried out the test, Liu Hai became suspicious of the validity of the test. Together with Du Yelong and Li Zhong he paid a visit to the institution which had conducted the report. The office leader at the institution which allegedly had carried out the test confirmed Liu Hai's suspicion; the test could not be used as evidence since it lacked an official seal and the signature of the people who had carried out the test (Liu: interview 01.12.07). Also in the Dongwu Banner County Paper Mill case, the herdsmen experienced difficulties when the local government was opposing their case. In this case the herdsmen were not able to prove that the land occupied by the wastewater dike was legally contracted by them as they did not have a copy of the collective landownership certificates.¹¹² Due to this, the court did not recognize that the herdsmen had legal standing in demanding return of the land 'occupied' by the paper mill's wastewater dike. According to CPL 'the plaintiff of a law suit must be a citizen, a legal person or any other organization that has *direct interests* in the law suit' (emphasis added). That is, only those whose legal rights and interests are directly affected can bring a lawsuit to the people's court.¹¹³ According to Damulinzhabu the herdsmen had never heard of the collective landownership certificates before the dispute with Dongwu Banner County Paper Mill (Damulinzhabu: interview 26.11.07). During the dispute assessment and handling process, the local government was very unsupportive towards the herdsmen. Not only did they not provide the

exerting pressure on polluting enterprises to reform their harmful environmental practices and take their environmental responsibilities. See: www.ipe.org.cn

¹¹² Constitution of the PRC art. 10, the land belongs to the state. Land in the rural and suburban areas is owned by collectives, except for those portions which belong to the state in accordance with the law.

¹¹³ CPL, art. 108

certificates to the herdsmen, they actually illegally transferred the land back to the government, so that it would appear that the herdsmen were, in fact, not the legal users of the land (Chen: interview 14.10.07). In January 2003, the Dongwu Banner government divided the grassland area into parts, which included Dongwu Banner County Paper Mill and 10,730 mu (1,716.8 acres) of surrounding pasture, based on a purported incorrect division of the grassland in January 1997. The local government also signed and issued five copies of the State-Owned Land-Use Right Certificate and officially transferred the land to state ownership, and then leased the land to the Dongwu Banner County Paper Mill (Chen, J. and Li, J. 2005: 211). However, if 35 hectares (86.4 acres) of arable lands, or 70 hectares (172.8 acres) of other land are taken for national construction, the land expropriation must be approved by the State Council; but this approval was not sought.¹¹⁴

Withholding documentation and falsification of evidence is most probably a result of the local protectionism phenomena. Local protectionism (*difang baohu zhuiyi*) is a phenomenon that creates a number of obstacles for the pollution victims at nearly all stages of the dispute pyramid. In relation to environmental issues, local protectionism commonly occurs in situations where the local government protects businesses against strict enforcement of environmental laws resulting in weak enforcement of environmental laws and instances where the local government protects tax-yielding (and polluting) enterprises against demands from aggravated citizens. The phenomenon and its implications are complicated. Researchers have identified local protectionism as one of the main reasons causing weak implementation of environmental laws on the local administrative level in China (Beyer 2005,

¹¹⁴ Law of Land Administration (1999), art.45

Palmer 2007, van Rooij 2006). The findings in this thesis indicate that local protectionism also creates a number of obstacles in the environmental dispute assessment and handling process. However, the local protectionism phenomenon is not just a matter of corrupt officials with low moral values who are willing to ignore hazardous emissions from businesses, if the personal benefit of doing so is considered to be high enough. Local protectionism is an intricate institutionalized problem in China. In a top-down explanation of the phenomenon, it will be natural to start explaining the phenomenon as a combination of the strong emphasis on economic development from the central leadership, in combination with the responsibility system (zeren zhuijiu zhi) used to evaluate the work performance of local cadres. Peerenboom and Xin claim that one of the reasons for a strong focus on economic development from the central government is based on the fact that one of the main factors still legitimizing CPC is the Party's capability to bring economic development to the country.

Given CPC dependence on economic growth as the mainstay of its claim to legitimacy, government leaders have had little choice but to press on with reforms. In doing so, they have relied mainly on an incentive structure for promotion that places great weight on economic growth to ensure that local officials create a business friendly environment. At times the incentives have worked too well, as lower-level officials ignore central policies or engage in protectionist measures to achieve local development (Peerenboom and Xin, H. 2008: 4).

The strong focus on economic development propagates to provincial and local levels. Local government officials often feel pressured by the responsibility system used by party authorities to evaluate the work of the local cadres to take severe measures to allow for a steady economic development in their districts. If leaders meet these goals set in the responsibility system standards, cadres are rewarded. On the other hand, failure to meet these goals might result in adverse career consequences (Minzner 2006b: 49). According to critics of the system, the outcome is not much different the period of planned

economy where cadres did all they could to please their superiors by apparently reaching the targets laid out in their contracts and evaluation forms, even if they have to distort data, and even when their acts were detrimental to the peasants' interest (Thøgerson 2003: 203-4). It is tempting to try to draw a line between local protectionism as a result of sheer corruption and local protectionism as a result of the above mentioned political and structural guidance. However, obtaining empirical data to support such conclusions would be very difficult. Moreover, perhaps the line is not so clear; and that in most cases local protectionism is a mix of the two as political and structural guidance provide room for local officials to operate in corrupt manners, conceivably is it only the degree of sheer corruption that varies from case to case. This being said, the informants did provide some information which can be used to give an indication of how the local phenomenon manifests itself in their local community. In an article analyzing the Dongwu Banner County Paper Mill case, Chen Jiqun and Li Junhui made the following reflections:

In the pollution case of Dongwu Banner County Paper Mill, the preferential conditions the local government promised included, "The only charge borne by the lessee enterprise is CNY 50,000 of water resource fee and CNY 20,000 of pollutant discharge fee per rental year, and the factory land-use fee according to the relevant stipulation from the 6th year of operation for lease... The total income tax turned over by the enterprise in the first 7 years of operation is to be returned the moment it is collected. 50% of the value-added tax that has been kept by the local government should be returned to the enterprise the moment it is collected within the first 7 operation years." It is hard to understand how, given these conditions, that the enterprise contributed to local economic development. The majority of profit went into individuals' pockets, while a smaller portion went to the national and local financial organs as tax (Chen, J. and Li, J. 2005: 213).

Although the current responsibility may lead to the local protectionism phenomena, it could be that if this is implemented more strictly and hard targets are also set for environmental protection, there is a chance that the local protectionism might decrease its impact as an obstacle in environmental dispute resolution. As pointed out by Edin, although the current system

endorses management by setting goals, the targets set in the current responsibility system are not static. When higher level authorities wish to shift priority policy, they can upgrade or downgrade the status of a certain target (Edin 2003: 10). Moreover, Edin has noted a positive development in which not only reaching the goals, but how they are reached is included in the evaluation process (Ibid.). Since 1992 environmental protection has been one of the evaluation factors under the responsibility system (Economy 2005: 117). Although there have not been conducted any studies, to my knowledge, investigating the relationship between environmental protection standards within the responsibility system and the environment or environmental disputes, the general situation of the environment in China suggests that it has not been a major success. However, in 2007 the State Council issued a regulation stating that local-level officials who had failed to meet environmental targets, such as reducing the discharge of effluents and other pollutants in their areas by 2% a year, may not be eligible for promotion (Lam, W. 10.01.08). The effect of this new regulations remains to be seen. Thus, perhaps it is more relevant to ask, as Thørgerson has, how basic level cadres in poor areas can be given a sense of purpose and direction which will constrain their tendency towards corruption and abuse of power and make them work loyally for the Party's agenda (Thørgerson 2003: 203). Thørgerson's answer to this question is that

in addition to the personal benefits that cadres get from their positions, they find a sense of purpose believing that they are part of a process which will eventually turn China into a strong and modern country (Ibid.: 223).

However, other researchers have pointed out a slightly different answer on this subject. In Lily Tsai's comparative case study of the relationship between formal and informal processes at local level administration in rural China, she explores the question of why some villages provide comprehensive social services while others do not. She argues that,

When officials are embedded in solidarity groups such as temples or village-wide lineages that encompass everyone under their jurisdiction, obligations to contribute to the good of the group are synonymous with obligations to contribute to the public good. Under these conditions, social institutions can reinforce or substitute for state institutions. Officials in these communities have an extra incentive to perform well and provide public goods and services because they can earn moral standing by meeting and exceeding their obligations to the group (Tsai 2007: 251).

The local protectionism is a major obstacle for Chinese pollution victims, not only in the process of obtaining evidence, but throughout the entire process of exercising their legal rights in environmental disputes. Thus it is vitally important that Chinese leaders develop strategies to address this situation.

4.2.3 Obstacles in the polarisation process

The polarisation process is the last stage in the dispute assessment process, in which the claimant approaches the polluter and states their demands. All the informants in the cases I have investigated have tried to negotiate with the polluter directly, but the polluters have either refused to engage in negotiation meetings or refused to accept the demands raised by the claimant. This is a common trend in environmental disputes. As pointed out by Wang, pollution victims nearly never manage to solve the dispute with the polluter directly, because the polluter refuses to accept responsibility (Wang, C. 2002: 11). Unable to solve the dispute with the polluter, pollution victims can try to solve the dispute with the assistance of a third party.

4.3 Obstacles in the dispute handling process

The third level of the dispute pyramid, the dispute handling process, contains four stages. The first stage is to drop the dispute. The second option is to seek

help from third parties. If third party is unable to assist pollution victims in solving the dispute, the option of lumping it remains as the third step; the last option is to take the dispute to court (Wouters and Van Loon 1992: 224-225).

4.3.1 Obstacles when seeking assistance from third parties

In environmental disputes pollution victims commonly ask for assistance in dispute handling from the EPB. EPB can assist the parties by conducting negotiation and mediation meetings. The findings in this thesis suggest that a number of obstacles complicate the pollution victims' access to justice in this process: the discrepancy in demand and outcome of the compensation agreement, internal conflicts between the pollution victims themselves, local protectionism and a very inefficient complaint system.

(1) Discrepancy in demand and outcome

In Jinshan, mediation agreements had been made in three of the four cases under the organization of the Kalaqin Banner EPB. One general conclusion can be made when comparing the original demand from the injured parties and the outcome of the mediation – namely, that there is a great discrepancy between the former and the latter. In Mr. Gao's case the original demand from the villages was CNY 144,000, through mediation the 108 households in the villages agreed on an annual compensation of CNY 9,000.¹¹⁵ Li Shuxian has been through a number of mediation processes with Jinfeng Copper Metallurgy Co. Ltd. From 2002 to 2007 he has received a total of CNY 28,000 in compensation from the enterprise, which is far from the CNY 434,000 he

¹¹⁵ Environmental dispute, Mediation agreement, (*Huanjing jiufen tiaojie xieyi shu*).

has estimated the damage to be.¹¹⁶ In Liu Hai's case the Kalaqin Banner government organized a mediation meeting between the village committee representing the pollution victims and Jinfeng Copper Metallurgy Co. Ltd. Under the mediation meeting an agreement was established between the village committee and Jinfeng Copper Metallurgy Co. Ltd. in which it was agreed that the enterprise would pay the villagers CNY 50 in compensation per *mu*. But the villagers were unsatisfied with the compensation, claiming that it wasn't even enough to cover the expenses for buying the seeds.¹¹⁷ In the Baotou Water Supply Company case, mediation meetings were initiated by Gao Guizhen. The parties did meet a couple of times where Baotou EPB acted as a mediator, but the two parties were not able to reach an agreement as the defendants refused to accept any responsibility for the damage caused to the plaintiff. Baotou Water Supply Company then decided to file a case against the polluters (Gao: interview 27.12.07).

Palmer has pointed out that there is a problem with power imbalances in the mediation process in environmental disputes in China. He claims that

A related problem with the stress of informality is that of power imbalances, especially in the cases that are mediated. For while the informal processes of dispute resolution have many advantages –such as cheapness, speed, better enforcement prospects, and the maintenance of good relationship between the parties –the reality is that in the vast majority of the cases one party is a private individual, a politically unimportant community or small enterprise and the other is an environmental protection agency or (say) a large factory, perhaps wholly or partially owned by the state (including local government). Even if the enterprise is in private hands, the personal 'connection' or *guanxi* between its leaders and the local government is likely to be very close, and may therefore impact significantly on the outcome (Palmer 2007: 221).

¹¹⁶ General introduction to Li Shuxian's case, (*Jiben qingkuang jianjie (Li Shuxian de anli)*)

¹¹⁷ Who will help us appraise the environment we live in? The joint aspiration from tens of thousands of residents in Jinshan township (*Shui wei women de shencun huanjing pingjia ?-----Jinshan zhen shi wan shimin de gongtong xinsheng*)

The power imbalance described by Palmer has most likely played a part in the unfavourable outcome for the pollution victims in the mediation agreements.

(II) Internal conflicts among the pollution victims

Disagreement among the pollution victims on how they should respond to the offer from the polluter can cause them to spend valuable time and energy on internal discussions instead of focusing on the conflict with the polluter. The Weihang Cement Factory case illustrates this problem very well. In this case villagers who had their farmland close to the factory experienced more dust on their vegetables than with farmland further away. The Xiaofu villagers most affected by the dust pollution did not want to accept the compensation offered by the cement (Mr. Gao: interview: 29.11.07). Moreover, many of the villagers were sceptical to the closure in the agreement stipulating that the factory would give the compensation only if all the 108 households in the villagers agreed not to demand supplementary compensation in the future. If the villagers accepted the compensation they would receive a total compensation of around CNY 83 per household. This created a situation in which villagers with fields distant from the factory (and comparatively less affected by the pollution) were willing to accept the offer, whereas people close to the factory felt that the compensation was too low (Ibid.). In the end the villagers managed to reach an agreement in which the farmers with fields distant from the factory gave some of the compensation they received from the factory to the ones with fields close to the factory. The villagers all agreed to give the people most affected an extra CNY 20 in total each year, adding up to CNY 103 in compensation for the villagers most affected by the pollution. According to Mr. Gao, this internal disagreement between the villagers was one of the most challenging obstacles in solving the conflict (Ibid.).

4.3.2 Lodging complaints

If pollution victims are not able to solve the conflict through negotiation or mediation, the next step they commonly take is to lodge complaints at various governmental offices, DLV or with any other higher official who might take interest in their case. Although the option to file complaints is most prevalent in this part of the process, many pollution victims lodge complaints simultaneously with the other ongoing processes of dispute resolution.

(1) Lodging administrative complaints

In the cases I have investigated, the pollution victims felt that the local government was very often protecting the polluting enterprise instead of helping the pollution victims (Han: interview 30.11.07, Li interview: 30.11.07, Liu interview: 01.12.07). Given this situation, complaining at the local level about the lack of action taken from another governmental office has been relatively ineffective (Ibid.).

In the Dongwu Banner County Paper Mill case and the three cases against Jinfeng Copper Metallurgy Co. Ltd., the pollution victims have lodged complaints to various government offices and DLV with little effect (Han: interview 30.11.07, Li interview: 30.11.07, Liu interview: 01.12.07).

Damolinzhabu claim that he cannot recall how many times he went to seek help from various governmental offices (Damulinzhabu: interview 26.11.07). After the pollution took place he spent at least one and a half years, together with other herdsmen, appealing to various authorities; the authorities included all levels of the Banner government, League government and government of the Autonomous Region, along with various organizations such as the DLV of the People's Congress of the Autonomous Region, the Agriculture and Animal Husbandry Bureau, the Grassland Supervision and Administration Station etc. (Ibid.)

In Rounan Dong and Henan Dong villages in Jinshan, villagers were lodging complaints on a daily basis, but this had been to no avail (Rounan Dong village: collective interview 30.11.07, Henan Dong village: collective interview 30.11.07). When pollution victims experience that lodging complaints at the local level does not yield any result, they often move on to file complaints at higher administrative levels. The findings in this thesis show that pollution victims do this because they commonly believe that at higher administrative levels, especially at the national level, governmental officials are more 'just'. They also believe that at higher administrative levels they can work around the local protectionism phenomenon (Han: interview 30.11.07, Li interview: 30.11.07, Liu interview: 01.12.07, Damulinzhabu: interview 26.11.07). However, the higher the petitioners aim on the hierarchical administrative ladder, the more difficult, time consuming and expensive it will be to lodge a complaint. Higher level administrative officials are more difficult to access than their local level counterparts, travelling to provincial level administrative offices is time consuming, and travel and accommodation expenses quickly add up. But more importantly, lodging complaints at higher-level administrative offices is seldom efficient (Ibid.). If a higher level official agrees to actually hear the complaint, it is most likely that the reaction will be to send a request to the local level that they take action to solve the problem. Thus, the petitioners are back at the local level, where local protectionism once again becomes a major obstacle in the dispute handling process.

(II) Lodging complaints at Departments for Letters and Visits

If pollution victims fail in solving the environmental dispute by requesting help from government offices, they might try to put pressure on the local government to take action through petitioning the DLV.

In the cases taking place in rural areas, lodging complaints at the DLV as a means to help solve the environmental dispute was widely used (Ibid.). In the Jinshan cases, Han Xiang, Li Shuxian and Liu Hai had all made numerous trips to various DLV at the local, provincial and national levels (Liu: interview 01.12.07, Han: interview 30.11.07, Li: interview 30.11.07). Damulinzabu had also actively lodged complaints at DLV during the dispute handling process (Damulinzhabu: interview 26.11.07). However, petitioning at DLV had not been an effective tool in the process of solving the dispute (Han: interview 30.11.07, Li interview: 30.11.07, Liu interview: 01.12.07, Damulinzhabu: interview 26.11.07). Petitioning normally resulted in a copy of a written statement from the official who received the petitioner concerning the purpose of the visit. Followed by an assurance, normally not written, that DLV would address the relevant governmental offices that have the authority to intervene in the conflict at the local level. However, when the complaint reached the local level, the local protectionism would influence the local government respond to the request from DLV. Thus, petitioning at DLV is largely inefficient. It has been argued that one of the reasons for the inefficiency of the DLV lies in the fact that the aim of protecting individual legal interests is but one element of a larger focus on governance.¹¹⁸ Minzner explains:

As a general-purpose governance tool, with historical origins in centralized authoritarian rule, the *xinfang* system encompasses multiple functions frequently the province of separate government or private institutions in Western countries. *Xinfang* regulations direct *xinfang* bureaus to (1) provide information to central leadership and conduct research on social problems; (2) serve as a channel for citizen input into policymaking; (3) monitor the conduct of local officials; (4) participate in maintaining social order; (5) conduct some propaganda functions; and (6) handle individual grievances. The last point deserves further elaboration. *Xinfang* regulations do frequently assert as one of their primary purposes protecting “the lawful

¹¹⁸ See for example (Peerenboom and Xin, H 2008, Minzner 2006a, Thireau and Hua, L. 2005: 88).

rights and interests” (*hefa quanyi*) of individuals. However, in almost all cases, this is coupled with the goal of “maintaining connections between the government and the masses”. In other words, the *xinfang* system’s aim of protecting individual legal interests is but one element of a larger focus on governance: how to effectively rule the country (Minzner 2006a: 120-121).

One might wonder, given the inefficiency of lodging complaints to the DLV, why is it so popular? When I asked this question to the informants their answers showed two different approaches. First of all, the petitioners in the Henan Dong village expressed that given their poor financial situation, lodging complaints at the DLV was the last effort in an attempt to solve the conflict (Henan Dong village: Collective interview 30.11.07). This is in line with Palmer’s conclusion that,

Although the petition system is known to be ineffective as a mechanism for securing redress, it is increasingly relied on by the poor and the powerless people to try to voice their opinions options in a manner that embarrasses corrupt local officials (Palmer 2007: 223).

In the cases I have investigated, the more experienced petitioners, Damolinzhabu and Liu Hai, expressed that they had little faith in the DLV (Liu: interview 01.12.07, Damulinzhabu: interview 26.11.07). Liu Hai claimed that the only thing one can achieve by making visits to the DLV at a provincial or national level was to put some pressure on the local government (Liu: interview 01.12.07). Liu Hai’s reflections seems to reflect as general trend in China today, in which the DLV responsibility systems create an incentive system that encourages petitioners to organize larger scale petition movements directed at increasingly higher levels of government. The DLV responsibility systems apply harsher disciplinary sanctions to officials who experience larger and more frequent mass petitions (CECC 2005: 9). Thus, large scale petitioning at provincial or national level DLV could be an effective tool to put pressure on the local government. However, the new regulations on the DLV adopted by the State Council in 2005 limit the petitioners to three appeals to successively higher levels of administrative

agencies, limit the number of representatives for each visit to five and emphasize the need to obey the law and not disturb social order.¹¹⁹ Furthermore, the responsibility system described under local protectionism also asserts a set of strict orders on local cadres to maintain social stability under their administrative jurisdiction. These responsibility systems set up a cycle of destructive incentives. First, they create incentives for party officials to use any and all measures to suppress manifestations of citizen grievances (Minzner 2006b: 68). Minzner further elaborates that,

Unsurprisingly, one of the core functions of DLV bureaus is to provide higher-level leaders with a flow of information as to which geographical regions petitioners come from, so as to help establish which lower level leaders should be punished. Ironically, higher level Chinese authorities, although running an authoritarian state, are dependent on mass citizen protests and petitions as tripwire signalling devices to determine what is actually taking place at the grassroots levels in their own country (Ibid.).

However, petitioning at DLV is not only an inefficient way of dispute handling, large scale petitioning can be a very dangerous activities, as abuse against petitioners at is a widespread and serious problem in China (HRW 2005). In October 2007 a large group of villagers from Rounan Dong village and Henan Dong village in Jinshan travelled to Beijing to voice their grievances at the National DLV. After arriving in Beijing, they were detained by police from Jinshan. The police requested that the claimants returned to Jinshan under their surveillance. The claimants were told that when they returned to Jinshan the local government would make an effort to solve the conflict with Jinfeng Copper Metallurgy Co. Ltd. However, on arrival in Jinshan Du Yelong was detained for organizing the collective petitioning trip and was later imprisoned on the charges of ‘disturbing the social peace’; other petitioners reported

¹¹⁹ Decree of the State Council of the People’s Republic of China: Regulations on Letters and Visits (2005).

beatings and ‘unfriendly’ behaviour (Rouan Dong village: collective interview 30.11.07, Henan Dong village: collective interview 30.11.07). Officials at Jinshan local government knew about the collective petitioning trip from informants in the group of petitioning villagers, and it was decided that local police and procurators should travel to Beijing in an attempt to stop the villagers from petitioning at the National DLV (Liu: interview 01.12.07).¹²⁰ Du Yelong’s destiny is not uncommon. According to the Dui Hua Foundation prisoner database, from 2001 to 2007, 38 individuals were detained or arrested for activities linked to environmental protests in China (Dialogue 2008: 3).¹²¹ It should be noted that these numbers are far from comprehensive. However, the Dialogue Foundation claims that:

In enforcing the law, local party secretaries above all have a mandate to maintain order in society, and their almost total control over police and courts helps them implement this mandate liberally. More often than ever, those defending the environment are ending up detained by the police or imprisoned by Chinese courts (Ibid.: 2).

In general, lodging complaints at the DLV is ineffective; pollution victims in the cases I have investigated have not been able to solve the dispute by complaining to the DLV. Although they are well aware of this fact, many pollution victims still use it, either because they believe that the closer to the centre they get, the better the chances are of actually receiving help, or they use it as a tool to put pressure on the local government to take action, or a combination of both.

¹²⁰ This information was confirmed by an anonymous source at the local procuratorate.

¹²¹ The Dui Hua Foundation ("dui hua" means "dialogue" in Mandarin Chinese) is a non-profit organization dedicated to improving universal human rights by means of a well-informed dialogue between the United States and China. Dui Hua leverages its partnerships, research, and publications to help secure better treatment of Chinese detainees, particularly early releases and sentence reductions for non-violent political and religious prisoners. See: <http://www.duihua.org/index.htm>

4.3.3 Obstacles during litigation

(I) Preparing for litigation: lawyers, evidence and convincing the court to accept the case.

We are poor people, we don't have the money, nor the energy to fight in a lawsuit.

-Mr. Gao in the cement factory case in Jinshan

On the top of the dispute pyramid, the last option of dispute settlement is litigation. For some of the pollution victims in the rural areas, filing a case did not present an option as the costs of filing a case were considered to be too high (Mr. Gao: interview 29.11.07). In the process of preparing for a lawsuit, victims of pollution have to overcome three major obstacles: hiring a lawyer they can both afford and trust, providing evidence, and getting the court to accept the case.

(A) Hiring a lawyer

It is usually during or after the process of preparing to file a case that pollution victims consider hiring a lawyer (Damulinzhabu: interview 26.11.07, Hang: interview 30.11.07, Liu: interview 01.12.07). In the process of hiring a lawyer, pollution victims normally face three challenges: the cost, finding a lawyer they trust and convincing the lawyer to represent them.

In the Dongwu Banner County Paper Mill case, pollution victims came up with a creative solution to solve the financial obstacle of hiring a lawyer. The lawyer they first approached charged a pre-set fee per plaintiff, a fee the Dongwu Banner County Paper Mill pollution victims could not afford. Thus, the 18herdsmen decided to select one person to represent the group and split the lawyer's fee equally. If they won the case, they would share the compensation. However, after a case had been filed, most of the plaintiffs withdrew their case under pressure from the local government. The herdsmen

who withdrew their cases greatly regretted their actions (Wuretu: interview 26.11.07).

In the Jinshan cases against Jinfeng Copper Metallurgy Co. Ltd pollution victims all reported financial obstacles in filing a case (Han: interview 30.11.07, Liu: interview 01.12.07, Li: interview 30.11.07). Furthermore, the lack of lawyers in rural areas and reluctance from lawyers to get involved in potentially sensitive and economically undesirable cases constitute yet another obstacle for pollution victims who want to take the dispute to court.

Damulinzhabu, for example, decided to travel all the way to Beijing in an attempt to find a qualified lawyer he could trust not to give in to pressure from the polluter or the local government in Dongwu Banner County (Damulinzhabu: interview 26.11.07). In the four Jinshan cases, the pollution victims had consulted with local lawyers about the possibility of filing a case (Han: interview 30.11.07, Liu: interview 01.12.07, Li: interview 30.11.07, Mr. Gao: interview 29.11.01). The lawyers had told them that it was useless to file a case against the enterprise, as the local government had *guanxi* which would make it impossible for the pollution victims to win against the factory (Ibid.). Further, the consulted lawyers made it clear that they would not be interested in representing the pollution victims in a case against the local enterprise (Ibid.).

Reluctance from Chinese lawyers to represent a party who brings suits against the government is not uncommon, as lawyers for fear of the adverse impact this might have on their long-term practice (Palmer 2007: 227). Even though the environmental disputes discussed in this thesis were not directed at the government directly, the close links between the enterprises and the government quite possibly had the same effect on local lawyers who were approached by pollution victims. This reluctance can be explained from at least two perspectives. First of all, similar to Palmer's observations, O'Brian

and Li find that “local officials may sometimes try to stop lawyers from helping villagers file a lawsuit; they may also warn local attorneys not to aid potential litigants and they may work to discredit outsiders” (O’Brian and Li, L. 2005b: 34). Another factor in this situation is represented by Chinese lawyers’ screening of potentially economically un-lucrative cases.¹²²

Michelson explains that

Case screening is the manifestation neither of an inherent unwillingness to represent the poor and the powerless nor of a lack of social justice ideals. Rather, it is the result of an institutional context in which lawyers are under enormous economic pressure and receive scant institutional support to protect the rights of the most vulnerable members of society (Michelson 2006: 27).¹²³

One of the ways of overcoming the obstacles described above is by receiving legal assistance.¹²⁴ However, CLAPV is currently the only legal aid centre in China specializing in environmental disputes. However, the legal aid centres are normally situated in urban areas, and pollution victims may be unaware of the existence of such organizations.¹²⁵ Three of the pollution victims in Jinshan who have received or are receiving legal aid from CLAPV got to know about the centre by coincidence (Hang: interview 30.11.07., Liu: interview 01.12.07, Li: interview 30.11.07). Moreover, the influence of such organizations is also limited as they are poorly staffed and overloaded with work. In 2007 CLAPV represented fifteen cases (Zhang: interview 07.01.08).

¹²² Case screening occurs when lawyers evaluate whether or not they should represent a potential client. Michelson has found that Chinese lawyers usually screen cases based on fee potential. Disputes with low fee potential (including but not limited to labour disputes) are screened out at much higher rates than disputes with high fee potential (including but not limited to commercial disputes) and an assessment of the value of the dispute itself and of the extent to which the client matches cultural stereotypes of “a difficult client” are also considered (Michelson 2006: 7).

¹²³ Regardless of how lawyers are paid and the client is billed, legal fees are almost always paid from the client’s own resources or from funds recovered or collected from the client’s adversary in the dispute. In China, there is no norm or expectation of fee shifting; neither the English rule of two-way fee shifting (in which the loser unconditionally pays the winner’s legal fees) nor the common American practice of one-way fee shifting (in which the loser pays the winner’s legal fees if the loser is the defendant but not if the loser is the plaintiff) applies in China (Michelson 2006:13).

¹²⁴ For an introduction to the development of legal aid in China see (Thelle 2008, Regan 2004)

(B) Filing a case

With a lawyer to represent them and evidence to prove their cases, the pollution victims are ready to file a case. But successfully filing a case might be one of the most difficult obstacles for the pollution victims to overcome; the case acceptance fee (*anjian shouli fei*) and convincing the court to accept the case are two major obstacles in this part of the process. Alex Wang has claimed that

a particularly onerous requirement of Chinese law is the "case acceptance fee" (*anjian shouli fei*), which is calculated as a percentage of the total amount of relief requested. Plaintiffs must pay anywhere from 0.5 to 4 per cent of the relief requested as an acceptance fee. The rules require the party that loses a lawsuit to assume responsibility for the acceptance fee. Plaintiffs often also face so-called "other litigation costs" that are levied at the court's discretion and which can be a source of abuse (Wang, Alex 2007: 207).

In other words, a high compensation demand will lead to a high case acceptance fee, and the "other litigation costs" can be a real obstacle for those who want to take their case to court. Moreover, in the process of taking the dispute to court, convincing the court to accept the case constitutes yet another obstacle. The tough battle litigants have to go through in order to persuade a court to accept the case has been documented by a number of scholars. A 2004 study of petitioners who had arrived in Beijing to lodge a complaint at the national DLV showed that 43 percent of the 632 petitioners who participated in the study had their cases rejected by the local courts (Michelson 2008: 55). Unlike courts in some countries, Chinese courts actually have the authority to reject litigation. The decision is supposed to be based on the merits of the case, but the rules that govern this are not always clear or consistent.¹²⁶

¹²⁵ CLAPV is dependent on financial support and has limited funding for carrying out information campaigns.

¹²⁶ See: personal communication with Donald Clark (O'Brian and Li, L. 2005: 35).

In Han Xiang's request for litigation was rejected by Chifeng Intermediate People's court after tests showed that three of his fruit trees had died as a result of an insect infection and poor location.¹²⁷ Although Han Xiang and CLAPV were able to prove that the test carried out by the Fruit and Seedling Quality Testing Centre of the Ministry of Agriculture on behalf of Chifeng Intermediate People's Court concerning the cause of death of Han Xiang's trees had not followed standard procedures and could thus not be used as evidence, Han Xiang's case was still rejected.¹²⁸ Han Xiang believed that the local protectionism phenomenon has influenced the courts to reject their case (Han: interview: 30.11.07). Peerenboom and Xin's reflections on the lack of judicial independence in China might support Han Xiang's suspicion:

...judicial independence is a complicated topic in China, as there are many different ways influence can be exerted on the judiciary, and courts may enjoy more independence in some areas, such as commercial cases, than in other politically sensitive areas.... (Peerenboom and Xin, H. 2008: 7).

How can the local government or Party exert such a high level of influence on the courts? The appointment and promotion of judges as well as the court's budget is controlled by the local Party committee and government. Moreover, Party committees may actually issue internal orders forbidding courts to accept certain types of sensitive cases. O'Brian and Li argue that "even when such prohibition does not exist, a local court will often consult with the local Party committee and government before it accepts litigation" (O'Brian and Li 2005b: 35). This creates a very unfortunate situation for judicial protection in China and difficulties in filing suits, external interference in the litigation process, and problems enforcing judgements against administrative defendants

¹²⁷ Environmental pollution case: Han Xiang sues Jinfeng Copper Metallurgy Co. Ltd. (*Han Xiang su Jinfeng tongye youxiangongsi huanjing wuran an*)

¹²⁸ Ibid.

(Peerenboom and Xin, H. 2008: 9). Besides the financial reliance between the courts and the local government and the Party's control over the appointment of judges, the Chinese constitution actually opens the courts for supervision (and interference) from the People's congresses.¹²⁹ As Young has pointed out:

Most legal scholars object to this form of supervision on the grounds that it can obstruct judicial independence and fairness, because it oversees individual cases – even those currently under trial – instead of the general work of courts. In other words, under this system, judges should consider people's congresses in addition to the Party and government when they examine cases; this could seriously influence the ruling process (Young 2003: 1077).

This situation is further complicated by a number of notifications issued by the Supreme People's Court urging courts to decline applications for class action suits (*gongtong susong*) and to solve such cases through mediation instead of litigation.¹³⁰ This emphasis on encouragement not to take on 'joint suit' cases, together with the strong emphasis on mediation, have been interpreted as a response from the State to reduce public pressure on the courts and as a way to prevent social disturbance. Peerenboom and Xin note that the

...courts have developed a number of techniques to reduce public pressure, including breaking the plaintiffs up into smaller groups, emphasizing conciliation, and providing a spokesperson to meet with, and explain the legal aspect of the case to the plaintiffs with the hopes of encouraging settlements or even withdrawal of the suit (Peerenboom and Xin, H. 2008: 15).

¹²⁹ PRC Constitution, art. 104. "The standing committee of a local people's congress at and above the county level discusses and decides on major issues in all fields of work in its administrative area; supervises the work of the people's government, people's court and people's procuratorate at the corresponding level; annuls inappropriate decisions and orders of the people's government at the corresponding level; annuls inappropriate resolutions of the people's congress at the next lower level; decides on the appointment and removal of functionaries of state organs within its jurisdiction as prescribed by law; and, when the people's congress at the corresponding level is not in session, recalls individual deputies to the people's congress at the next higher level and elects individual deputies to fill vacancies in that people's congress."

¹³⁰ It should be noted that although the cases investigated in the case study have been class action suits, environmental disputes involving a large number of petitioners are well suited to be filed as 'class action' or 'joint suit'. The case represented by Liu Hai will most probably be a class action case.

The guidance from the Supreme People's Court to reject class action cases has been considered as a great step backwards from environmental lawyers as such guidance greatly increases the work of lawyers in cases which could have been filed as class action cases. The political implications of such guidance might scare away lawyers and make it even more difficult for pollution victims to convince lawyers to represent them (Zhang: interview 07.01.08).

(II) Obstacles during a trial

It is not easy for the people to take on a lawsuit...the court should be for the people. If the people have committed a crime, the court will show no mercy, but if the officials or people with money commit a crime, nothing happens.

How can the Court protect them and not us?

- Han Xiang in the Jinfeng Copper Metallurgy Co. Ltd. case

Should the victims of pollution manage to climb all the way to the top of the dispute pyramid in an attempt to have their cases heard in a trial, they might still encounter some obstacles. In this part of the process the main obstacle is the interdependence between the Court, the Party and the government.

The previous section described how the interdependence between local government, local Party and the Court could influence the court to reject a case. Such interdependence is also prevalent during a trial, especially when the judge decides on the ruling. Some of the most successful examples of environmental litigation in China are cases in which the lawsuit is held in a different administrative district from the location of the pollution, or when pollution victims can face the hearing at an intermediate court.¹³¹ This was the

¹³¹ See for example: Zhang Changjian et al. v. Pingnan Rongping Chemical Plant in Fujian. Plaintiffs prevailed at the Intermediate People's Court and on appeal to the Fujian Provincial High People's Court. The final judgement ordered defendant: (a) to immediately stop the infringement, (b) to pay plaintiffs CNY 684,178.2 in compensation for losses to crops, bamboo, timber, etc., and (c) to clean up chromium-containing waste in the

situation in the Baotou Water Supply Company, where the pollution occurred in the upriver Hetao administrative region and the trial was held in Baotou administrative region. Gao Guizhen claimed that if the trial had taken place in the same administrative region where the pollution the company may not have been able to win the case (Gao: interview 27.12.07). Another widespread problem obscuring plaintiffs' access to justice in China is the problem of a dependent and sometimes even corrupt judicial system. As with the local protectionism phenomenon it is difficult to point out to what extent the courts' decisions in the cases I have looked at have had an element of corrupt judges, or whether the courts in these cases are simply part of a system where financial dependence and future career opportunities are in the hands of the government. However, as pointed out in an expensive report conducted by HRW, the systematic lack of fair trials in China has led to a widespread lack of faith in the court system. The report concludes that some petitioners said they did not even attempt to take their cases to court because they did not believe they would get a fair hearing (HRW 2005: 36).

(III) Obstacles after a trial

Even when pollution victims have successfully climbed the dispute pyramid and won a lawsuit, plaintiffs in environmental litigation may experience that access to justice have not been achieved. As shown in two cases that have been settled through litigation, there was a large discrepancy in the

factory and in the back mountains within one year. Plaintiffs were able to file the case in the Intermediate People's Court because it was considered to have met the threshold set forth in the law as a case of "significant impact within the particular jurisdiction." This decision to commence the litigation at the Intermediate People's Court was likely helpful to plaintiffs. The Intermediate People's Court was located more than a two-hour drive from the site of the factory. The basic level court, located within the same county as the factory, would have been most susceptible to local factors (Wang, A. 2007: 208).

compensation demand and the actual payment.¹³² Furthermore, pollution victims have experienced that courts' verdicts have not been implemented properly (Gao: interview 29.11.07, Damulinzhabu: interview 26.11.07).

Baotou Water Supply Company has only received about half of the settlement from the three defendants, which was paid shortly after the trial. As for the remaining part of the settlement, Gao Guizhen believes that the company will never receive it (Gao: interview: 27.12.07). The lack of implementation of courts' verdicts is a problem in China. As pointed out by Alex Wang, even when the court decides in favour of plaintiffs, it can be difficult to enforce orders to stop infringements or to obtain payment of compensation (Wang, A. 2007: 212). But, this is not a problem only in environmental disputes. In their study of Administrative litigation cases, O'Brian and Li found that,

even when villagers emerge victorious from the courtroom, it does not mean that their grievances will be redressed: in many cases a favourable verdict is just the beginning of another round of struggle: rulings for plaintiffs sometimes go unexecuted when local governments either ignore them or subvert them (O'Brian and Li 2005: 41).

Again, local protectionism is pointed out as a reason causing this situation. Donald Clark, a leading expert on Chinese Law, claim that local protectionism is by far the most common external factor blocking effective execution (Clark 1995: 71). Furthermore, the structural lack of an executing body within the judiciary causes such problems to arise. Although the great majority of basic level and intermediate level courts do have a specialized branch concerned with execution, they are not technically required to have one. The relevant law requires only that particular personnel be placed in charge of execution work (Clark 1995: 70). Moreover, the chief problem with direct execution is that

¹³² In the Dongwu Banner Paper Mill case the demand was CNY 3.15 mill , the actual compensation they received was CNY 360 000 . In the Baotou Water Supply Company case the demand from the plaintiff was 3.5

outside courts tend to lack the local influence needed to get their judgements enforced (Ibid.: 71). The CPL allows a court to fine or detain for up to 15 days any person (including the responsible person of an organization) who refuses to carry out a legally effective judgement or ruling of the court¹³³, freeze funds held in a defendant's bank account or have them transferred to a judgement creditor.¹³⁴ But there is reluctance for courts to take coercive measures, which is compounded by the fact that the execution of judgements has not traditionally been a matter of great concern for them. Clark claim that this is based in the fact that courts' traditional jurisdiction of judgements has been within criminal adjudication (Clark 1995: 70).

The Supreme People's Court has addressed this problem on a number of occasions. In 2006 the SPC formulated new regulations about executing court decisions and proclaimed regulations governing the time limit for executing court decisions in an attempt to address the problem of passive execution (SPC 2007). The effect of such regulations remains to be seen.

4.4 The extra-legal process

4.4.1 Media coverage is difficult to obtain

We hope that there are some good hearted journalists who can help the people obtain some justice!

-Liu Hai in the Jinfeng Copper Metallurgy Co. Ltd. case

million, and the compensation settlement was CNY 2.8 mill.

¹³³ CPL, art. 102

¹³⁴ CPL, art. 221

Attempt to receive media coverage is an ongoing process which most pollution victims exercise simultaneously with other dispute resolution processes.

In the Baotou Water Supply Company case and the Dongwu Banner County Paper Mill case, media coverage was widespread. In both cases the informants believe that this widespread media coverage was an important factor in the ‘successful’ outcome of the litigation (Gao: interview 27.12.07, Damulinzhabu: interview 26.11.07). Media coverage was especially important in the Dongwu Banner County Paper Mill case, where the herdsmen managed to receive the attention from the influential China Central Television (CCTV) program *Jinri shoufa* (Legal discussion), with the help of Chen Jiqun in Beijing (Damulinzhabu: interview 26.11.07, Chen: interview 14.10.07). The program was shown only a couple of days before the Court proclaimed a decision on the case. According to Damulinzhabu, the herdsmen had tried to get in touch with journalists for a long time after the pollution from the paper mill first occurred. However, media coverage was not obtained until Chen Jiqun started to exercise his *guanxi* in Beijing and was to get in touch with a *Jinri shoufa* (Legal discussion) journalist. Chen Jiqun managed to convince the program to make a show on the Dongwu Banner County Paper Mill case (Ibid.).

In the Jinshan cases there has been very little media coverage. In Han Xiang’s case, CCTV news on included a report on his situation in January 1995. This media coverage lead to some attention from higher level officials which pressured the local government to arranged a meeting concerning the pollution from Jinfeng Copper Metallurgy Co. Ltd. However, the meeting did not change the local government or the enterprise’s attitude towards Han Xiang’s problem (Wang, C.2003: 3). In the recent case against Jinfeng Copper

Metallurgy Co. Ltd., two reporters have been in Jinshan to investigate the case. One of the journalists conducted a number of interviews with Liu Hai and other villagers. After investigating the situation among the villagers, the journalist went to conduct interviews with the local EPB and other governmental offices. Having completed the interviews the journalist left Jinshan; later an article was published stating that the pollution in Jinshan had been minimal and that the government had handled the case in a satisfactory manner (Liu: interview 01.12.07). The next time a journalist came to the village, almost the same situation occurred. Only this time, the journalists did not even publish an article after visiting the local government (Ibid.). The villagers in Jinshan are desperate to get in touch with journalists. Some of the villagers perceive media coverage as the only solution left to solve the conflict. In the words of some villagers, unless they get some attention from media they will just have to accept their bad fate (*ren daomei*) as they have tried to solve the dispute through all other available dispute resolution mechanisms (Rounan Dong village: collective interview: 30.11.07, Henan Dong village: collective interview: 30.11.07).

However, the villagers in Jinshan do not know how to get in touch with ‘influential’ media (Gao: interview 01.12.07). CLAPV has some *guanxi* within the media, but they are reluctant to use media in this part of the process. Whereas villagers are desperate to end the conflict and the pollution as soon as possible, CLAPV has a more tactical approach on how to use media most effectively, namely right before and during the trial (Zhang: interview 07.01.08).

One might wonder why media coverage is so important and why it is so difficult to get the attention from influential reporters. In China, as elsewhere, the exposure of incorrect actions by government officials to a wide audience, including higher level officials, can potentially change a situation in a

favourable direction for the petitioners. When a situation which is considered to be “unjust” is exposed, the administrative agency (which has conducted, or made it possible for others to conduct “unjust” actions) or the court (that is handling the case) will be very closely watched. In these situations failure to act according to the law could potentially have devastating effects on the administrative officials’ or judges’ future careers. Given the potential effect of media coverage on their cases, it is obvious why pollution victims try to receive such attention. However, this is not an easy task. The findings in this thesis show that there are at least three reasons for this: first of all, access to reporters is limited; secondly, journalists are reluctant to get involved in potentially politically sensitive cases; and finally, there can be corruption among journalists (Liu: interview 01.12.07).

Access to reporters is a practical and perhaps financial problem. As most influential media is situated in bigger cities, getting physically in touch with journalists can be a challenge. Expenses of travelling to larger cities have been described before in this thesis, and the same challenges apply in these situations. Even if petitioners manage to visit the main office of, for example, *jinri shoufa*, the chances that they will be received are small. Of course they can contact the editors by phone or mail, but this might not have the same effect as visiting the editorial office in person.

The second and perhaps more serious challenge is the reluctance from journalists to get involved in potentially politically sensitive cases. This reluctance is based on a number of reasons. First and perhaps foremost are the formal and informal regulations in what journalists can actually report on. According to Leibman, the dos and don’ts of reporting in China are derived from four different sources: government laws and regulations, Party documents and instructions, informal content regulations and self-censorship, and local restrictions and impediments to reporting (Liebman 2005: 41).

Furthermore, there is a pervasive problem of corruption among journalists, which, as in the Jinshan cases, leads journalists to either not report on a case or write a report which is favourable towards the local government. This situation leads to the question; why are some Chinese journalists corrupt? In addition to sheer bribery, the partial marketization of the media has created powerful financial incentives for the media to skew their reports or remain silent on particular topics (Ibid.: 40).

Empirical researches focusing on how petitioners get in touch with journalists and why journalists choose to cover the stories they do have been rare (Liebman 2008, Sæther 2008).¹³⁵ Yet, it is reasonable to assume that when journalists pick the stories they do, a number of factors come into play. According to Liebman, corruption certainly exists; reporting restrictions and sheer luck also play a major role. Reporters are besieged by petitioners; they have to pick and choose what they can publish, taking into account both how stories play to their audiences and reporting restrictions (Ibid.). Thus, in order to get their story covered, petitioners have to know how to push the right buttons. One of the journalists who had reported on the Dongwu Banner County Paper Mill case, Jiang Fei, claim that she wanted to report on the Dongwu Banner County Paper Mill case due to her personal interest in the environment and worries about the deteriorating state of it. However, the editor of the paper she was writing for, China Youth Daily, did not believe that the story would interest their readers. It was not until Jiang Fei showed her editor a picture of the wastewater dike connected to Dongwu Banner County Paper Mill that the editor agreed to let her cover the story (Jiang: interview 23.10.07). It should be noted that it is much harder to get TV

¹³⁵ See: (Liebman 2005).

coverage than newspaper coverage, because television is much more closely monitored (Liebman 2008). Yet, media coverage on TV was considered to be much more influential and desired by the pollution victims in the cases I investigated (Liu: interview 01.12.07, Rounan Dong village: collective interview: 30.11.07, Henan Dong village: collective interview: 30.11.07).

4.4.2 Conducting protests can be risky

In desperation to end the dispute, pollution victims might take to the streets or conduct sit-ins in front of the polluting factory or government offices. In the cases in this sample protests and sit-ins in front of the factory have only been conducted in one of the Jinshan case. The protests happened after the collective petitioning trip to Beijing in October 2007 where all the petitioners were detained and returned to Jinshan. The effects of the protests were limited in Jinshan.¹³⁶ However, other studies indicate that protests are very prevalent in environmental disputes. In a comparative case study of five environmental disputes, Liang found that with the exception of one case, all the cases involved acts of disobedience. Lang further explains that the informants emphasised that they had been forced to take illegal actions because “conditions became unliveable” (Liang 2006: 49).

Moreover, protests are also popularly used in other forms of disputes. The initiative to carry out protests is similar to the wish to receive media attention, as large-scale collective actions are likely to attract attention from the press or

¹³⁶ The protests and sit-ins in front of Jinfeng Metallurgy Co. Ltd. took place in December 2008, one month after I had been in Jinshan to conduct interviews. Liu Hai informed me about the protests. He claimed that the protesters had been moved from the factory by the local police and that the protests did not have any effect in the process of solving the dispute.

higher-level authorities –two crucial external players who are capable of making or breaking a case (Tang 2005: 46).

However, conducting protests can be a dangerous activity. As protests and demonstrations are perceived as a threat to social stability, the retaliation against Chinese protesters can be severe.

5. Overarching obstacles

5.1 To what extent was access to justice obtained in the environmental disputes?

In the outset of the thesis four questions were established for a comprehensive analysis of pollution victims' possibility of obtaining access to justice. These questions will be used as a framework in the following discussion addressing the question, to what extent has access to justice been obtained in the environmental disputes?

5.1.1 Did the pollution victims have the right to seek remedy before a third party?

As accounted for in chapter two, describing the opportunities pollution victims have when seeking redress for grievances, Chinese pollution victims have the right to seek remedy before a third party which is constituted by law; the third party should also guarantee independent and impartial application of the law in theory. Although in all the cases the pollution victims endeavoured to seek remedy before a third party which should complete these criteria, the outcome on this matter varied considerably in the six cases. The Dongwu Banner County Paper Mill case and the Baotou Water Supply Company case, both of which were solved through litigation, were the two most successful cases in this regard. However, it was only after a long process that the petitioners in the Dongwu Banner County Paper Mill case turned to litigation and this right was secured. In the Weihang Cement Factory case the pollution victims managed to solve the dispute through mediation facilitated by Kalaqin Banner EPB. Also Li Shuxian had participated in mediation meetings with Jinfeng Copper

Metallurgy Co. Ltd. that were facilitated by the same EPB. However, the EPB did not make a decision in these cases; it merely facilitated the mediation meetings. Moreover, some of the pollution victims experienced difficulties in exercising their rights to seek remedy before an independent third party. This was most prevalent in the Jinshan case where Han Xiang's application to file a case against Jinfeng Copper Metallurgy Co. Ltd. was dismissed by Chifeng Intermediate People's Court after a hearing related to the evidence in the case. As to Liu Hai's case it remains to be seen what will happen when the claimant in this ongoing conflict files a case against the Jinfeng Copper Metallurgy Co. Ltd. in the near future. However, it should be noted that although the pollution victims did exercise their right to seek redress before a third party, the findings in this thesis indicate that the independence and impartiality in the application of the law from these third parties can be questioned.

5.1.2 Was the compensation perceived by the pollution victims to be acceptable?

The findings in this thesis indicate that the compensation in the environmental disputes settlement was not perceived to be acceptable. In Mr. Gao's case the demand from the villages was CNY 144,000. However, through mediation the 108 households in the villages agreed on an annual compensation of only CNY 9,000.¹³⁷ Although the villagers did not believe that the compensation was fair, they decided to accept it. According to Mr. Gao, this was because the costs of filing a case were considered to be too high and the possibility of winning was considered to be too low (Mr. Gao: interview 29.11.07). Li Shuxian's compensation has also been very low in comparison to his demands. He has been through a number of mediation processes with Jinfeng

Copper Metallurgy Co. Ltd. from 2002 to 2007. He has received a total of CNY 28,000 in compensation from Jinfeng Copper Smelting Ltd., which is far from the CNY 434,000 he had estimated the damage to be.¹³⁸ Li Shuxian believes that he will never be able to receive enough compensation through mediation meetings; that is why he has decided to file a case against Jinfeng Copper Metallurgy Co. Ltd. (Ibid.) In the Liu Hai case, one of the reasons why the villagers are planning to file a case against Jinfeng Copper Metallurgy Co. Ltd. is due to the low compensation they received as a result of the mediation agreement between the village committee and Jinfeng Copper Metallurgy Co. Ltd. In the agreement it was established that the enterprise would pay the villagers CNY 50 in compensation per *mu*. According to the villagers, this was far too little (Rounan Dong village, Henan Dong village: collective interview 30.11.07).¹³⁹ For some crops (such as sunflowers and yellow beans) the CNY 50 per *mu* compensation did not even cover the expenses for buying the seeds (Ibid.). Han Xiang has not received any compensation (Han: interview 30.11.07).

In the Baotou Water Supply Company case, the original demand was CNY 3.5 million; the company ended up with a court mediation agreement in which it was decided that the defendants should pay CNY 2.88 million in compensation. However, only half of the compensation was paid (Gao: interview 27.12.07). In the Dongwu Banner Paper Mill case the compensation demand was CNY 3.15 million, but the compensation decided by the Supreme People's of IMAR was CNY 360,000 (Damulinzhabu: interview 26.11.07).

¹³⁷ Environmental dispute, Mediation agreement, (*Huanjing jiufen tiaojie xieyi shu*).

¹³⁸ General introduction to Li Shuxian's case, (*Jiben qingkuang jianjie (Li Shuxian de anli)*)

In five of the cases, the pollution victims expressed that they were unsatisfied with the outcome of the dispute settlement process. On the other hand, Gao Guizhen expressed that he was pleased with the outcome of the dispute settlement process as it had lead to drastically improved water quality (Gao: interview 26.11.07).

5.1.3 Have the danger of pollution been eliminated?

In four of the cases the danger of further pollution from the polluters has been eliminated. In two of the cases this has happened as a result of the dispute settlement process. After the successful trial against polluters upriver, Baotou Water Supply company has never had to close off its intake of water from the Yellow River again due to high levels of pollution (Gao: interview 27.12.07). In the Dongwu Banner Paper Mill case, the factory suspended its production in Dongwu Banner in October 2005, more than one year after the verdict from IMAR Xilinhaote Higher People's Court. According to Damulinzhabu, the outlets from the sewage water decreased somewhat during the period after the lawsuit and the suspension of production (Damulinzhabu: interview 30.11.07). After the enterprise closed down in 2005, the danger of future pollution from the paper mill has logically been eliminated. However, as Dongwu Banner County government is planning to build an industrial zone in the vicinity of the former paper mill, Damulinzhabu is worried that pollution will be even more widespread in the future (Ibid.). In the Han Xiang and Li Shuxian cases the immediate danger of pollution from Jinfeng Copper Metallurgy Co. Ltd. has been eliminated as the enterprise. moved from Sishi Jiazi village to

¹³⁹ Who will help us appraise the environment we live in? The joint aspiration from tens of thousands of residents in Jinshan township (*Shui wei women de shencun huanjing pingjia ?-----Jinshan zhen shi wan shimin de*

Jinshan township industrial zone. In the Liu Hai case and the Weihang Cement factory case the pollution has not been eliminated.

5.1.4 Have nature been restored to its original condition?

Perhaps one of the most disturbing findings in this thesis is that in none of the six cases has the damage to nature caused by pollution been properly restored. The improvement to nature was most evident in the Baotou Water Supply Company case. However, the three original sources of pollution have not improved their discharge procedures; instead, in order to avoid a new conflict with Baotou Water Supply Company, the factories have lead the discharge water in pipes which lead to a wastewater dike separated from the Yellow River (Gao: interview 27.12.07). In the Dongwu Banner County Paper Mill case, the damage caused to nature at the location of the 688.88 acres wastewater lake has been left unresolved. Although the wastewater has been removed, a black sludge is left on the ground of the former wastewater lake.¹⁴⁰ According to Damulinzhabu, there is no vegetation in the whole area (Damulinzhabu: interview 26.11.07). In Han Xiang's case, the natural areas were never restored after being damaged from pollution from Jinfeng Copper Metallurgy Co. Ltd. Realizing that there was no hope that his fruit trees would be able to produce apples again, and in desperate need of firewood, Han Xiang cut down all the dead fruit trees (Han: interview 30.11.07). In Li Shuxian's case, nature has not been restored, although restoration of nature has been a central issue in the many mediation agreements between Jinfeng Copper Metallurgy Co. Ltd. and Li Shuxian (Li: interview 30.11.07). In Liu Hai's

gongtong xinsheng)

¹⁴⁰ For an image of the former wastewater dike, see the picture at the beginning of this thesis.

case and the Weihang Cement Factory case pollution is still ongoing, and measures to restore the damage caused by pollution have not been addressed.

5.1.5 Concluding remarks

The thesis finds that in only one of the case, the Baotou Water Supply Company case, pollution victims have be close to achieving access to justice as described in this thesis. In all the cases which took place in rural areas, compensation settlement was considered to be unjust, and in none of the cases damage to nature caused by pollution have been restored. In some of the cases pollution was eliminated, but not as a direct result of the environmental dispute resolution process.

What were the important factors in the successful outcome of the Baotou Water Supply Company case? It was probably a combination of the company's legal expertise, the company's relatively strong financial situation, the company's ability to carry out scientific tests by itself, widespread media coverage and the fact that the pollution occurred in one administrative region whereas the trial took place in another.

In the cases which occurred in the rural areas, the situation was quite different. Given the relatively poor financial situation of the pollution victims in the Dongwu Banner County Paper Mill case and the Jinshan cases, they all tried to solve the disputes through opportunities represented at the lower level of the dispute pyramid, which proved to be largely ineffective. The local protectionism phenomenon imbued these opportunities with obstacles. In addition to this, obstacles embedded in the pollution victims themselves created surplus challenges for them. In comparison with the Jinshan cases, the Dongwu Banner County Paper Mill case plaintiffs, at least the ones that did not withdraw their case under pressure from the local government, has

accomplished comparatively good results. However, in order to achieve these results, the herdsmen had to resort to the most expensive, most time consuming and least accessible option of the dispute resolution process, namely litigation.

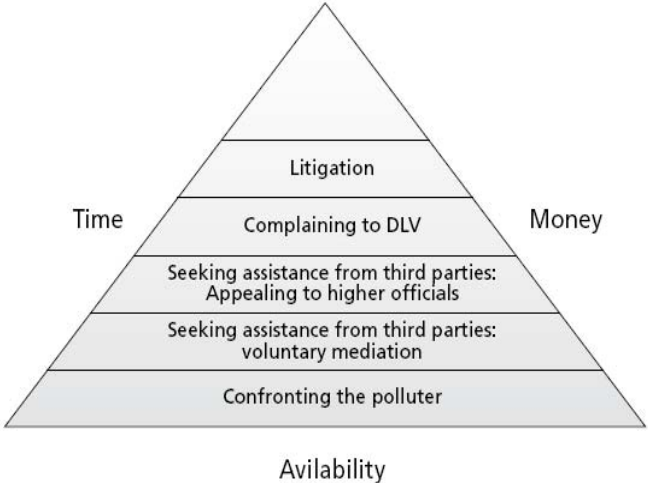


Figure 3: Illustration of Time, Money and Degree of Availability

Figure 3 presents an overview of some of three elements; time, money and degree of availability which influences the different options victims of pollution have in the process of trying to gain access to justice. The table shows that the highest possibility of access to justice can be obtained by a combination of high cost, high time consumption and low availability. Low cost and low time consumption options, such as confronting the polluter or seeking assistance from a third party at local level commonly lead to low levels of access to justice.

Based on the findings in this thesis it is clear that the higher the pollution victims climb the dispute pyramid, the possibility of obtaining access to justice increases. The findings also indicate that the more ‘formal’ the choice of dispute handling process, the more time consuming and expensive dispute

handling becomes. The dispute settlement choices which provide pollution victims with comparatively better chances of obtaining access to justice (court mediation, litigation) are the most difficult to access in terms of availability, time perspectives and expenses. However, outside the traditional dispute pyramid the extra-legal opportunities such as media coverage and protests can be found. The only low cost options pollution victims can try to exercise in the dispute handling process which might lead to some degree of access to justice. Nevertheless, as the findings in this thesis show, access to influential media is difficult to obtain, and media coverage alone cannot solve a conflict. But the combination of litigation and media coverage seems to have yielded good results for the pollution victims in the Baotou Water Supply Company case and the Dongwu Banner County Paper Mill case.

5.2 Pollution victims experience obstacles in every stage of the dispute pyramid

The findings in this thesis indicate that it is very difficult for Chinese pollution victims to obtain access to justice. Chapter four provided a chronological overview of all the obstacles pollution victims in the case study experienced in the process of trying to obtain access to justice. Below is a summary of the obstacles the pollution victims experienced in the process of endeavouring to obtain access to justice.

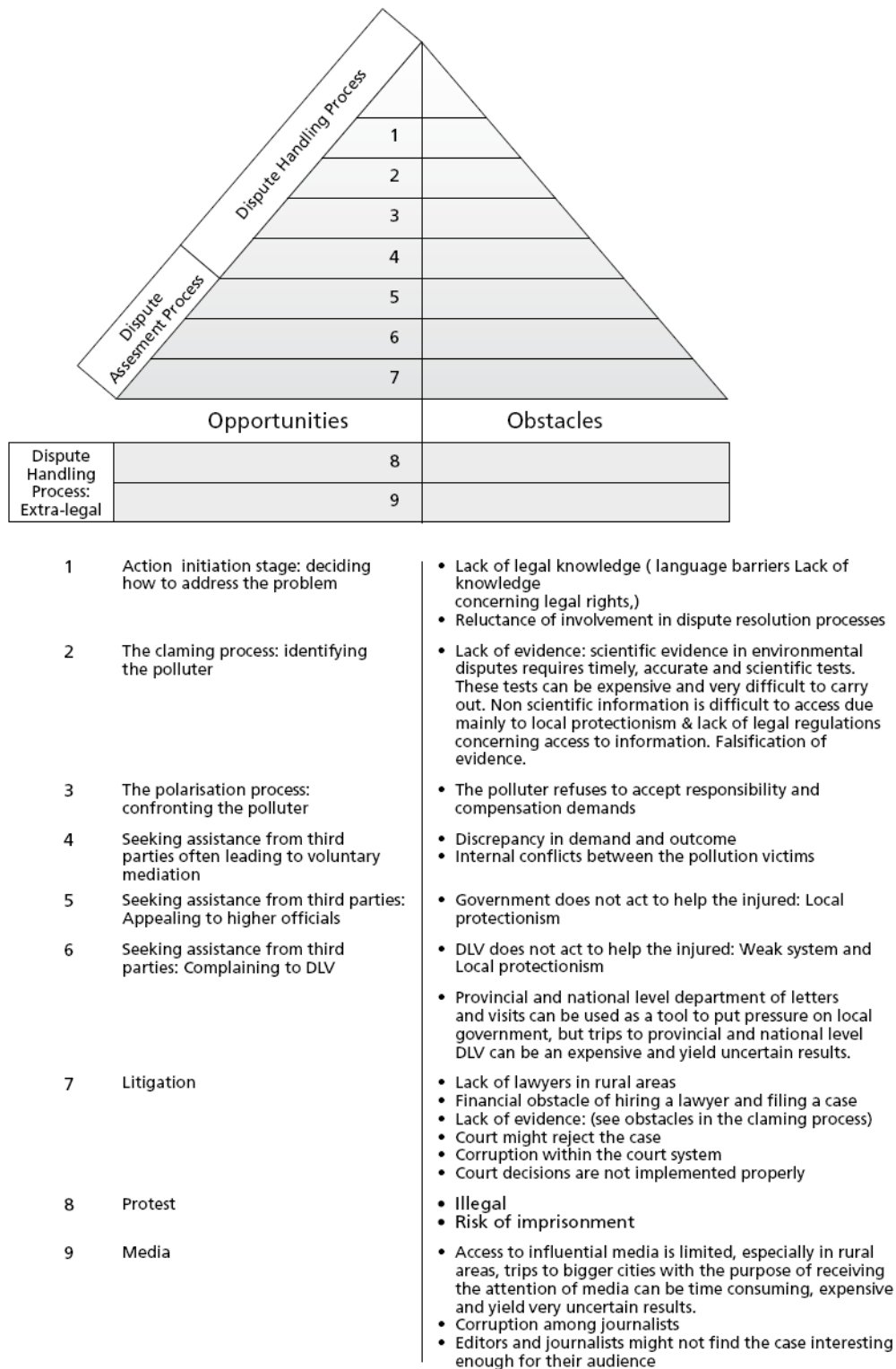


Figure 4 : Opportunities and Obstacles for Chinese Pollution Victims

Figure 4 illustrates the various obstacles pollution victims face in each stage of the dispute pyramid. Many of the obstacles, such as language barriers in the Dongwu Banner Paper Mill case, or a weak financial situation in the Jinshan cases create obstacles which reappear throughout the dispute assessment and dispute handling process.

Furthermore, political and structural obstacles to access to justice are also reoccurring, such as the local protectionism phenomenon. This phenomenon creates difficulties for pollution victims to receive help from the local government in the complaining process, creates difficulties in obtaining scientific and non-scientific documentation to be used as evidence, influences the local court's decision in mediation or litigation processes, etc. These overall findings in this thesis are in line with Wang Canfa's conclusions that

Many difficulties exist for pollution victims attempting to safeguard their environmental rights. First, victims are generally poor and lack knowledge. Second, governments are unable to collect all the information required to make an informed decision. Third, local governments are more likely to favour polluters because of the economic benefit that polluters create. Fourth, courts cannot adjudicate independently because of interference from local governments. And finally, there is not enough legal assistance in China to support all the pollution victims (Wang, C. 2007: 182).

With this examination demonstrating which obstacles are attached to the various opportunities in the dispute assessment and handling process, let us now move on to investigate the underlying reasons causing the obstacles.

5.3 What causes pollution victims' obstacles to access to justice?

The obstacles pollution victims encounter in the process of climbing the dispute pyramid is based on structural, political, financial, technical and

traditional grounds, or the combination of two or more of these factors. This complicated situation, deeply anchored in Chinese structural and political systems, makes it extremely difficult for the pollution victims, especially in rural areas, to successfully solve environmental disputes. It is extremely important to take into account the complexity of the situation the pollution victims' face in order to be able to provide a comprehensive answer to the question of what can be done to alleviate pollution victims' difficult situation. As pointed out by Cappelletti and Garth, the initiators behind the Florence project of access to justice, one complicating factor in the efforts to attack barriers to access is that obstacles cannot simply be eliminated one by one. As many of the problems are interrelated, changes aimed at improving access in one aspect can exacerbate access barriers in another (Cappelletti and Garth 1978: 21).

Table 2 illustrates the character of the problems causing the difficulties, starting with the obstacles at the left, explaining the how the obstacles manifest themselves as hindrances for pollution victims in the dispute assessment and dispute handling processes, and finally identifying the character of the situations causing the obstacles to exist. In the table, 'structural organization' (SO) refers to obstacles caused directly or indirectly as a result of structural arrangements of the Party-and-government apparatus, 'political' (P) refers to obstacles caused directly or indirectly by the ideas or strategies of the CPC, 'financial'(F) refers to obstacles related to monetary situations, 'scientific' (SE) refers to technical and scientific characteristics of the obstacles, and finally 'traditional' (TR) refers to obstacles based on long-established cultural customs.

Table 2: Diagram of the underlying reasons causing obstacles for Chinese pollution victims

Obstacles	Result	Reason				
		SO	P	F	SE	T
Language barriers	Lack of laws regulating translation of legal documents into minority language: In the Dongwu Banner Paper Factory case the herdsmen were unable to locate relevant legal documentation.	X	X			
Lack of legal knowledge	Local government withheld legal information such as information on the collective landownership in the Dongwu Banner Paper Mill case, probably caused by local protectionism.	X	X			
	General lack of legal knowledge in the Dongwu Banner Paper Mill case and the Jinshan cases informants did not have knowledge concerning legal rights in environmental disputes before the incident took place. However, they reported a steep learning curve in the dispute assessment and dispute handling process.	X	X			
Reluctance towards involvement in disputes	In the Weihang Cement Factory case, Mr. Gao claimed that one of the reasons why the villagers decided not to file a case against the cement factory (which was ‘protected’ by the local government) was out of fear of offending the local government which could potentially be negative for the villagers should they need assistance from the local government in the future (Mr. Gao: interview 27.11.07). He claims that Chinese traditionally have preferred to solve conflict through negotiation and mediation and that this reluctance to formal dispute settlement procedures, especially dispute settlement through court, is based on a mixture of long influence by Confucian values and Maoist principles, in addition to the recent focus of building a “harmonized society” (Palmer 2004: 216).		X			X
Financial situation	Financially disadvantaged pollution victims commonly do not have the financial means to hire lawyers, conduct scientific tests to provide evidence or pay the case acceptance fee.			X		
Local protectionism ¹⁴¹	Local protectionism created a number of obstacles for pollution victims in almost the entire dispute handling process. It can be explained by a combination of the following factors: Responsibility system (emphasis on strong economic growth)	X				

¹⁴¹ For a description on the local protectionism phenomenon see 4.2.2

Obstacles	Result	Reason				
		SO	P	F	SE	T
	Decentralization	X	X			
	Corruption	X		X		
Evidence	In the Jinshan cases the pollution victims' experienced scientific challenges of identifying causation relationships between pollution and damage. In addition, challenges were posed in the process of providing scientific evidence to predict future economic loss as a result of the pollution.			X	X	
	In Han Xiang's and Liu Hai's case, opposing scientific evidence was an obstacle as report A stated that pollution caused damage, while report B states that damage was caused by insects.			X	X	
	In all cases the informants experienced difficulties in obtaining official documentation such as EIA, or other reports from EPB which could be used as evidence. This was probably a result of local protectionism and lack of laws concerning the public's access to governmental information. ¹⁴²	X				
	In both the Dongwu Banner Paper Mill case and Liu Hai's case in Jinshan, falsification of evidence was a problem. This was probably a result of local protectionism and/or corruption.	X	X	X		
Lodging complaint is ineffective	In all of the cases taking place in rural areas, complaining to administrative offices was ineffective and yielded no results, probably because local administrative offices were influenced by local protectionism. All of the informants who had visited DLV reported that this was an ineffective way of lodging complaints and solving the dispute. DLV 'accepted' the petitioner's complaints and then addressed the administrative office with authority on the given complaint, which was where the	X	X			

¹⁴² Access to Government Information" and "Methods of Public Access to Environmental Information" which went into effect in May 2008 might change this situation.

Obstacles	Result	Reason				
		SO	P	F	SE	T
	problem was aggravated in the first place. Local DLV was reportedly influenced by local protectionism.					
	The informants who had lodged complaints at higher level administrative offices or DLV experienced that such activities could be time consuming, expensive ¹⁴³ and risky. ¹⁴⁴ Further, such activities were also considered to be ineffective as complaints made to higher level officials would in the end return to local level administrative offices where local protectionism was widespread.	X	X			
Access to lawyers	In both the Dongwu Banner Paper Mill case and the Jinshan cases pollution victims experienced difficulties in finding lawyers in their own district, which can be explained by the general lack of knowledge in rural areas.	X	X			
	Pollution victims in rural areas were unaware of the existence of legal aid for a long period. They all got to know about legal aid centres by coincidence. Legal aid centres are commonly situated in urban areas and do not have the time or financial means to carry out information campaigns.	X		X		
	In two of the Jinshan cases, pollution victims' requests to hire a lawyer were rejected at the local level. In the Dongwu Banner Paper Mill case, Damolinzhabu had great difficulties in finding a lawyer to represent him. Their experiences could be a result of a screening process in which lawyers 'screen out' economically ulcerative and potentially sensitive cases. ¹⁴⁵	X	X			
The Courts reject the case	Han Xiang and Li Shuxian's cases were rejected by the court. Possible reasons could be interdependency between Courts, local government and Party, in combination with local protectionism.	X	X	X		

¹⁴³ Travel and accommodation expenses when petitioning at provincial or national level administrative offices or DLV.

¹⁴⁴ Collective lodging of complaints can lead to detention or imprisonment on the charges of disrupting social stability.

¹⁴⁵ Case screening occurs when lawyers evaluate whether or not they should represent a potential client.

Obstacles	Result	Reason				
		SO	P	F	SE	T
	SPC guidance to the Courts on not to accept ‘class action cases’ and the emphasis on mediation instead of litigation in especially ‘sensitive cases’ ¹⁴⁶ is another obstacle pollution victims in Liu Hai’s case might face when they are going to file a case later this year.		X			
Failure to implement Courts’ decisions	In the two cases won by the pollution victims, the courts’ decisions were not implemented fully. ¹⁴⁷ The interdependence between Court, local government and Party, in combination with local protectionism may create a situation where the court will be reluctant to use coercive measures to execute the court’s verdicts.	X				
Risk of retaliation and detention and/or imprisonment when lodging complaints at higher level administrative offices/DLV or when engaging in protests at the local level.	Activities perceived as ‘disrupting social order’ or ‘threatening social stability’ can lead to harsh reactions from local officials who are afraid that their lack of ability to keep social order within their administrative jurisdiction will have a negative affect on their evaluation in the responsibility system. Or that such activity will receive attention from higher level officials who might investigate the matter to find that illegal activities (such as corruption) have occurred.	X				
Access to media	In the Jinshan cases there had been very little media reporting on the environmental dispute compared to the Dongwu Banner County Paper Mill case and the Baotou Water Supply Company case, which had both received widespread media attention. In Jinshan the pollution victims experienced difficulties in accessing media and convincing journalists to report on their cases. The following reasons might account for such obstacles: Reporting restrictions	X	X			

¹⁴⁶ Supreme People’s Court notification concerning people’s courts accepting class action cases (2005), Supreme People’s Court “Opinion on Future Increasing the Positive role of Mediation (in Litigation) in Constructing Socialism and a Harmonious Society (2007).

¹⁴⁷ Baotou Water Supply Company case and Dongwu Banner County Paper Mill case.

Obstacles	Result	Reason				
		SO	P	F	SE	T
	Corruption among journalists			X		
	Commercialisation of media: editors and journalists have to consider if the case is interesting enough for their audience	X		X		

As shown in table 2, many of the underlying reasons inhibiting pollution victims from obtaining access to justice are based on the current Chinese structural organization of the administration of the country. Given the current administrative and political system in the country, it is highly unlikely that large scale structural reforms will be adopted overnight. Thus, suggestions to assist Chinese pollution victims in the process of obtaining access to justice should be addressed from both a short term perspective (i.e., solutions which can be adopted within the current system; for example, the establishment of provincial or legal test centres for environmental disputes) and a from a long term perspective (i.e., suggestions opening for judicial independence, public participation in decision making, strong civil society, etc).

5.4 Concluding remarks

The overall evaluation of access to justice for Chinese pollution victims based on the findings in this thesis is rather dire. An analysis of the six cases from IMAR have indicated that a number of structural organizations and political agendas within the current Chinese administrative and political system are the underlying causes of Chinese pollution victims' hindrances in obtaining access to justice. These findings are in line with previous studies focusing on environmental disputes within the country, concluding that structural and political changes are necessary in order to alleviate Chinese pollution victims' difficult process of obtaining access to justice (Li, Z. 2007: 354, Palmer 2007: 234-235, Wang, A. 2007: 217-218, Wang, C. 2007: 183, Zhao, Y. 2004: 190-192). Moreover, this thesis shows that in cases where pollution victims are relatively financially disadvantaged, their poor financial situation becomes an obstacle to exercise certain dispute resolution mechanisms. Based on the findings in this thesis that the more costly dispute resolution processes yield higher possibility of access to justice, this is a very unfortunate situation. Furthermore, the cases investigated in this thesis indicate that technical and scientific challenges pertaining to the process of obtaining and providing evidence in environmental disputes can also constitute an obstacle in the pollution victims' process of obtaining access to justice. Finally, findings in this thesis also imply that a certain reluctance towards involvement in dispute where the local government is believed to have a strong interest might also be a hindrance for the pollution victims in obtaining access to justice.

However, it is important to point out that a number of recent developments in within the country could contribute to making it easier for Chinese pollution victims to obtain access to justice. First off all there are some chances that the Chinese leaderships increased awareness and focus on environmental protection could lead to more direct actions and real change for the protection

of the environment. The recent elevation of SEPA into the newly established Ministry of the Environment and Construction (MOEC) could mean that the environmental protection in China will become more effective, as SEPA will be part of larger ministry with a broader area of jurisdiction. Furthermore, the recent focus on 'Green GDP' suggests that the Chinese leadership is placing more and more attention on the need for sustainable economic development. The combination of a stronger environmental protection apparatus and strong focus on the need for sustainable development could be instrumental in reducing local officials' desire and possibility to protect tax yielding enterprises, in order to ensure bright career prospects. It is possible that this could lead to a decline of the local protectionism phenomenon. However, the real effects of the emphasis on environmental protection and projects such as the 'Green GDP' project remain to be observed. Apparently the Green GDP project collapsed in 2007. The official explanation has been that the mathematical instruments to calculate the Green GDP are not advanced enough. The unofficial justification is that when faced with the mounting evidence that environmental damage and resource depletion had been far more costly than anticipated, the government withdrew its support for the Green GDP project and suppressed the 2005 report, which had been due out in March 2007 (Kahn and Yardley 2007).

With regards to providing evidence, one of the major obstacles Chinese pollution victims have to overcome, the introduction of the two new regulations 'Access to Government Information' and 'Methods of Public Access to Environmental Information' has provided Chinese pollution victims with a legal tool to obtain information on matters related to the environment. In theory, citizens should be able to use these regulations to access information from EPB's which potentially could be used as evidence in environmental dispute resolution processes. Moreover, the establishment of the China Environmental Science Institute Environmental Damage Examination and Evaluation Centre at the China Environmental Science

Institute could perhaps alleviate the scientific and technical challenges Chinese pollution victims experience in the process of providing scientific evidence in environmental disputes.¹⁴⁸

Moreover, with the widespread availability to media where shows like *Jinri shoufa*, *Fazhi zaixian*, *Xinwen diaocha*, etc. are broadcasted on a daily basis, Chinese citizens are becoming more and more aware of their legal rights and how to exercise them. As Chinese citizens witnessing that people can succeed in formal dispute settlement procedures, they might become more inclined to resort to such options themselves. Take, for example, Wuretu in the Dongwu Banner County Paper Mill case, who deeply regretted that he had withdrawn his case when the Damulinzhabu successful won the trial against the paper mill and the local government. Wuretu called Damulinzhabu a hero and noted that his persistency in exercising his legal rights was an honourable example to be followed (Wuretu: interview 26.11.07).

Furthermore, there is also some positive progress in the legal development in the country. It is important to notice that, although there are many deficiencies within the Chinese legal system, the country's judicial system has come a long way since the end of the Cultural Revolution. Besides, with regards to CPC, it should be noted that the term 'rule of law' was first used by the Party leadership in 1997, while in 2002, some of the elements associated with the rule of law, such as accountability and transparency, were incorporated into CPC terminology (Cohen 2008: 9). This might indicate that the Party is starting to include some of the elements of 'rule of law' in their agenda.

¹⁴⁸ China environmental science institute, China environmental science institute letter concerning the establishment of environmental damage certification (examination) and evaluation centre (*Zhongguo huanjing kexue xuehui guanju kaizhan huanjing sunhai jianding ha pinggu gongzou de han*) of 2007, number 118.

In relation to the problems discussed in this thesis, the new standards for litigation fees are important to notice. In April 2007 State Council issued new standards for litigation fees in an effort to provide socially vulnerable groups better access to the court system (Peerenboom and Xin, H. 2008: 22). Yet, as many courts, especially in rural areas, cannot afford to lose their main source of income and thus are reluctant to implement this policy, the effect of the new regulation might be limited (Ibid.).

Although there are some positive progresses both in the sphere of environmental protection mechanisms and the legal development, which might benefit Chinese pollution victims fight for access to justice, it is unrealistic that there will be a rapid improvement in pollution victims' situation. As the findings in this thesis have indicated the fundamental reasons creating hindrances for pollution victims to exercise their legal rights is based on structural, political, technical, financial and traditional grounds. Thus, it might be that more drastic reforms are needed to really alleviate Chinese pollution victims' struggle in obtaining access to justice. Yet, given the political situation in China it is highly unlikely that sweeping reforms will happen overnight. Therefore, it is important to come up with solution to these problems which can be adopted within the current system. Unfortunately, given the scope of this study it is not possible to develop suggestions to reforms here. However, the findings in this thesis, accounting for a holistic understanding of which obstacles pollution victims face in their process of endeavouring to obtain access to justice, provide an important foundation for exploring this subject further.

6. Conclusion

China's rapid economic growth the last past decades has come at a high cost to the environment. In recent time environmental pollution and degradation have become a serious threat to both the Chinese economic and the social stability within the country. According to numbers from SEPA and the National Bureau of Statistics environmental pollution cost China around CNY 511.8 billion in economic losses in 2004, amounting to 3.05% of the total economic output for that year (Xinhua 05.03.07). Furthermore, the number of pollution incidents and environmental disputes has also increased rapidly. According to SEPA, 161 pollution accidents were reported in China in 2005 (Xinhua 11.01.07) and in 2007 more than 100,000 environmental disputes were reported in the country Li, J. 16.01.2008). In 2008 the Ministry of Public Security ranked pollution among one of the top five threats to China's peace and stability (Larson 2008: 1).

This thesis has accounted for some personal illustrations of the above-described statistics by exploring how pollution incidents affect people's lives. The focus of the thesis has been on the processes which take place when pollution victims try to obtain access to justice in the aftermath of a pollution incident. Based on a comprehensive case study of six environmental disputes cases in IMAR, the thesis has shown that a number of obstacles deeply anchored in the current Chinese structural organizations and political agendas hinder pollution victims from obtaining access to justice. The findings in the thesis show that the local protectionism phenomenon which is caused by a combination of the responsibility system, a strong emphasis on economic growth, the interdependence between courts, the judiciary and the government as well as corruption constitute a major obstacles when pollution victims try to exercise various dispute resolution mechanisms. Furthermore, the findings in this thesis show that when environmental disputes occur in rural areas, the disadvantaged financial situation of the claimants, can impede pollution

victims from making use of the more formal forms of dispute resolution processes, such as litigation. Moreover, the scientific nature of evidence in environmental disputes requires timely, accurate and scientific tests; conducting such tests can be very expensive and a great burden for pollution victims. Finally, complications rooted in the pollution victims themselves, such as lack of legal knowledge, reluctance towards involvement in dispute resolution and internal conflicts between the pollution victims can also constitute obstacles for Chinese pollution victims endeavouring to obtain access to justice. In addition to this, pollution victims also face a number of challenges when trying to make use of extra-legal opportunities in the dispute resolution process, such as media coverage and protests. They learn that access to media coverage, especially from influential national media, is difficult to obtain. Furthermore, pollution victims experience that conducting protests can be a very dangerous activity, leading to detention or imprisonment on the charges of ‘disturbing the social peace’. Moreover, one of the most discouraging findings in this thesis is that even when pollution victims succeed in exercising their right to seek remedy before a third party, access to justice was not achieved. In the two cases which were solved through litigation, with a favourable outcome for the pollution victims, courts verdicts was not implemented properly, leaving a number of issues unresolved. Furthermore, in none of the six cases the damage on nature caused by pollution been properly restored.

This thesis have illustrated how some of the weaknesses within the current Chinese legal system, such as the interdependency between the Court, the Party and the government as well as the deficiencies within the Department for Letters and Visits system, can cause major obstacles for pollution victims who try to exercise their legal rights. Nevertheless, it is important to remember that China has made remarkable progress in a short time in improving its legal system, having essentially started from scratch in after the Cultural Revolution (Hapler 2008: 5).

Given the complexities of environmental disputes, vividly illustrated in this thesis, they offer an interesting foundation for research on the subject of judicial protection and rule of law in China. Furthermore, given the dire situation pollution victims face in their struggle to obtain access to justice, there is an urgent need to investigate what can be done within the current political setting and structural organization to increase pollution victims' chances of obtaining access to justice. This thesis have laid the foundation further research in this field, by pointing out the root of the problems causing obstacles for Chinese pollution victims in obtain access to justice.

Finding a solution to address the current situation in which environmental disputes increasingly constitute a source to social disruption and instability is a real challenge for the Chinese leadership. However, if successful reforms are adopted Chinese citizens might be able to play an important role in protecting the environment. On the other hand, if the situation is left as it is today, it is quite possible that both the environmental and people's chances of obtaining access to justice will continue to suffer immensely.

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Appendix 1

Database: Interview Guide

1. Name (Sex) Adr. Occupation:
Age: *Contact numbers(s):*
2. Could you please inform me about how you (or the company) have been affected by pollution (follow-up questions: when did the pollution occur? What kind of pollution? Loss of property? Health problems? How long did (or have) the pollution been going on?)¹⁴⁹
3. What kind of losses have you (or the company) experienced as a result of the pollution?
4. Where you (or the company) able to identify the source of the pollution? How? Did you (or the company) experience any difficulties in this process? If yes, please explain what difficulties you (or the company) experienced.
5. What was your (or the companies) first reaction after the pollution incident occurred?
6. Did you or the company do something to address the situation? If yes, what was the first thing you (or the company) did? Please tell me about this process. Did you experience any difficulties during this process? If yes, please explain.
7. If you (or the company) tried to address the situation by contacting the polluter directly, what were your demands to the polluter? (follow up questions: did it include any of the following: financial compensation, restoration of the environment, prevention of future pollution, criminal punishment for the polluter or other demands) Did you (or the company) succeed in obtaining your demands from the polluter? If not, why not?
8. When/how did the situation develop into a dispute?
9. Please inform me on what have happened about the process you (or the company) have been through since you (or the company) addressed the

¹⁴⁹ In the case where informants for Baotou Water Supply company were interviewed, questions were directed with references to “the company”.

situation the first time. What are the different means you (or the company) have tried to address the? (check if the informant mentions the following: address administrative and/or EPB to ask for assistance, mediation with a third party, DLV, litigation, media coverage, protests, or other mechanisms). What do you (or the company) experience as the strength or weaknesses of these various mechanisms of dispute resolution?

10. If the informants mentions local protectionism, ask the informant what he or she think causes the phenomena. Have you (or your company) experienced difficulties in the process of the dispute resolution which is related to local protectionism? If yes, what? Have you (or your company) managed to overcome such difficulties? How?
11. How long time have you (or the company) spent since starting to try and solve the problem until it was solved? How much money have you (or the company) spent? On what have you (or the company) spend money?
12. Did you (or your company) experience any difficulties in obtaining evidence? Of, yes: what difficulties did you experience?
13. What did you (or the company) experience as the biggest challenge in the process of solving the dispute?
14. What have you (or the company) learned from the process of endeavouring to solve the dispute?
15. Based on your (or the company) experience, what have been the most effective way of dispute resolution?
16. Did you (or the company) ever consider to give up to? Why? Why not?
17. If you (or the company) received legal aid, can you tell me about how you got to know about the existence of such services? What has it meant for you (or the company) to receive assistance from a legal aid centre?
18. If the dispute have been resolved, where there or are there any problems which have been left unsolved? Did you (or your company) experience any problems after the dispute resolution process had been closed?
19. How is the situation today?

20. When you (or your company) reflect on the process of solving the dispute today, are there anything you (or your company) regret?

21. Let us imagine that a friend of yours who is a fish farmer in another village calls you and tell you that all his or hers fish suddenly died. Your friend suspect that pollution from a nearby factory have cased the problem. Based on your own experiences, what would you advice your friend to do? Why?

22. What are your hopes for the future?

APPENDIX 2

Database: List over interview

Interviews:

Chen, Jicun: Painter. Beijing: 14.10.07

Collective interview Rounan Dong village: Villagers. Rounan Dong village: 30.11.07

Collective interview Henan Dong village: Villagers . Henan Dong village: 30.11.07

Damulinzhabu: Herdsman, Plaintiff against the Dongwu Banner County Paper Mill case. Jirigelanggecha: 26.11.07

Gao, Guizhen: Office director and legal adviser, Baotou Water Supply Company. Baotou: 27.12.07

Han, Xiang: Peasant, plaintiff against Jinfeng Copper Metallurgy Co. Ltd. case. Sishi Jiaqi village: 30.11.07

Jiang, Fei: Journalist, China Youth Daily. Beijing: 23.10.07

Li, Shuxian: Peasant, petitioner against Jinfeng Copper Metallurgy Co. Ltd. Sishi Jiazi village: 30.11.07

Liu, Hai: Peasant, petitioner against Jinfeng Copper Metallurgy Co. Ltd. Chifeng: 1.12.07

Mr. Gao: Petitioner in the Weihang Cement factory case. Jinshan: 29.11.07

Wen, Quanlai: Lawyer. Baotou: 28.12.0

Wuretu: Herdsman, one of the original plaintiffs in the Dongwu Banner County Paper Mill case. Jirigelanggecha: 26.11.07

Zhang, Jingjing: Lawyer, CLAPV. Beijing: 07.01.08

APPENDIX 3

Database: List over Chinese documents

English Translation	Pinyin	Characters
Baotou city Intermediate People's Court, document number 7	Baotoushi zhongji renmin fayuan, bao min san chu zi di 7 hao	包头市中级人民法院，包民三初字第7号
China environmental science institute, information letter from China environmental science institute letter concerning the establishment of environmental damage certification and evaluation centre number 188 of 2007	Zhongguo huanjing kexue xuehui guanju kaizhan huanjing sunhai jianding ha pinggu gongzou de han, zhong huan xue 2007, 118 hao .	中国环境科学学会文件，中环学(2007)118号，中国环境科学学会关于开展环境鉴定评估工作
Civil procedure indictment (Inner Mongolia Baotou Water Supply Company)	Minshi qisu zhuang (Neimenggu Baotoushi gongshui zong gongsi)	民事起诉状（内蒙古包头市供水总公司）
Contract between Li Shuxian and Jinfeng Copper Metallurgy Co. Ltd.	Xieyi shu (Li Shuxian he Chifengshi Jinfeng tongye youxiangongsi)	协议书（李树先和金峰铜业有限公司）
Environmental dispute, Mediation agreement	Huanjing jiufen tiaojie xieyi shu	环境纠纷调解协议书
Environmental pollution case: Hang Xiang sue Jinfeng Copper Metallurgy Co. Ltd.	Hang Xiang su Jinfeng tongye youxiangongsi huanjing wuran an	韩祥诉金峰铜业有限公司环境污染案
General introduction to Li Shuxian's case	Jiben qingkuang jianjie (Li Shuxian de anli)	基本情况简介（李树先的案例）

Inner Mongolia Autonomous Region Higher People's Court, Civil procedure mediation agreement 2005, document 54	Neimenggu zizhiqu gaoji renmin fayuan minshi tiaojie shu, (2005) neimeng er zhong zi di 54 hao	内蒙古自治区高级人民法院民事调解书, (2005)内民二终字第54号
Inner Mongolia Autonomous Region Xilinhaote Intermediate People's Court, Civil procedure case, court verdict, document six of (2002)	Neimenggu xinlinhaote zhongyi renmin fayuan, minshi panjue shu (2002) xi min yi chu zi di 6 hao	内蒙古自治区锡林郭勒盟中级人民法院, 民事判决书 (2002)锡民一初字第6号
Inner Mongolia Autonomous Region Xilinhaote Higher People's Court, Civil procedure case, court verdict, document 82 of (2004)	Neimenggu zhongyi renmin fayuan gaoyi renmin fayuan, minshi panyueshu (2002) nei min yi zhong zi de 82 hao	内蒙古自治区高级人民法院, 民事判决书 (2004)内民一终字第82号
Inner Mongolia Chifeng city Kalaqin Banner environmental protection bureau document nr. 19 in 2007, issued by Kalaqin Banner EPB: Kalaqin Banner EPB reply to Du Yelong's report on Jinfeng Copper Metallurgy Co. Ltd. pollution	Neimenggu Chifengshi Kalaqin qi huanjingbaohu wenjian, ka huan fa (2007) 19 hao, Kalaqin qi huanjingbaohuju guanyu Du Yelong fanying Jinfeng tongye wuran wenti de dafu	内蒙古赤峰市喀喇沁旗环境保护文件, 喀环发(2007)19号, 喀喇沁旗环境保护局关于杜业龙反映金峰污染问题的答复
Inner Mongolia Chifeng city Kalaqin Banner Li Shuxian vs. Jinfeng Copper Metallurgy Co. Ltd. air pollution damage compensation case (NRDC)	Neimenggu Chifengshi Kalaqin qi Li Shuxian shou Chifengshi Jinfeng tongye youxiangongsi daqi wuransunhai peichang an (NRDC)	内蒙古赤峰市喀喇沁旗李树先受赤峰市金峰铜业有限公司大气污染损害赔偿案 (NRDC)
Kalaqin Banner EPB, minutes from mediation meeting concerning the "Weihang Cement" Pollution dispute	Kalaqin qi huanjingbaohu ju weihang shuini wuran peichang jiufen tiaojie huiyi jiyao	喀喇沁旗环境保护局威航水泥污染赔偿纠纷调解会议纪要
List of evidence and intention of collecting evidence (Inner Mongolia Baotou Water Supply Company)	Zhengju mulu he juzheng yitu (Neimenggu Baotoushi gongshui zong gongsi)	证据目录和举证意图 (内蒙古包头市供水总公司)

Report on the investigation of Li Suxian's case	Diaocha jingguo (Li Shuxian de anli)	调查经过 (李树先的案例)
Who will help us appraise the environment we live in? The joint aspiration from tens of thousands of resident in Jinshan township	Shui wei women de shencun huanjing pingjia ?---- Jinshan zhen shi wan shimin de gongtong xinsheng	请为我们的生存环境评价？——锦 山镇十万市民的共同心声

