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# The People vs. Pollution: understanding citizen action against pollution in China

BENJAMIN VAN ROOIJ\*

*Chinese pollution victims have increasingly started to resort to political and legal action to protect their interests. This paper analyzes such activism by studying how citizens identify the necessity to initiate action against pollution and by investigating the obstacles they meet when attempting to take action. The paper highlights the importance of state and intermediary institutions to aid citizens in understanding the seriousness of pollution and overcoming the obstacles they face. It shows, however, that often such aid is not available, and that state institutions when aligned with industrial interests restrict rather than support citizen action. When this occurs, citizen activism becomes an isolated affair, resulting in adversarial relations with state and industry, sometimes escalating to violence and repression of activists. The paper concludes that isolated activism forces a new look at concepts such as 'embeddedness' and 'rightful resistance' to capture citizen activism and contentious politics in China.*

## Introduction

Since 1978, China has gradually built a system of pollution laws and regulations. Although legislation has slowly improved over the years, many problems remain including the continued use of vague, contradictory, weak, and unrealistic rules.<sup>1</sup> However, at present the true challenge in Chinese pollution regulation is not the legislation itself but the implementation. Violation of environmental law remains a pervasive problem and law enforcement, while improving, is still weak.<sup>2</sup> Violating firms operate without the proper legal approvals or having or continually using the prescribed pollution abatement installations. They engage in illegal practices such as

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1. W. P. Alford and B. L. Liebman, 'Clean air, clean processes? The struggle over air pollution law in the People's Republic of China', *Hastings Law Journal* 52, (2001), pp. 703–748; X. Ma and L. Ortolano, *Environmental Regulation in China* (Landham, MD: Rowman & Littlefield Publishing Group, 2000); B. Van Rooij, *Regulating Land and Pollution in China, Lawmaking, Compliance, and Enforcement; Theory and Cases* (Leiden: Leiden University Press, 2006).

2. Carlos W. H. Lo *et al.*, 'Effective regulations with little effect? The antecedents of the perceptions of environmental officials on enforcement effectiveness in China', *Environmental Management* 38, (2006), pp. 388–410; Ma and Ortolano, *Environmental Regulation in China*; OECD, *Environmental Compliance and Enforcement in China, An Assessment of Current Practices and Ways Forward* (Paris: OECD, 2006); Van Rooij, *Regulating Land and Pollution in China*.

secret nightly discharges or sabotaging monitoring equipment. Law enforcement agents have been challenged in securing compliance as they lack the resources, authority and local political support to successfully detect and punish violations of the law.<sup>3</sup>

While state control of pollution violations has been difficult, there is increased recognition that Chinese citizens can play an important role in pressuring firms into compliance. Several scholars have argued over the last decade that activist citizens create more compliance and stronger enforcement, while inactive citizens sustain violations and undermine enforcement.<sup>4</sup> There is increasing evidence that, despite limited political freedom and without an independent judiciary, Chinese citizens living in the vicinity of polluting enterprises have become increasingly activist, helped perhaps partly by China's growing environmental NGO-movement.<sup>5</sup> Citizens have for instance sued chemical plants responsible for destroying their fishponds. They have voiced formal complaints demanding enforcement action from environmental authorities. They have petitioned other local and national government institutions, going all the way to Beijing. And finally, citizens have organized mass demonstrations against pollution.<sup>6</sup>

These Chinese findings resonate with those in studies of regulatory compliance in other countries which ask why regulated business actors comply with legal regulation [(regulatory) compliance theory]. Over the last two decades, scholars in this field have moved away from the state and a focus solely on the effects of state enforcement on compliance.<sup>7</sup> Regulatory scholarship has started to concentrate also on non-state approaches to compliance, including compliance resulting from social pressures.<sup>8</sup> A consistent finding in this literature is that citizen pressure on firms is essential for

3. A. R. Jahiel, 'The organization of environmental protection in China', *China Quarterly* 156, (1998), pp. 757–787; Carlos W. H. Lo and Gerald E. Fryxell, 'Governmental and societal support for environmental enforcement in China: an empirical study in Guangzhou', *Journal of Development Studies* 41, (2005), pp. 558–588; Ma and Ortolano, *Environmental Regulation in China*; Van Rooij, *Regulating Land and Pollution in China*.

4. S. Dasgupta and D. Wheeler, *Citizen Complaints as Environmental Indicators: Evidence from China* (Washington, DC: The World Bank, 1997); Van Rooij, *Regulating Land and Pollution in China*; Wang Hua, 'Pollution charges, community pressure and abatement cost: an analysis of Chinese industries', World Bank policy research working paper, (2000); Mara Warwick and Leonardo Ortolano, 'Benefits and costs of Shanghai's environmental citizen complaints system', *China Information XXI*, (2007), pp. 237–269.

5. Peter Ho, 'Greening without conflict? Environmentalism, NGOs and civil society in China', *Development and Change* 32, (2001), pp. 893–921; Peter Ho and Richard L. Edmonds, eds, *China's Embedded Activism: Opportunities and Constraints of a Social Movement* (London and New York: Routledge, 2008); Yang Guobin, 'Environmental NGOs and institutional dynamics in China', *China Quarterly* 181, (2005), pp. 46–66.

6. W. P. Alford *et al.*, 'The human dimensions of pollution policy implementation: air quality in rural China', *Journal of Contemporary China* 11, (2002), pp. 495–512; Anna M. Brettell, *The Politics of Public Participation and the Emergence of Environmental Proto-Movements in China*, unpublished Ph.D. dissertation, University of Maryland, 2003; Elizabeth C. Economy, *The River Runs Black: The Environmental Challenge to China's Future* (Ithaca, NY: Cornell University Press, 2004); Jun Jing, 'Environmental protests in China', in E. Perry and M. Selden, eds, *Chinese Society: Change, Conflict and Resistance* (London: Routledge Curzon, 2004); Van Rooij, *Regulating Land and Pollution in China*.

7. Julia Black, 'Critical reflections on regulation', *LSE, CARR Discussion Paper Series* (2002), pp. 1–27; John Braithwaite *et al.*, 'Can regulation and governance make a difference?', *Regulation and Governance* 1, (2007), pp. 1–17.

8. Neil Gunningham *et al.*, *Shades of Green, Business Regulation and Environment* (Stanford, CA: Stanford University Press, 2003); Bridget M. Hutter, 'The role of non-state actors in regulation', *LSE, CARR Discussion Paper Series* (2006), pp. 1–19; Bridget M. Hutter and Clive J. Jones, 'From government to governance: external influences on business risk management', *Regulation and Governance* 1, (2007), pp. 27–45.

enhancing compliance.<sup>9</sup> In addition, this literature concludes that citizen pressure also positively influences law enforcement, thus indirectly increasing the pressure on firms to comply.<sup>10</sup>

Citizens can thus play a crucial role in improving pollution regulation and controlling severe pollution. The essential questions, left largely unanswered in the current literature on pollution compliance in China, as well as in studies of regulatory compliance, are under what conditions do citizens take such action, and what obstacles do they encounter when they do so?

In seeking to answer these questions, we can learn a great deal from the analytical approach used in the socio-legal literature on dispute resolution and access to justice. This literature discusses the process of how disputes emerge, how they are solved and how citizens get effective remedies for their grievances. An important aspect of this literature is how citizens develop grievances and claims. Felstiner *et al.* show that this is a three step process, from naming, to blaming, to claiming, in which citizens first identify the seriousness of an injurious incident (*naming*), then attribute this incident to another person (*blaming*), and lastly approach this person seeking a remedy and compensation for the incident (*claiming*).<sup>11</sup> The literature shows that in cases, whether in the US<sup>12</sup> or in China,<sup>13</sup> most citizens who suffered grievances will first try to negotiate with the person they blame for their grievances. If this fails, a small percentage of citizens will try to involve third parties in order to get a remedy for their grievance.

Citizens have several options in involving third parties, and may try several at once. The literature generally differentiates between third party involvement that is formal or informal, binding or non-binding, and compromise seeking or adjudicative.<sup>14</sup> In both the US<sup>15</sup> and in China<sup>16</sup> citizens only seldom turn to formal legal institutions such as courts or even lawyers to resolve their disputes through third parties, preferring informal options. There is also a body of socio-legal work analyzing the reasons why formal legal options are less preferred by studying the obstacles justice-seeking citizens encounter.<sup>17</sup> This body of work shows that there are

9. Gunningham *et al.*, *Shades of Green*; Noga Morag Levin, 'Between choice and sacrifice: constructions of community consent in reactive air pollution regulation', *Law & Society Review* 28, (1994), pp. 1035–1077; World Bank, *Greening Industry, New Roles for Communities, Markets and Governments* (Oxford: Oxford University Press, 2000).

10. Maria Carmen de Mello Lemos, 'The politics of pollution control in Brazil: state actors and social movements cleaning up Cubatao', *World Development* 26, (1998), pp. 75–87; Gunningham *et al.*, *Shades of Green*; Robert A. Kagan, 'Regulatory enforcement', in D. H. Rosenbloom and R. D. Schwartz, eds, *Handbook of Regulation and Administrative Law* (New York: Marcel Dekker, 1994).

11. W. Felstiner *et al.*, 'The emergence and transformation of disputes: naming, blaming, claiming', *Law & Society Review* 16, (1980–1981), p. 631.

12. Richard E. Miller and Austin Sarat, 'Grievances, claims, and disputes: assessing the adversary culture', *Law & Society Review* 15, (1980–1981), pp. 525–566.

13. Ethan Michelson, 'Climbing the dispute pagoda: grievances and appeals to the official justice system in rural China', *American Sociological Review* 72, (2006), pp. 459–485.

14. Cf. Henry Brown and Arthur Marriott, *ADR Principles and Practice* (London: Sweet & Maxwell, 1999); A. V. Horwitz, *The Logic of Social Control* (New York: Plenum Press, 1990); Martin Shapiro, *Courts, A Comparative and Political Analysis* (Chicago, IL: The University of Chicago Press, 1981).

15. Miller and Sarat, 'Grievances, claims, and disputes'.

16. Michelson, 'Climbing the dispute pagoda'.

17. Summarized in Michael R. Anderson, 'Access to justice and legal process: making legal institutions responsive to poor people in LDCs', *IDS Working Papers* 178, (2003); B. Van Rooij, 'Bringing justice to the poor, bottom-up approaches to legal development cooperation', paper presented at the *Law and Society Conference*, Berlin, Germany, 26 July 2007.

four types of obstacles, which are related to the justice seeker (lack of resources, time, awareness, experience, and economic independence), justice institutions (costs, slowness, lack of impartiality), legal conditions (lack of proper rights provision), and intermediary institutions necessary for success in some legal fora (lawyers, expert witnesses, informal legal aid providers).

This paper begins to explore the role citizen action plays in controlling pollution in China, and suggests an agenda for future research. The paper is based on several different sets of data. A first source of data consists of 189 cases of citizen action from various parts of China derived from multiple sources. These include online court decision databases and collections of court cases, Chinese language (both official and unofficial) online media, and reports from NGOs such as the Beijing-based Center for Legal Assistance for Pollution Victims (CLAPV). The present study has made a deeper analysis of a selection of cases from this dataset, examining about 35 cases in more detail, while using the set as a whole as an indicator of general trends.<sup>18</sup> As a second source, governmental statistics about citizen activism have been consulted, bearing in mind their possible biases. The third source of information consists of secondary studies of (environmental and broader) citizen activism, access to justice and contentious politics from China and other countries. Given the variety of sources used and their respective limitations, this paper cannot provide more than an exploratory examination of the issues with a view to formulating hypotheses that will require further study.

The data will be analyzed using an analytical framework derived from the dispute and access to justice literature, studying how exposure to pollution translates into citizen grievances, the types of action citizens undertake in seeking a remedy for such grievances, the obstacles in doing so, and the outcomes of their efforts. The analysis of obstacles also draws on the socio-legal access to justice literature in differentiating obstacles related to the justice seeker (the pollution victims in this case), justice institutions, legal conditions, and intermediaries. It also studies counter-actions by polluting enterprises, which an inductive study of the data found to be another important obstacle citizens face when taking action.

### From pollution to grievance

Not all pollution incidents lead to citizen action, and following Felstiner *et al.*<sup>19</sup> we must first understand which pollution incidents generate grievances. Here two aspects are important, *naming* (recognizing the seriousness of the pollution) and *blaming* (attributing these damages to a responsible entity).

Naming requires knowledge about the (possible) damages related to the pollution and ‘saying to oneself that a particular experience has been injurious’.<sup>20</sup> It is important to note that the issue is not *whether* citizens suffering from pollution know about the effects of pollution, but rather *how detailed* their knowledge is. Naming is an awareness process that can be best captured by Jing’s term ‘cognitive revolutions’,

18. These cases are referred to by their case number which has been assigned to them by the author. All cases are available on file with the author.

19. Felstiner *et al.*, ‘The emergence and transformation of disputes’.

20. *Ibid.*, p. 635.

which captures the way in which sudden insights spur citizens to a new level of understanding about the health and economic effects of pollution.<sup>21</sup> The progression of such cognitive revolutions can be quick and sudden, but it can also be protracted, sometimes taking decades before citizens have sufficient knowledge about the damaging effects of pollution to develop grievances.

Awareness seems to have developed quickly in cases where accidents had a sudden impact on the local environment, causing directly visible damages.<sup>22</sup> In the cases studied such damages were mostly economic; in many of these cases pollution killed aquatic creatures that were being farmed, such as fish, shrimps or hairy crabs.<sup>23</sup> The development of new sources of pollution can also lead to rapid awareness of the damages caused by these new activities. An example is Tongren village in Guizhou. A heavily polluting urban plant was relocated there, immediately sparking the concern of local citizens. They knew how bad the original pollution had been, and argued, 'If it was pollution in the city, it will be pollution in the village'.<sup>24</sup> The best known case is the grievances expressed by local people against the planned construction of a PX (xylene) chemical plant in Xiamen city, which developed quickly following the publication and mysterious dissemination by text message of expert opinions about the harmful effects of the plant's expected pollution.<sup>25</sup>

There are many cases where awareness, and grievances, developed much more slowly, and for a long time citizens did not know or were not sure about the damaging effects of the pollution. This was especially likely to happen in cases with health related grievances where the negative effects of pollution took a long time to develop and were difficult to ascertain. A good example is a case in Jishou city in Hunan where a local agricultural office had been doing car repairs and paint jobs in a dormitory since 1982. It was not until 1998 that the residents started to complain about the noise and smell this caused. In 2001 one of them became ill and was diagnosed with cancer. Subsequently this resident, called Liu Desheng, found out that of the 20 residents living in the dormitory, eight had developed cancer and six had died. He gradually became aware of the possible relationship between the indoor pollution and the extraordinary rate of cancer among the residents.<sup>26</sup> Another example is from Zhejiang province. In this case, citizens slowly gained knowledge about the effects of the pollution from a local mine on their crops and health, which gradually made them more activist, especially as authorities failed to respond to their grievances. The local villagers were unaware of the effects of the pollution for a long time, until one of their children, who was studying in university, told them they should not drink the water or use it for irrigation. At first they did not believe him, but as the months passed they gradually discovered he was right. First all the local water turned yellow and then the stones, and finally all the grass growing along the side of

21. Jing, 'Environmental protests in China', p. 209; for similar findings from Kenya and the US see Evanson Chege Kamau, 'Environmental law and self-management by industries in Kenya', *Journal of Environmental Law* 17, (2005), pp. 229–44; Kenneth A. Gould *et al.*, *Local Environmental Struggles, Citizen Activism in the Treadmill of Production* (Cambridge: Cambridge University Press, 1996).

22. Cf. Alford *et al.*, 'The human dimensions of pollution policy implementation', pp. 495–512.

23. See for instance Cases 44, 45, 47, 50, 51, 52, 53, 56, and 57.

24. See Case 8.

25. Case 169.

26. Case 29.



the stream died. As one of the villagers later explained, this knowledge gradually turned them into activists: 'I had always been a law-abiding citizen. Before the pollution I have not even been to the Township government. But as our problem remained without a solution, I have had to petition everywhere'.<sup>27</sup>

Experts play an important role in these awareness processes. In the Xiamen case a chemistry professor was the first to voice concerns, which were later picked up by the media and activists informing the general public. In several of the serious health cases involving 'Cancer Villages', medical experts have sometimes helped local citizens make the connection between their health problems and the pollution. An example is Aidi village in Hubei province where over five years an extraordinarily large number of villagers developed cancer and died. The villagers started to connect these health problems with pollution after doctors in the municipal hospital told them they were related to contamination of their drinking water.<sup>28</sup>

There is a subjective side to knowledge about the effects of pollution. Lora-Wainwright's study of citizens' experiences with illness and pollution in cancer villages provides important insights into this.<sup>29</sup> It shows that citizens are more likely to absorb knowledge about the adverse effects of pollution when three types of perceptions are at play: (1) perceptions based on experience that pollution and such effects are connected; (2) perceptions based on moral values about the sufferers and their families; and (3) pragmatic perceptions about the usefulness of connecting adverse effects such as illness to pollution because it can bring support, attention, and investment. One important lesson from this, confirmed in the cases studied, is that no matter how much information citizens get about the effects of pollution, they are more likely to develop a grievance if such knowledge is connected to their own experience, moral values or interests.

The subjective reception of information about pollution means that knowledge about the adverse effects of pollution does not necessarily translate into a grievance. What experts may regard as very serious pollution with potentially severe effects may, for local citizens, be an habitual situation posing distant risks that they choose to ignore. Vice versa, forms of pollution that experts consider minor and unlikely to have serious economic or health effects, some citizens may view as extremely bothersome. For example, there have consistently been far more complaints about noise pollution (255,638 cases in 2005) than about water pollution (66,660 in 2005).<sup>30</sup> Therefore, although a prerequisite for action, knowledge in itself is not enough, as citizens may know about the effects of pollution but choose to ignore them and thus not develop a grievance. The subjective reception of knowledge and its role in the development of grievances deserves further exploration.

Once the seriousness of the pollution and its harmful effects have been named, the development of a grievance requires finding a responsible entity that can be blamed for the pollution. Although this may seem like a straightforward matter, in practice

27. See Case 34.

28. See Case 10.

29. A. Lora-Wainwright, 'An anthropology of "cancer villages": villagers' perspectives and the politics of responsibility', *Journal of Contemporary China* 19(63) (2010).

30. SEPA, *Zhongguo Huanjing Tongji Nianbao 2005* [*China Environment Statistical Report 2005*] (Beijing: Zhongguo Huanjing Kexue Chubanshe, 2006).

it is not. The first problem is identifying a responsible entity when there may be multiple or non-point sources of pollution. It is not surprising that in most of the cases studied, grievances concerned singular point-source types of pollution.<sup>31</sup> A second problem is that it is hard for citizens to blame pollution on companies that they depend on for their income.

### From grievance to action

Chinese citizens have taken several courses of action to get an effective remedy for their pollution-related grievances. A distinction can be made between legal and political action. Legal action includes tort litigation against companies, and administrative litigation against enforcement authorities for negligence in conducting their environmental management or enforcement duties. Political action includes complaints and petitions to enforcement authorities, petitions to higher levels of government, media involvement, and collective action through demonstrations, blockades or physical action against industry premises. Citizens will often try multiple courses of action, starting with relatively non-risky and simple action such as complaints and petitions, and moving towards more formal and risky action such as litigation and protests.

As could be expected from the socio-legal literature,<sup>32</sup> legal action has remained the least used of the two. Civil litigation against pollution is limited: the number of cases has fluctuated, with 2,136 cases nationwide in 2006, compared to 4,453 and 1,545 in 2004 and 2005, respectively.<sup>33</sup> In the dataset studied, there is variety in civil tort cases ranging from cases involving straightforward material damages following minor pollution accidents, to more complex cases involving multiple plaintiffs and defendants claiming complex damages related to physical and psychological health following severe pollution.<sup>34</sup> Since 2000 there have also been cases where citizens have sued local EPBs or other enforcement authorities using Chinese administrative law for failing to carry out their enforcement duties. Here citizens have demanded that the authorities take action and sometimes also pay for the damages they have suffered.<sup>35</sup> In one exemplary case, 11 citizens initiated administrative litigation against the EPB because it had failed to carry out its governmental tasks in enforcing the law and had issued an improper approval of a restaurant's environmental control installations. The citizens were able to pressure the EPB into a settlement while litigation was pending. Consequently the EPB enforced the law, issuing a production stop at the restaurant and rescinding the approval for it to operate.<sup>36</sup> In another case a lawyer initiated administrative litigation against SEPA for granting the status of 'model environmental city' to the heavily polluted Yixing city.<sup>37</sup>

31. Exceptions are Cases 5, 6, and 12.

32. Cf. Miller and Sarat, 'Grievances, claims, and disputes'; Michelson, 'Climbing the dispute pagoda'.

33. See: [http://news.xinhuanet.com/misc/2008-03/08/content\\_7746377.htm](http://news.xinhuanet.com/misc/2008-03/08/content_7746377.htm).

34. For examples see Cases 7 (collective action with more than 1,000 plaintiffs), 31 (civil suit for psychological damages related to a suicide following noise pollution), and 29 (civil suit for health related damages related to eight cancer cases in an old people's home also used for car repairs and painting).

35. For examples see Cases 5, 14, and 20.

36. See Case 14.

37. Case 5.



Political action has been constantly on the rise. In 2006, EPBs in China received 616,122 complaints and petitions from citizens concerning pollution<sup>38</sup> compared to 247,741 in 2000. Of these, the majority concerned noise pollution (255,638 cases in 2005) and air pollution (234,908 cases in 2005), while there were far fewer complaints about water pollution (66,660 cases in 2005) and solid waste (10,890 cases in 2005).<sup>39</sup> In many cases citizens try to appeal to higher levels of government through petitions when their local enforcement authorities fail to take action. In many of the cases studied here, citizens attempted to file such petitions after prior attempts at direct appeals to the polluting firm or local regulatory institutions failed to produce a result. As with tort action, petitions have also been tried in a wide range of different cases both small and large, involving material and health damages, and both singular or multiple petitioners.

If other options fail, or when citizens seek to put extra pressure on enterprises or authorities to meet their demands, they may turn to collective action. SEPA stated that in 2005 there had been over 510,000 cases of ‘public conflict’ initiated by ‘severe environmental problems’ that threatened social stability.<sup>40</sup> According to official sources, furthermore, the number of ‘large scale social incidents’ involving protests and demonstrations has increased by 29% annually.<sup>41</sup> Some citizens using collective action try as much as possible to remain within the confines of the law, advocating non-violent and non-disruptive forms of collective action in which citizens try to draw attention to the violation of their constitutional and legal rights. A good example is the way in which the citizens of Xiamen organized a ‘stroll’ to draw attention to the planned citing of the PX plant in the city, deliberately refraining from calling it a protest.<sup>42</sup> Other forms of collective action are less ‘rightful’<sup>43</sup> and involve the blockade of roads, enterprises or governmental buildings, and physical action and violence against enterprise installations and fights with enterprise personnel, their hired thugs, or state officials.<sup>44</sup>

But not all grievances, even relatively major ones, lead to action. An extreme example is a case in a Chongqing township where 40 villagers died in the space of two years because of cancer thought to be related to local paper industry pollution, and where citizens never took direct action.<sup>45</sup> It is difficult to ascertain how widespread such inaction is, but Michelson’s research on dispute processing shows that ‘lumping it’ is a common way for Chinese citizens to deal with injustices. They probably do so partly because they recognize the tremendous obstacles they face in taking successful action.

38. SEPA, *Zhongguo Huanjing Tongji Nianbao 2006* [China Environment Statistical Report 2006] (Beijing: Zhongguo Huanjing Kexue Chubanshe, 2007).

39. SEPA, *Zhongguo Huanjing Tongji Nianbao 2005*.

40. See [http://news.bbc.co.uk/chinese/simp/low/newsid\\_4920000/newsid\\_4923800/4923810.stm](http://news.bbc.co.uk/chinese/simp/low/newsid_4920000/newsid_4923800/4923810.stm).

41. See [http://news.bbc.co.uk/chinese/simp/low/newsid\\_4920000/newsid\\_4923800/4923810.stm](http://news.bbc.co.uk/chinese/simp/low/newsid_4920000/newsid_4923800/4923810.stm).

42. See Case 169.

43. Kevin J. O’Brien and Lianjing Li, *Rightful Resistance in Rural China* (Cambridge: Cambridge University Press, 2006).

44. See for instances Cases 1, 2, 3, 6, and 8.

45. See Case 42.

## Citizen characteristics

In responding to pollution, Chinese citizens are first of all constrained by their own limitations. The literature mentions several characteristics of citizens or local communities that influence their environmental action. These include their level of income, education, dependency on polluting source for income, and organization.

It is generally assumed that citizens with limited income and education are less effective in acting against pollution. Pargal *et al.*'s econometric study on informal pollution regulation in Indonesia and the US has found that richer communities are more effective in taking action to get regulated actors to comply with the law.<sup>46</sup> A related finding from a similar study in the US is that 'plants in poor, less educated areas are about 15.4 times more water pollution intensive than plants in affluent well educated areas'.<sup>47</sup> In China there also seems to be some connection between income levels and activism. There is a strong correlation between the aggregate number of complaints about pollution at the provincial level and per capita provincial GDP over the years 2001, 2003 and 2006 [Pearson's correlation 0.587, Sig. (two tailed) 0.000].<sup>48</sup> Other forms of activism in China show a more complex relation between levels of education and income. In fact, most of the court cases studied were initiated by Chinese farmers, who generally have lower levels of income and education. Of the protests and petitions studied most cases were rural and not urban. Notable exceptions have been the widely reported recent protests against new polluting projects by urban citizens in Xiamen, Beijing, Chengdu and Shanghai.<sup>49</sup> One could argue that poor and uneducated citizens may be less likely to take action as they may lack the knowledge necessary for such action. Knowledge about how to file a complaint, how to approach a petitions office, how to find evidence for pollution, how to find a lawyer and initiate litigation, and how to involve the media is indeed important. Poor and uneducated citizens in particular may start with limited information about the law, the political system or the complexities of pollution and its relation to health matters.<sup>50</sup> However, Fürst's study of pollution-related litigation and petitioning in Inner Mongolia shows that such knowledge is not just a product of wealth and formal education but can also be obtained through experience and self-study, as citizens progress from simple forms of action such as negotiations with the company or local complaints, to more complex forms such as petitions and litigation. Doing so they learn through experience, self-study, advice and information from other citizen activists they meet, and from legal, environmental and health experts willing to help them.<sup>51</sup>

46. Sheoli Pargal *et al.*, 'Formal and informal regulation of industrial pollution: comparative evidence from Indonesia and the United States', *The World Bank Economic Review* 11, (1997), pp. 433–450.

47. Sheoli Pargal and David Wheeler, 'Informal regulation of industrial pollution in developing countries: evidence from Indonesia', *The Journal of Political Economy* 104, (1996), pp. 1325–1326.

48. SEPA, *Zhongguo Huanjing Tongji Nianbao 2006*; SEPA, *Zhongguo Huanjing Tongji Nianbao 2001* [*China Environment Statistical Report 2001*] (Beijing: SEPA, 2002); SEPA, *Zhongguo Huanjing Tongji Nianbao 2003* [*China Environment Statistical Report 2003*] (Beijing: SEPA, 2004).

49. Cases 169, 185, 190, and 191.

50. For example, Zhiping Li, 'Protection of peasants' environmental rights during social transition: rural regions in Guangdong province', *Vermont Journal of Environmental Law* 8, (2006–2007), pp. 338–361.

51. Kathinka Fürst, *Access to Justice in Environmental Disputes: Opportunities and Obstacles for Chinese Pollution Victims*, unpublished M.A. thesis, University of Oslo, 2008.

The dependency of the citizens on the polluting factory is another citizen-related obstacle to activism. Regulatory literature shows that citizens are less likely to take action against firms on which they are in some way dependent.<sup>52</sup> In most of the cases from the dataset studied here it is difficult to ascertain what the relationship between the citizen activists and the enterprise involved is, as necessary ethnographic data are missing. Nevertheless, we do see that in most of the cases where activism occurred there is no indication that citizens worked for the polluting firm or had other close relationships with it. In many cases the citizens involved had unrelated sources of income such as fish farming, agriculture, or urban employment outside of the polluting industry.<sup>53</sup> The dependency relation between local communities and polluting enterprises deserves further study, especially concerning cases of pollution where citizens failed to act, which are obviously less likely to be reported in the sources consulted here.

Citizens also need to have a certain degree of organization, coordination, and social resources if their actions are to succeed.<sup>54</sup> In some of the cases studied we saw complex forms of organization involving thousands or tens of thousands of citizens protesting against pollution. In one case over 1,000 citizens brought a collective lawsuit against a polluting firm.<sup>55</sup> The cases show that activism requires leadership, often by ordinary citizens who spontaneously emerge as leaders or are elected by those affected by the pollution. Leaders play an important role in representing the activists and bringing in outside attention, support and knowledge.<sup>56</sup> Coordination of citizen action and coherence within activist groups is complex. Especially when action is successful, tensions within activist communities may develop as to how to distribute the compensation paid. A good example is a large class action suit in Fujian, won by 1,721 litigants with the assistance of the Beijing-based CLAPV. This case was successful because a small group of five representatives was able to coordinate the case and initiate litigation on behalf of all pollution victims. Following the court verdict in favor of the plaintiffs, however, the group disagreed about how to manage the compensation received. This led to a split, with two representatives, including the designated accountant, who was a local village finance cadre, leaving the group. According to one of the lawyers handling this case, the result has been that one of the five original representatives is now in sole control of the compensation funds and had not yet distributed the money to the group nor paid the lawyers.<sup>57</sup> In her study of pollution conflicts in Inner Mongolia, Fürst has similar findings. She concludes that 'Disagreement among the pollution victims (. . . can) cause them to

52. Phil Brown and Edwin J. Mikkelsen, *No Safe Place, Toxic Waste Leukemia, and Community Action* (Berkeley, CA: University of California Press, 1990), p. 50; Gould *et al.*, *Local Environmental Struggles*, p. 86; Mainul Huq and David Wheeler, 'Pollution reduction without formal regulation: evidence from Bangladesh', *World Bank Policy Research Working Paper* 1993–39 (1993); Robert A. Kagan *et al.*, 'Explaining corporate environmental performance: how does regulation matter?', *Law & Society Review* 37, (2003), p. 69; Richard Kazis and Richard L. Grossman, *Fear at Work, Job Blackmail, Labor and the Environment* (New York: The Pilgrim Press, 1982), p. 4.

53. A clear case is Case 43 where citizens protested against local iron mine pollution especially because they found that they were not allowed to share in the wealth created by the local iron deposits.

54. Gould *et al.*, *Local Environmental Struggles*.

55. Case 7.

56. See for instance Cases 7, 20, and 21.

57. Based on interviews with a lawyer involved in the case during April and May 2008.

spend valuable time and energy on internal discussions instead of focusing on the conflict with the polluter'.<sup>58</sup>

Citizens need social and political capital to take effective action against pollution.<sup>59</sup> Michelson's quantitative studies of citizen's strategies in dealing with disputes show how important social and political capital are in China. Michelson found for instance that social resources play an important role in the probability of citizens making appeals to higher authorities in the event of a grievance. He mentions two particular social resources: political connections and elderly women, explaining that the latter are 'strategically mobilized to escalate claims to higher levels of authority ... in an institutional context that demands politically non-threatening forms of contention'.<sup>60</sup> In another study Michelson argues that citizens with good political connections are more likely to take legal than political action.<sup>61</sup> It is unfortunate that Michelson's work has not yet incorporated environmental disputes. Further study about social and political capital is necessary, but unfortunately the data used here do not offer sufficient information.

### The role of government institutions

The access to justice literature shows that citizens seeking remedies for their grievances also meet obstacles in the governmental institutions they approach. The literature mentions slowness of the procedures, excessive costs, inadequate access to information about institutional procedures, the geographical distance justice-seeking citizens must travel, poor execution of institutional decisions, widespread corruption and abuse of power and limited institutional independence.<sup>62</sup> Local Chinese institutions involved in handling citizen action against pollution, including local EPBs, agricultural offices, courts, or local governments, suffer from many of these problems, some of which are clearly at play in the cases studied. It is especially noteworthy that local governments directly control the local environmental and legal institutions because they pay their personnel and appoint their leaders.<sup>63</sup> This is problematic because local governments are well known to maintain close ties to local enterprises, in part because of the historical legacy of the planned economy, and in part because of enterprises' importance for local revenue and job opportunities.

Governmental institutions, including local governments, courts, EPBs, agricultural offices, fishery bureaus, forestry agencies, and the public security bureaus (PSBs) play a crucial role in the cases studied. On the positive side, in some cases, government institutions supported citizens taking action against pollution. EPBs and agricultural offices have, for instance, helped citizens identify and gather evidence

58. Fürst, *Access to Justice in Environmental Disputes*, p. 82.

59. Gould *et al.*, *Local Environmental Struggles*.

60. Ethan Michelson, 'Connected contention: social resources and petitioning the state in rural China', unpublished paper, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=922104](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=922104) (2006).

61. Michelson, 'Climbing the dispute pagoda'.

62. Cf. Anderson, 'Access to justice and legal process'.

63. K. Lieberthal, 'Introduction: the "fragmented authoritarianism" model and its limitations', in K. G. Lieberthal and D. M. Lampton, eds, *Bureaucracy, Politics, and Decision Making in Post-Mao China* (Berkeley, CA: University of California Press, 1992); K. Lieberthal, *Governing China, From Revolution through Reform* (New York: W.W. Norton & Company, Inc., 1995).

about pollution related damages.<sup>64</sup> In addition, it is noteworthy that of the 66 court cases about pollution found in the legal database consulted here, 43 were won by citizens, showing that courts have ruled in favor of pollution victims and against polluters.<sup>65</sup>

In other cases, however, governmental institutions did not provide sufficient support and even directly opposed citizen activism. Governmental institutions, such as EPBs or petition offices at other governmental bureaus approached by citizens with pollution grievances remained unresponsive, not sufficiently helping in identifying the pollution, gathering evidence or enforcing the law. In one case, fish farmers who had lost their fish due to pollution failed to get the local environmental and fisheries authorities to take sufficient enforcement action, even after national media and the provincial governor stepped in. Having won an administrative suit against these authorities in court, they were unable to execute the verdict because two years had passed and law enforcement was no longer possible.

Courts have refused to accept certain environmental cases,<sup>66</sup> as they have done in other sensitive or difficult cases.<sup>67</sup> In addition there are cases where judges consistently misapplied the law to rule in favor of polluting enterprises, even under close scrutiny of higher level courts and national media.<sup>68</sup> A lack of court independence from local governments<sup>69</sup> combined with close government–enterprise relations is most likely responsible for this.

Rather than helping, some governmental institutions have directly opposed justice seekers. In the worst cases, the police have used violence to keep citizens from taking action. In one case, an intervention by the PSB hospitalized 60–70 protesters.<sup>70</sup> Similarly, in Zhejiang a PSB intervention in a local protest ended in the killing of the protesters.<sup>71</sup> Police have also arrested activists, putting them in detention and sometimes prosecuting them on various charges. Such cases mostly concerned activists engaging in demonstrations, but in some cases police also detained petitioners.<sup>72</sup> In one case in Hebei, local police arrested pollution petitioners on charges of instigating public turmoil, keeping them in detention for six weeks. Following their release, the petitioners initiated administrative litigation and reached a settlement with the local government on compensation. Nonetheless, after the administrative suit was dropped, the activists were again arrested, prosecuted and tried for blackmail and instigating acts of turmoil against social order. In the first instance, the defendants were found guilty and sentenced to between three and four years in prison. They later won in an appeal and the case was retried. In the second trial, this

64. See for instance Cases 13, 14, 18, 19, 22, 25, and 29.

65. Cases 44–86.

66. See for instance Case 180.

67. Kevin J. O'Brien and Lianjiang Li, 'Suing the local state: administrative litigation in rural China', in N. J. Diamant, S. B. Lubman and K. J. O'Brien, eds, *Engaging the Law in China, State, Society, and Possibilities for Justice* (Stanford, CA: Stanford University Press, 2005).

68. See for instance Case 29.

69. Benjamin L. Liebman, 'China's courts: restricted reform', *China Quarterly* 191, (2007), pp. 619–638; R. Peerenboom, *China's Long March toward the Rule of Law* (Cambridge: Cambridge University Press, 2002).

70. Case 1.

71. Case 2.

72. See for instance Cases 9 and 34. For more about this see Human Rights Watch '“We could disappear at any time” Retaliation and abuses against Chinese petitioners', *Human Rights Watch* 17(11c), (2005).

case drew national media attention but this did not change the retrial verdict. Three of the representatives again received similar prison sentences, and were also sentenced to pay fines and even compensation to the factory that had been in illegal operation.<sup>73</sup>

The most subtle form of resistance to citizen activism is when state institutions or enterprises isolate citizen protest by labeling their activities as subversive turmoil that damages social order. In doing this they effectively negate the illegality of the original polluting behavior that the action is directed against, and obscure the failure to respond to earlier legitimate complaints and petitions made to governmental institutions. They try to portray citizen activists as radicals against whom stern action is warranted and who do not deserve the support of public institutions and the public at large. And such unfair characterizations may indeed push citizens to take more radical forms of action. If successful such isolation tactics may make it risky for lawyers, NGOs or EPBs to be associated with activists as they themselves run the risk of being labeled subversives, with all the consequences that entails. A good example of such labeling is a case where local villagers in Zhejiang province took action against pollution caused by iron mining which affected their irrigation water. At first they tried to get the local township and district government to respond, but to no avail. Their grievances were ignored. The villagers then complained to the EPB and filed petitions all the way to the authorities in Beijing. The local EPB consequently isolated them, saying of one of the activists: 'He has been arrested many times, perhaps he is psychologically not 100%, just going about making trouble'.<sup>74</sup> In another case local activists were characterized by local authorities as 'disorderly', 'crazy' and 'mentally retarded'.<sup>75</sup> These labels are sometimes combined with the stronger label of 'causing turmoil against social order', which can be used as the basis for charging activists with this crime, and further isolating and stigmatizing them. It is surprising that national media including the Xinhua news agency have sometimes directly criticized such negative labeling of activists in reports that support the legitimacy of activist's claims and explain that a lack of access to legal channels has forced them to take other forms of collective and physical action.<sup>76</sup>

As the cases are not a representative sample it is impossible to tell at this point whether the government institutions generally support or oppose citizen action against pollution, and it is important to note that both occur. We can conclude, however, that when government institutions do fail to respond to citizen demands, the situation can escalate to the point where citizens take matters into their own hands.

### Legal obstacles

In taking action, whether political or legal, citizens often claim that the pollution is illegal, that their rights are violated, and that they are legally entitled to compensation. The letter of the law thus plays an important role in citizen activism.

73. Case 20.

74. Case 34.

75. Case 183.

76. Cases 8, 183, and 182; see [http://news.xinhuanet.com/environment/2008-02/15/content\\_7609366.htm](http://news.xinhuanet.com/environment/2008-02/15/content_7609366.htm), [http://news.xinhuanet.com/environment/2006-01/18/content\\_4065924.htm](http://news.xinhuanet.com/environment/2006-01/18/content_4065924.htm), and [http://news.xinhuanet.com/comments/2006-08/23/content\\_4992517.htm](http://news.xinhuanet.com/comments/2006-08/23/content_4992517.htm).



Chinese law contains an impressive and complex body of national and local rules which apply here, including rules on enterprise pollution, law enforcement, administrative litigation, and civil liability for pollution. While this body of law has improved, studies show that existing rules continue to contain weak, unfeasible, unclear, and incomplete elements that limit citizen rights, and offer leeway for polluting enterprises and discretion to government institutions.<sup>77</sup> These issues are particularly problematic for citizens who attempt legal action through civil litigation and try to sue companies for damages. A study of such cases in the sample used here brings out five legal obstacles that citizens must overcome to win and get due compensation.

The first legal hurdle is providing evidence of the damages. When damages occur citizens may not yet have thought of initiating legal action, and fail to gather sufficient evidence to prove their losses. This is, of course, more troublesome in cases which involve one-time pollution violations, such as leakages or accidents, than in cases where pollution is continual. For many sorts of damage a certain amount of technical expertise is required which victims themselves do not have, and for which they must depend on experts from law firms, NGOs, or local environmental or other authorities, including for instance agricultural or fishery bureaus. Such expertise is especially necessary for damages related to physical health, where statistical evidence is often needed to show that the incidence of disease is abnormal.<sup>78</sup> Mental health damages have also been difficult to prove, as they are less easily ascertained and also require expert opinions.<sup>79</sup> An additional complication has been that despite increasing legal clarity about exactly what types of damages are eligible for compensation,<sup>80</sup> in practice judges have made inconsistent decisions about non-material health and psychological damages. In some courts pollution victims can get compensation for these damages while in others they are refused.

A second legal obstacle is that the plaintiff has to demonstrate the existence of a polluting act, which is difficult in some of the cases studied. Here plaintiffs encounter some of the same problems as they realize too late that they need this evidence and also often expert support.<sup>81</sup> An additional problem is that enterprises do their best to hide pollution. In one case studied, a company added a certain kind of substance to the water making it impossible to detect that the original pollution had created a pH level that exceeded the relevant water quality standards there.<sup>82</sup> In another case, even a report by a local EPB attesting to the existence of indoor pollution was deemed insufficient evidence because the court ruled that it lacked details about 'the scope of the pollution'.<sup>83</sup>

77. Alford and Liebman, 'Clean air, clean processes?'; Asian Development Bank, *Reform of Environmental and Land Legislation in the People's Republic of China* (Manilla: ADB, 2000); Peerenboom, *China's Long March toward the Rule of Law*; Van Rooij, *Regulating Land and Pollution in China*.

78. See for instance Cases 29, 4, and 42.

79. Cases 37 and 31.

80. See *The Explanation on Several Issues of Psychological Damage Compensation in Civil Tort Cases* made by the Supreme People's Court in 2001, and *The Explanation on Several Issues of Personal Damage Compensation Cases* made by the Supreme People's Court in 2003, which provided detailed rules on immaterial and psychological damages.

81. See Case 18 which is about the technical challenges of measuring certain kinds of pollution.

82. Case 34.

83. Case 29.

The third legal obstacle is finding evidence for causation. Since a 2001 Supreme People's Court (SPC) ruling, the burden of proof for causation has been reversed and plaintiffs no longer have to prove a causal connection between the polluting act and their damages. The SPC made this ruling in recognition of the difficulty pollution victims have in gathering such evidence.<sup>84</sup> Nonetheless, in some of the cases studied, local courts ruled against plaintiffs because they were not able to provide evidence for the causal relationship between the polluting act and the damages incurred.<sup>85</sup> The reason why this continues to happen is that the ruling has still not been codified into China's Civil Procedure Law, leaving room for some ambiguity.

The fourth obstacle discussed here is shared liability by the plaintiff. In many of the cases studied the plaintiff was not awarded full damages because the court ruled that the plaintiff had himself been partly responsible for the damages. In some cases involving destroyed crops or fishponds, the plaintiff was believed to have used inferior production processes that had made their products of inferior quality in the first place. In other cases involving pollution spills, plaintiffs were thought to have taken insufficient steps to prevent the spill or prevent further damages from happening.

The fifth legal obstacle is procedural and concerns the Chinese limitations on legal standing in environmental compensation suits. Here two issues are at stake. First whether Chinese citizens are allowed to sue for pollution damages collectively through class action suits and second whether public interest litigation is allowed. Both continue to be hotly debated issues, with the first now seemingly approved in the law and the latter still not allowed.

Class action can be important in cases where there are many victims, as it helps save litigation costs and directly creates pressure on the company which is faced with one large lawsuit instead of many smaller ones. At present the law clearly stipulates that class action is allowed. See for instance art. 55 of the Civil Procedure Law and art. 88 of the new Water Pollution Prevention and Control Law.<sup>86</sup> In 2005, however, the Supreme People's Court issued a notice that can limit class action suits. The notice proscribes that courts can split up class action suits if they find that 'it is not easy to handle the case as a class action suit'. In addition the notice redirects jurisdiction over class action suits to courts at one level lower than in normal procedures. As Wang has noted, this may strengthen the effects of local protectionism in these cases considerably.<sup>87</sup> This decision is an example of how the Chinese state has sought to reduce public pressure and control and prevent social unrest.<sup>88</sup> As Fürst notes, restrictions on class action can have important consequences for lawyers and litigants as it increases the legal work and costs as claims need to be made separately.<sup>89</sup>

84. See *SPC Opinion on Several Issues concerning the Application of Civil Procedure Law of People's Republic of China*, art. 74/77.

85. For examples see Cases 131 and 29.

86. Alex Wang, 'The role of law in environmental protection in China: recent developments', *Vermont Journal of Environmental Law* 8, (2006–2007), pp. 192–220.

87. *Ibid.*

88. Cf. Randall Peerenboom and Xin He, *Dispute Resolution in China: Patterns, Causes and Prognosis, Rule of Law in China: Chinese Law and Business* (Oxford: The Foundation for Law, Justice and Society and The Centre for Socio-Legal Studies, University of Oxford, 2008); Fürst, *Access to Justice in Environmental Disputes*.

89. Fürst, *Access to Justice in Environmental Disputes*.

Public interest litigation offers the advantage of allowing civic organizations to sue companies in cases where direct victims are not available, or are unable or unwilling to do so. Despite much support for it amongst Chinese environmental law scholars and practitioners,<sup>90</sup> so far, this type of litigation has not been allowed in China, probably because of fear about creating a legal forum for political and civic action. In an earlier draft of the new Water Prevention and Control Law, a provision allowing such litigation was adopted, advocated by Chinese environmental lawyers. The provision was deleted from the later drafts as lawmakers objected to having such a rule in special environmental regulation. They ordered that public interest litigation should be further researched during the amendment of the Civil Procedure Law, before it could be further developed for inclusion in environmental law.<sup>91</sup>

### Intermediaries

The access to justice literature further highlights the importance of intermediaries that aid citizens in finding an effective remedy for their grievances.<sup>92</sup> In the cases studied important intermediaries included lawyers and legal aid centers, the media, and civil society organizations.

Lawyers play an important role, especially in legal action. Without representation it is highly unlikely that citizens can win in court. Lawyers are necessary to help gather evidence, prepare legal reasoning, represent clients in court, and oversee the execution of judgments if the case has been won. In most of the legal cases studied here, plaintiffs hired lawyers to plead on their behalf. They often do so after having tried other courses of action such as complaining to the local EPB, and sometimes even after organizing protests.

In the case sample studied here many lawyers were specialists working for or with the CLAPV legal aid center for pollution victims at the China University of Politics and Law. This is one of the few centers offering such specialized legal assistance. Through its hotline, CLAPV volunteers provide initial legal information pollution victims can use to defend their rights, while selecting a tiny fraction of cases to help victims start litigation. CLAPV has, over the last eight years, received over 10,000 complaints from aggrieved citizens, but was only able to get directly involved in 104 cases.

The sample studied here is, however, not representative as a portion of cases comes from the CLAPV website. It is highly likely that in average cases citizens will have trouble finding proper legal assistance. There are few specialized environmental legal aid centers such as CLAPV, and for normal legal aid centers environmental cases may prove highly challenging given the specific legal and scientific expertise they require. For ordinary lawyers, helping citizens sue enterprises or governments may not be enticing as it is a high risk undertaking with little chance of getting paid much.

90. For an overview see Rachel Stern, 'Towards environmental public interest litigation? Proposals for legislative change', paper prepared for Natural Defense Council, Beijing, April 2008.

91. Based on interviews with scholars and officials involved in the drafting and deliberations of this new law, May 2008, Beijing.

92. Cf. Anderson, 'Access to justice and legal process'.

Pressed for money and strictly supervised by justice departments, Chinese lawyers have been known to select cases based on their profitability and low sensitivity.<sup>93</sup>

It is hard to blame lawyers who stay away from these cases. They are highly complex, not just legally, but also in terms of gathering evidence and in larger collective cases organizing and managing the victims. The work is not always rewarding, as there is little money to be made, and victims sometimes do not appreciate the help they get. One influential environmental litigator told me after winning a large collective case:

After hearing the verdict I was so happy that we had won. However, my clients were unhappy that they had not been awarded as much compensation as they had hoped for. Had I lost they would have blamed it on corrupt court officials, but now that we had won they blamed it on me.

She also expressed her dissatisfaction that the clients involved failed to mention all she had done for them when interviewed by national media.<sup>94</sup>

Environmental lawyers are also obstructed by the state, which will try to control their work as it does for any sensitive cases. Even the All China Lawyers Federation has not been helpful as it has adopted a new rule that forces lawyers to ask for approval before starting any case involving more than ten plaintiffs.<sup>95</sup> In some cases lawyers have even been directly targeted by enterprises and local authorities. An example is the case of lawyer Wu Lihong who has been fighting a legal battle against polluting enterprises and local authorities in the Taihu river catchment area. Over the years, unidentified men carrying knives have threatened to cut off his hands and feet and his windows were broken several times. Local police also arrested him about ten times. Finally, half a year after he had initiated an administrative lawsuit against SEPA, Wu was prosecuted and sentenced to three years in prison on swindling and blackmail charges.<sup>96</sup>

The media is also an important intermediary for citizen action against pollution. The media has helped citizens unearth facts, and get attention for legal and political action and the obstacles citizens face. In some of the cases studied, a range of influential media sent reporters to carry out local investigations into the pollution, the damages, the role of local institutions and local court proceedings.<sup>97</sup> In most cases it was national level media who reported about local injustices, being careful not to blame national policies. However in some cases the media reports opinions that are clearly sensitive also in national level politics. This happens when national media supports collective action and even the use of violence. The Xinhua press agency, for example, voiced strong support for local villagers protesting against the move of a polluting factory from a rich urban residential area to their land: 'When faced with the havoc caused by industrial pollution, we do not hope that farmers chose for "collective silence", when they have the right to express the pursuit of their interests'.<sup>98</sup>

93. Ethan Michelson, 'The practice of law as an obstacle to justice: Chinese lawyers at work', *Law & Society Review* 40, (2006), pp. 1–38.

94. Based on an interview, May 2008.

95. Peerenboom and He, *Dispute Resolution in China*.

96. See Case 5.

97. For examples see Cases 8, 20, 21, 34, and 169.

98. Case 8.

One clear example of the power of media involvement is a case of citizen action in peri-urban Kunming. Here local citizens who had been trying to get compensation for pollution-related damages called the local Yunnan News to report an illegal spill caused by a local chemical fertilizer company called NCFC. The following day this provincial newspaper ran a large front-page article reporting that the NCFC had caused a large environmental disaster destroying the local environment and farmers' interests. However, the paper had failed to verify the facts of the matter properly and blindly printed what local farmers had told them. It turned out that NCFC had not been responsible, and the local EPB had established that a nearly bankrupt neighboring enterprise's rusted installations had caused the accident. But the newspaper article had an immense impact on NCFC. Angry Kunming citizens called factory management to demand an explanation. Some of their clients also voiced their concerns and NCFC's reputation was damaged. Local farmers surrounded the factory for three days, not letting anybody in or out. The police had to end the protest and free the factory personnel. When factory management demanded that the newspaper print a rectification, the editor-in-chief flatly refused. When asked why they did not go to court, the NCFC manager said, 'The media is very powerful. If we would sue, their printed word could crush us long before the case would close'.<sup>99</sup>

Another example of media influence is the Xiamen PX case, where a national news media report in *Phoenix Weekly*<sup>100</sup> supporting local protestors helped sway public opinion and gain higher level support to prevent the construction of an immense and highly polluting factory near residential areas.<sup>101</sup>

In other cases media support has been less influential.<sup>102</sup> In one case the national *Legal Daily* wrote a critical piece about the prosecution of farmers protesting against pollution entitled 'Farmers trying to stop pollution become defendants'. As a result of their piece, all major national media came to the local court to report on the case, including the *People's Daily* and Chinese Central Television (CCTV),<sup>103</sup> but their scrutiny had only a limited effect. The farmers were, in the end, sentenced to prison and even had to pay compensation to the factory. Similarly, fish farmers in Henan province were able to attract media coverage from the popular national news show *Law Today (Jinri Shuofa)*, without much effect on the polluting firm or on local authorities.<sup>104</sup>

As the cases here were in part derived from media sources, they are not a representative sample. Many pollution victims have trouble getting the media to report about their grievances and attempts to find a just remedy. Fürst shows in her study of Inner Mongolian pollution victims how important the right connections (*guanxi*) with the media are. In cases where there was wide media coverage the victims were helped by NGO activists with good contacts in the national media in Beijing. In cases where such contacts did not exist, getting media attention was difficult, no matter how desperate the victims were. Obstacles include the costs of

99. Van Rooij, *Regulating Land and Pollution*.

100. See <http://news.ifeng.com/phoenixtv/73020766223859712/20070530/908176.shtml>.

101. Case 169.

102. See Cases 20, 21, 28, and 29.

103. Case 20.

104. Case 21.

personally contacting reporters, reporters' reluctance to get involved in sensitive cases, or outright corruption amongst reporters.<sup>105</sup>

Civic organizations are also important intermediaries for citizens taking action against pollution. There has been much attention for China's 'green movement', which some estimate consists of over 200,000 people participating in civic environmental organizations.<sup>106</sup> Studies of such organizations conclude that they operate well because they are 'embedded',<sup>107</sup> meaning that they operate in close relation to the formal state structures, while refraining from direct opposition or larger political demands. By doing so they have been able to develop 'informal ties with the Central (and local) Party-state', allowing them 'to gain considerable political leverage and maneuvering space'.<sup>108</sup>

Such scholarship has, however, failed to analyze what role these embedded organizations play in pollution related cases, especially in helping aggrieved citizens. In the activist cases studied here, apart from the CLAPV cases, NGOs were absent. Interviews with several activists working for some of the major environmental NGOs have taught me that few environmental NGOs work on industrial pollution, and only a handful are involved in direct action against polluting enterprises or negligent governments, or help citizens to take such action. Apart from CLAPV, one interesting NGO that does directly help activists is 'Shouwang Jiayuan'. This is a Beijing-based organization that seeks to arouse citizen action against pollution by finding and training activist leaders in areas with serious water pollution, clearly going beyond the confines of the embedded approach where confrontation is avoided.

Most Chinese pollution victims are thus unlikely to be helped by an environmental NGO. It seems that embeddedness precludes many NGOs from helping victims take action, as this would often pit them against powerful local governments and enterprises, affecting their careful political balancing act. The few successful organizations that have done so, like CLAPV and Shouwang Jiayuan, have had to be very careful. CLAPV limits its work to legal advice and Shouwang Jiayuan avoids foreign funding in order to retain a purely Chinese image. Both organizations try to stay away from overtly political cases directed at goals other than environmental protection. In addition, neither organization has been established as an independent entity; they are both within the confines of universities. Even with all the care they take these organizations can get into trouble. Shouwang Jiayuan has had its activities closely monitored by China's internal intelligence agency. It has had to relocate out of Tsinghua University because the leadership there was pressured to let them go, and it has now moved to Renmin University, whose leaders are also being pressured to refrain from providing an institutional shelter for the group. Even worse, one of Shouwang Jiayuan's core members was recently arrested.<sup>109</sup>

105. Fürst, *Access to Justice in Environmental Disputes*; Cf. B. L. Liebman, 'Watchdog or demagogue? The media in the Chinese legal system', *Columbia Law Review* 105, (2005), pp. 1–154.

106. See <http://www.clapv.org/new/show.php?id=1709&catename=mtbd>.

107. Peter Ho, 'Embedded activism and political change in a semiauthoritarian context', *China Information* XXI, (2007), pp. 187–209.

108. Ho and Edmonds, eds, *China's Embedded Activism*, p. 11.

109. Based on interviews with environmental NGOs conducted in May 2008.



## The role of polluting enterprises

Polluting enterprises have not remained neutral or passive in all of this, and they play an important role in obstructing citizen action against pollution. In cases where citizens have successfully initiated litigation, despite the many existing obstacles, defending companies have tried various kinds of stalling tactics, to make trials expensive for the often poor litigants. One way is through appealing clear-cut lost compensation decisions in the hope that this will give them a better bargaining position. Enterprises have similarly used stalling tactics outside of the courts when entering into negotiations with aggrieved citizens, reaching settlements (sometimes through mediation) which were then not executed and so forcing the citizens to take action again. These tactics are similar to what companies have done with EPBs, telling them that they will clean up when forced to do so, and then continuing to pollute.<sup>110</sup>

Some enterprises have also resorted to violence to stop political activism. In several of the cases studied, local enterprises, sometimes backed-up by local police, have used physical violence to disperse protesting or blockading citizens. In the worst cases they even did so after the protest or blockade had ended, out of pure retaliation. In one case villagers who had been protesting severe pollution caused by a local iron mine, which allegedly had led to 40 cancer deaths in one township in two years, had blocked the road to the mine. The enterprise running the mine then organized a team of 100 people to go to the village. The villagers were severely beaten up and so frightened that they spent the night on top of their roofs or in the nearby hills.<sup>111</sup>

Another tactic has been to buy off the farmers through paying a limited amount of damages, in return for which they should stop their action; and while in many cases monetary compensation is exactly what aggrieved citizens want, receiving compensation instead of ending the polluting activities is problematic. This is especially so in cases where there are severe health effects which compensation may soften but not stop or prevent from further developing. A good example is a case from a Chongqing township where 40 cases of cancer occurred within two years, allegedly caused by the local paper industry. A leader of one of the factories involved told reporters: 'As long as we compensate (for economic damages related to crops), there is no problem'.<sup>112</sup>

## Conclusion

Chinese citizens have taken political and legal action against pollution. They have done so after they developed grievances based on the recognition that pollution had damaged their health and material interests. Citizen activism should be seen as a process that progresses from pollution to grievance and from grievance to remedial action. During this multi-faceted process citizens learn about the effects of pollution and may decide to take one or several forms of action. This decision, as well as the action selected, is influenced by a range of economic, social, political, and

110. See for instance Cases 20, 34, and 29.

111. Case 43.

112. Case 42.

legal factors. As this has been an explorative study, many questions remain, opening up an agenda for further research.

It is still difficult to establish exactly what effect different types of citizen action have on compliance and enforcement. An important question is which types of action have been most effective in controlling pollution and providing citizens with a proper remedy for their grievances. The datasets used here offer some guidance for answering this question. Government statistics of citizens' complaints and administrative enforcement show clearly that when there are more complaints local agents enforce more rigorously, issuing higher fines.<sup>113</sup> However, we know little about whether filing a complaint or threatening to file a complaint has a direct effect on the polluting enterprises. In the cases studied here, there was no indication of such an effect. For petitions to higher levels of government, the available data show little success, and petitioners are often reported to try other courses of action after the petitioning institutions did not react to their grievances. Here also further study is warranted as the successful petitions may not be widely reported in the sources consulted here. Citizens have at times been successful in court, winning cases against polluters, and getting compensation for their damages. Of the 66 pollution related tort cases in the *Chinalawinfo* database,<sup>114</sup> that form part of the dataset of cases studied here, 45 were successful. Of the administrative cases studied here, there were several where citizens either won, or were able to force the government into a positive settlement;<sup>115</sup> and while this database is not representative of all Chinese cases and may in fact have a strong bias towards model-type cases, it does show that citizens are able to win cases against polluting firms. In most cases citizens get a certain amount of compensation, often significantly lower than what was claimed. However, whether the outcome of the case influences the pollution behavior of the company or the enforcement activity of local authorities remains difficult to ascertain. Collective action and protests have been quite successful, at least in the dataset studied. The dataset contains examples of how protests, even when the protesters themselves were beaten up, arrested or prosecuted, did create stronger law enforcement and direct pressure on polluting companies to meet the protesters' demands.<sup>116</sup>

There are many obstacles that can hamper citizens when attempting action against pollution and there is still much we do not know. Empirically, we need to gain a better understanding about how the characteristics of citizens and the communities in which they live, their ability to organize and coordinate action, as well as their social and political resources, affects their willingness and ability to act. Perhaps more important, further study is needed to analyze the meaning of pollution related activism for China's legal and political development.

Underlying many of the obstacles to citizen activism against pollution are political constraints. China is and remains an authoritarian state with limited freedom of press, freedom of association, freedom of speech, freedom of demonstration, and lacking an

113. B. Van Rooij and Carlos W. H. Lo, 'A fragile convergence, understanding variation in the enforcement of China's industrial pollution law', unpublished paper, available on file with the author, 2008.

114. See [www.chinalawinfo.com.cn](http://www.chinalawinfo.com.cn).

115. Cases 5, 14, 20, and 21.

116. Cases 2, 3, 6, 8, and 169.

independent judiciary. This affects citizen activism in many ways: it complicates gathering trustworthy information about pollution and governmental responses; it makes it difficult for NGOs to create non-localized organizations that openly defend environmental interests, which is important especially for citizens that are highly dependent on local polluting sources of income; it undermines access to and effectiveness of the courts which operate in conditions where they are directly paid and managed by local governments with close ties to local industry; it makes governments less responsive to citizen complaints; and it makes organizing petitions and demonstration risky. All of this has meant that many citizens with legitimate claims against illegal pollution have had trouble finding legitimate ways to deal with their grievances, and in many cases they ended having to opt for acceptance or direct opposition, sometimes including violence instead of 'rightful resistance'.<sup>117</sup> Future research could draw on environmental activism cases to contribute to the body of work on China's changing state–society relations and contentious politics, studying how citizens develop strategies to cope with the political restraints of the authoritarian system, which so far has not incorporated pollution related activism.

Citizen activism against pollution sheds some new light on the study of Chinese civil society. It shows that, apart from 'embedded activism' by environmental civic organizations, there is also activism by citizens who try different legal and political pathways to find remedies for their grievances. Citizen activism takes less account of political sensitivities as desperate pollution victims try every strategy available to them to get attention for their cause. When initial non-confrontational options such as negotiations with the company and complaints to the EPB fail, citizens resort to provocative and sensitive forms of action such as petitions and protests. This pits them against local and sometimes national governmental interests. Their action is then sometimes labeled turmoil and activists are arrested and prosecuted. In these cases citizens are often not able to get support from civic organizations, especially those that are embedded and extra careful not to upset the sensitivities surrounding their relationship with the state. The result is that in these cases activists operate in isolation, lacking the help of state institutions and often also of NGOs. They have trouble framing their action as rightful, especially if they have to react against violence, sometimes adopting physical force themselves. Isolated activism by citizens and social organizations seems to be an overlooked and perhaps also a newly developing form of social action in China that requires more study, as do the links between embedded organizations such as CLAPV and isolated activists. In addition, further study needs to be carried out on the support of national news media for prosecuted isolated green activists, which seems to be significant albeit with little effect.<sup>118</sup>

Health played an important role in many activist cases against pollution. In many cases studied health aspects were serious, with cancer villages or townships as the worst examples. Health impacts were a major factor in the long process of developing

117. Cf. O'Brien and Li, 'Suing the local state'; O'Brien and Li, *Rightful Resistance in Rural China*; Ching Kwan Lee, *Against the Law, Labor Protests in China's Rustbelt and Sunbelt* (Berkeley, CA: University of California Press, 2007); Carl F. Minzer, 'Xinfang, an alternative to formal Chinese legal institutions', *Stanford Journal of International Law* 42, (2006), pp. 103–179.

118. Case 169.

awareness about the effects of pollution in cases where pollution has been a structural long-term problem rather than incidental, and seems to have influenced a transformation from awareness to action, especially in cases of collective action such as protests. Health effects are also what drew media attention and support for the often isolated activists against pollution. The importance of health in these cases is not absolute, however, as many citizens have become activists largely for economic reasons, ending their actions once compensation was paid, even though the pollution problem at hand had not been solved. Here the problem seems to be poverty and inequality, perhaps combined with sufficient knowledge and awareness of health effects. Health has also challenged pollution activism, as the complex linkages between pollution and disease have made awareness a slow process and collecting evidence for this relationship, even though not required by law, difficult. Here expert advice on the health effects of pollutants and statistical evidence for abnormal disease occurrences are important.

The role of health in the development of grievances and the progress and success of different types of action is an important topic of study for future research. Such research could delve deeper into how citizen perceptions of health and pollution develop into grievances and action. It could also probe how perceptions about the impact of pollution on health and the importance of health influence environmental institutions and enterprises targeted by citizen action. Such research could inform policy, by showing how concern for health can improve the effectiveness of environmental regulation.

In conclusion, it seems that China faces a rocky road in terms of citizen activism against pollution. While embedded organizations and pro-environmental government officials have been able to slowly make China's political agenda greener, there is still much resistance to the implementation of this agenda in everyday practice. Meanwhile pollution continues, and will be difficult to control or decrease given China's continued economic growth. As long as environmental authorities and local governments remain unresponsive, and as long as courts remain difficult to access and ineffective, pollution victims are likely to continue to chose political action, regardless of the constraints they face.