Yu Wang

The making of Environmental Law in China

UPPSALA UNIVERSITY

Master’s thesis in Global Environmental History
Abstract


This thesis analyses the history and politics of environmental law in China and its applications today. Looking back at the formation of China’s political system, from the administrative organ to the legal system, the thesis gives an overview of the long term roots in traditional political ideology in contemporary Chinese political practice. The history of environmental law is discussed in detail and the complexity of central, provincial and local governments and legislative organizations is discussed. The negotiation between government and enterprise, as a first part; through the environmental impact assessment law, and as a second part the relationship between government and individual referred to here as public participation is high lightened. I will analyse in detail particular case studies such as the Xiamen PX project and the Tianjin explosions. As I will show Although China’s environmental protection department has regulatory responsibilities of a unified supervision and management of environmental protection this supervision exist only on a theoretical or nominal level and the negation between different political interest on local, regional and national scale hampers the implementation of the environmental law in China.

Keywords: Juridical tradition, environment law, lawhistory EIA, Public hearing, Public participation

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Department of Archaeology and Ancient History,Uppsala University, Box 626, 75126, Uppsala, Sweden.
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1. Introduction

1.1. A Wake Up Call?

An environmental documentary about China air pollution called *Under the dome* was shown on the February 28, 2015, a Saturday just two days before the preceding of the meetings of the National People’s Congress and Chinese People’s Political Consultative Conference. This was an important and very influential self-financed documentary film about air pollution in China produced by Chai Jing who is a former and famous journalist from China Central Television (CCTV). The documentary was streamed on major internet platforms, such as Tencent and Youku without interference from censors as you know that China is keeping strict control on international video player website today, it is not allowed to look through YouTube in mainland of China. Abundant discussion about the film also took place online. Within three days of its release it was viewed more than 150 million times on Tencent. The film not only openly criticises state-owned energy companies, steel producers and coal factories, but also pointed the inability of the Ministry of Environmental Protection to act against the big polluters. Although the Communist Party’s publicity department confidentially ordered the film to be removed within a week, the documentary had great repercussion in the whole Chinese society, stirring a public discussion on the increasingly serious environmental pollution crisis.

On the night of the 12th of August 2015, half a year of the Chai Jing’s documentary *Under the Dome* had been released, a series of explosions killed over one hundred people and injured hundreds of people in a container storage station at the Port of Tianjin. As of 12th September 2015, the official casualty report was up to 173 deaths, 8 missing, and 797 non-fatal injuries. The cause of the explosions was not immediately known, but Chinese state media reported that at least the initial blast was caused by unknown hazardous materials in shipping containers at a plant warehouse owned by Rui Hai Logistics, a firm specializing in handling hazardous materials. It is not known what chemicals were being stored at the site, according to local reports, in addition to vast quantities of sodium cyanide and calcium carbide, 800 tonnes of ammonium nitrate and 500 tonnes of potassium nitrate exploded. On the 17th of August, the deputy director of the public security bureau’s fire department told CCTV: “Over 40 kinds of hazardous chemicals were stored on site. As far as we know, there were ammonium nitrate and potassium nitrate. According to what we know so far, all together there should have been around 3,000 tonnes.

In Chinese media and public debate these on the documentary by Chai Jing and the explosions of the Port of Tianjin came to symbolize the inefficiency of Chinese Environmental Law in protecting its citizens. Since the first pollution control program in 1972, until 2015, there are more than 30 laws and regulations relating to the management and protection of the environment, resources, energy and clean production, as I will discuss here. An economy of recycling has been promoted in China in order to prevent pollution and to protect the environment. The increasing incidence of

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2. A famous Chinese company whose subsidiaries provides media, entertainment, internet and mobile phone valued-added services, which is one of the largest internet company in the world.
3. This control programme was called the *Beijing Guanting Reserve Water Pollution Control Project.*
environmental conflict/disasters as the Xiamen PX project (2005) to the Tianjin 812 explosion in 2015 has made the Chinese public aware that the environmental pollution has not been resolved as what the public had been led to believe.

In recent years China has started to emphasis sustainable development, making greater efforts to balance the high rate of economic development and environmental protection. The so-called green economic model is put into the strategy of economy development. For China this is crucial as it faces depletion of resources and energy day by day and also great problems with pollution. In debates in and outside China it is often stated that the main obstacle for solving Chinas environmental problems is that there is a lack of a relevant law. The recommendation that China must establish the relevant legal system as soon as possible has therefore become the formula answer. In the documentary Under the Dome Chai Jing (2015) interviewed an official of the Environment Protection Department, who refers to the department as ‘a toothless tiger’. This expression fits well with the general perception of the capacity of the Environment Protection Department to enforce law. However I insist on that it is unconstructive to simply dismiss Chinas environmental policy as a failure, neglecting the efforts that have and is being made by China. As I will discuss here the matter is complex; China has had various environmental laws in place for a long time but there appears to be great problems in exercising them, despite the fact that both state and municipal authorities may be genuinely ardent to do so.

The constant repetition of the statement that we need an appropriate environmental protection law makes us believe that the problem of environmental pollution will be solved tomorrow as long as the law is enacted today. The one-side emphasize on establishing the environmental law, ignore those important factors that influence and restrict the execution of the law which could be one reason to explain the awkward situation China today is facing that today; the more pollution laws the worse pollution is getting. However, China has enacted eight pollution control laws, 15 natural resources laws, over 50 environmental protection administrative regulations, over 150 departmental regulations and other regulatory documents. In addition China has produced more than 1,300 national environmental standards, more than 1,600 local environmental regulations and has approved and signed 51 multilateral international environmental treaties. Since 2013 to 2015, there more than 4258 pollution cases have been reported and recorded through the environmental protection hotline, covering from atmospheric pollution, noise pollution, dust pollution until lack of environmental impact assessment and so on. Despite the number of laws and the latest revision of the environmental law, environmental protection is working poorly in China. This goes to show that the law system itself might be faultless as a legal document and perfectly constructed, but a fact that cannot be ignored is that from beginning to end the implementation of the law is made by individuals and the ‘people factor’ during implementation of the law will also decide the result of law. Furthermore, some elements such as history and culture will definitely influence how people react and handle the law.

Here I take an historical view of the shaping of the environmental law and the context in which has been interpreted and applied. I also bring a both temporal and institutional depth to the issue by looking at the formation of the political and law system in China, comparing the differences and continuities between old traditional system and today’s China. One such continuity is the ideology which emphasizes moral governance rather than a governance that manage by law. Another continuity is how the law system has been shaped by the conditions of the country of

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China; its huge population, diverse geographies and ethnicities that combined with a rapid economic growth rate in the present, are important factors to result in the inefficient of environmental protection process.

My personal interest in this matter has a long history, before I came to Sweden, I had studied seven years in law in China from bachelor to master of administrative law. After that, I worked for four years in the People’s Procuratorate in Zhen ping County (An Kang City, Shannxi province) and spent half a year worked for a law office in Beijing in 2010. This work experience was instructive for building my understanding of how the praxis of the law is shaped, and how the direction of interpretation and implementation is shaped in complex ways.

1.2. Questions

The focus in this thesis will lie on analyzing the various environmental laws in China, the context in which they were introduced, the possibilities of their application and how they have been exercised and the potential problems in their implementation. An underlying question is also how do we understand the role of the government during the time of environmental protection issues?

More specifically, I will proceed to ask in chapter 2 on how do the different organs of the People Republic of China influence the implementation of environmental protection; what is the relationship between the government and the party, the administration and the judicial system. In chapter 3-4 I will present a historical overview of laws systems in China first a deep time summary of the philosophy of law and then more broadly explaining the present day legal system. These chapters together illustrate the ambiguity of power and procedure which allows and admits jurisdiction to local governments in dealing with different local conditions; a condition which has resulted in a big gap between good legal principle on overarching levels in the governmental structure but poor execution of low in the bottom levels of governmental structure. In chapter 5-7, I will analyse how the environmental law works in practice first in terms of impact assessments and then on the basis of specific case examples where I will explore how the environmental law, the Environment Protection Department, the municipality regulations and enforcements interact to mitigate and enforce the environmental laws. Lastly I will draw on the case studies presented to discuss what is the reason for the Environment Protection Department is regarded as ‘a toothless tiger’ when it comes to environmental protection issues?

1.3. Material and methods

The primary source of this thesis lies in the analyses of the law texts themselves and the relationship and the different levels of law in China. Here I have the Chinese original text but reference them here using the English translation from official governmental websites.

I also analyse the governmental structure of China to discuss how the law is implemented through the administrative system mainly on the basis of an analyses of the constitution and how it prescribes the relationships between entities and the law making structure. I have also used the constitution of the communist party in China to analyze the close relationship between party and government and how party policy deeply influenced administrative issues. Here I have the Chinese original but reference them here using the English translation from official governmental websites.

Further, I have looked at specific case studies and discourses around them to analyse the implementation of the law. Here, I have focused on the aspects of 1) public right and disclosure, 2)
Environmental Impact Assessment 3) Mitigation and sanction. For this part I have used media reporting and also available official websites some of which I have translated from Chinese.

The thesis is divided into three major parts which composed by seven different chapers. First part (chaper 2 and 3) will focus on the structure of China, including political system (communist part, the administrative organ and the legal system); The second part (Chapters 4,5,6 and 7) will focus on the environmental law and the processes of environmental impact assessment systems and public hearing. Here I also analyse the relationship between government, emprises and citizen. I will discuss specifically the reasonability of government must take in whole protect process through the analyses of four case studies of environmental crises and public engagment. The last part (Chapter 7) I will give a short dicsussion and summary of the main points raised in the thesis.

1.4. Law in Chinese Environmental History

Most studies on environmental protection law in China is related to a single law department and using case studies focusing on a particular law, as for instance the focus on the law and regulation on air pollution. However, Jin Wangs study *The reaction and exploration: China’s path on Environmental law* give a comprehensive overview about China’s environmental law development in past forty years since the time China first joined the international environmental protection meeting in Stockholm in 1972. It provides frame for understanding how China’s environmental law changed day by day. Beside, Mark Elvin’s *The retreat of the elephants: an environmental history of China* from 2004 is a landmark book about how Chinese environment and landscape and the relationship with its people in history and today. Elvin summarized 4000 years collision between nature and human in China’ history, and also introduced the interaction between the traditional culture and the surroundings. Moreover, Jared Diamond also mention uses China as a case study examples in his book *Collapse*; in the chapter ‘Contemporary China’ Diamond paints a gloomy picture of Chinas environmental state and suggests that Chinas long continuity of unity is a factor for understanding Chinas environment today. Diamond also comments on the law system writing that:

“China’s existing environmental laws were largely written piecemeal, lack effective implementation and evaluation of long-term consequences, and are in need of a systems approach.”

Here, Diamond falls into the general argumentation that the cause for Chinas environmental problems is the ineffective law that Diamond claims has been constructed ‘piecemeal’. But as I will show here, and which is also shown by Jin Wangs study the problem and history of environmental law in Chinas is more complex than as portrayed by Diamond.

I will start this thesis with introducing the political system of China as the operating results of environmental laws always have a close relationship with the official political system. It is difficult to separate out the environmental law from the broader political system (Palmer 2015) and this may

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be so particularly in China where the manner in which the official system of environmental liability operates is clearly deficient in a number of important respects.
2. Politics and law in China

“The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People’s Republic of China.” (Chapter I, Article 1) “All power in the People’s Republic of China belongs to the people. The National People’s Congress and the local people's congresses at various levels are the organs through which the people exercise state power.” (Article 2).  

China has political system is divided into four kinds of organs with different functions: The National People’s Congress(NPC) that is legislature or law-making organ, the government that is an administrative organ, the judicial organs and the pro-curatorial organs that has judicial but also supervision authority. The politics of the People’s Republic of China (PRC) takes places in a framework of a socialist republic run by a single party – the Communist Party of China (CCP). The leadership of the Communist Party is stated in the Constitution of the People’s Republic of China. State power within the People’s Republic of China (PRC) is exercised through the Communist Party, the Central People’s Government and their provincial and local representation. The President of China is the titular head of state, serving as the ceremonial figurehead under National People’s Congress. The Premier of China is the head of government, presiding over the State Council composed of four vice premiers and the heads of ministries and commissions. As a single-party state, the General Secretary of the Communist Party of China holds ultimate power and authority over state and government.

2.1. The political system

2.1.1. Communist Party

The Communist Party of China (CPC) continues to dominate government since 1949. In all governmental institutions in the People’s Republic of China, the party committees at all levels maintain a powerful and pivotal role in administration. The formal organization of CPC is regulated by The Constitution of the Communist Part of China. Although the CPC declares that the party accepts the rule of law and obey the constitution; it also assumes the CPC as the leader of political organizations and ideological mission. The party organs are arranged in parallel with state organs, strengthening the CPC as the leadership in China. Both central and provincial government organizations have a party group in order to affect the making of policy, and the implementation

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9 The Constitution of the People’s Republic of China. adopted respectively at the First Session of the Seventh National People’s Congress (on April 12, 1988), and then the First Session of the Eighth National People’s Congress (on March 29, 1993) on the Second Session of the Ninth National People’s Congress (on March 15, 1999) and lastly on the Second Session of the Tenth National People’s Congress (on March 14, 2004) (see below).
and execution of the party’s ideology. China’s daily political work is carried out by the Secretariat, the Politburo, the Standing Committee of the Politburo and General Secretary. They are all elected by the central committee of CPC. The Politburo and its Standing Committee are the highest decision-making organs of CPC. The Secretariat is responsible for administrative work. The CPC also has a central disciplinary commission; this is an internal organization of CPC that takes responsibility for investigating policy implementation. Members are elected by the National People’s Congress Party and take responsible for the Central Committee.

The Chinese Communist Party Constitution stipulates that the party must ensure that the legislative, judicial, administrative organs, economic, cultural organizations and people’s organizations work with initiative and independent responsibility and in unison. The CPC is represented in all of levels within the state organs, and in general, party cadres also take charge in them which affects the discipline inspection and the procuratorate. For example, in cases of suspected dereliction of duty, corruption and other crimes an inquiry is commonly made first by discipline inspection commission of the party, and only after this the case is transferred to the Procuratorate in charge of public prosecution. This has been the case with several corruption cases and this procedure has shortened the investigation period, but over long term it weakens the authority of judicial branch, especially that of the Procuratorate. This underlies the complex relationship between Party and Government, and the latent clashes between the policy, individual behaviour and judicial actions that can potentially obstruct environmental law implementation. Here I would like ask you to pay attention to the role of communist party in whole political system of China. As illustrated there is a close relationship between communist party and government system. The communist party exerts its huge influence on government by poliburo from legislation (National People’s Congress) to justice (Courts and Prosecutors), from police control to law making, enforcement and implementation.

One key factor in Chinas political and lawmaking and enforcing system is that the administrative level always determines the configuration of resources and power. In order to understand how the complex administrative relationship (administrative level) in government, could be a factor to explain why law could not get enforcement, I have to ask you first pay attention on the administrative level of government official, especially the relationship between the party and the government. This relationship may help explain the process of the environmental pollution cases brought up in chapter 7 and why an official from environmental protection department describes the department as ‘a toothless tiger’. Further, is is important to note the executive-level agency official level interaction. In China, the ruling principle is that the party (here refers to CPC) should take responsibility on leading the country, this means that practically, the party department level is of higher authority than the same level of other government departments.

2.2.2. The highest organ of state power – The National People’s Congress

The Constitution of the People’s Republic of China was adopted at the Fifth Session of the Fifth National People’s Congress and promulgated for implementation by the Announcement of the National People’s Congress on December 4, 1982. This was later amended in accordance with the Amendments to the Constitution of the People’s Republic of China in 1988, 1993, 2005.
The constitution stipulates that China’s political organisation builds on the National People’s Congress system stating that: “All power in the People’s Republic of China belongs to the people. The National People’s Congress and the local people’s congresses at various levels are the organs through which the people exercise state power”. The phrasing ‘All power’ refers to that all the legislative, jurisdiction and executive power belong to the people, which means that the constitution confirms the supremacy of people. Further the constitution states that:

“The State organs of the People’s Republic of China apply the principle of democratic centralism.”

The term ‘Democratic centralism’ refers to the main operating principle of government. Under this principle, democratic discussions on decisions are encouraged, but when it comes to the actual decision or execution of a decision, it must focus on strict doctrine. The core of this phrasing is that democracy is just one part in China’s political system and that the constitution promotes a democratic style, but establishes the Party’s leadership as the core of governance. In the third article it is specified that the national organization of the People’s Republic of China, including the National People’s Congress and the Chairman of the People’s Republic, is paramount to the state council of the People’s Republic of China, and the Central Military Commission of the PRC (Fig 1). It is also paramount to local people’s congresses and local people’s governments at various levels including also the people’s courts and the people’s Procuratorate. This system is referred to as The People’s Congress System. In other words, the National People’s Congress and the local people’s congresses at various levels are the organs through which the people exercise state power.

The relationships of the legislative system of China is stipulated in the constitution by the articles 2 and 3:

“The National People’s Congress of the People’s Republic of China is the highest organ of state power. Its permanent body is

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12 The Constitution of the People’s Republic of China, article 3, 2004: “The National People’s Congress and the local people’s congresses at various levels are constituted through democratic elections. They take responsible to the people and subject to their supervision. All administrative, judicial and procuratorial organs of the State are created by the people’s congresses to which they are responsible and by which they are supervised.”
The two articles fix the relationship between the National People’s Congress (NPC) and its Standing Committee. Looking at the judiciary and the executive branch there is the normal political system of a separation powers; the legislature has legislative power, and the judiciary has the final interpretation of the Constitution and the law, while the administration owns the administrative power. However, the National People’s Congress does have the right to amend the Constitution as authorized by the provisions of the Constitution of PRC. The Standing Committee (as a permanent body of the National People’s Congress) has taken the function of legal interpretation in matters (exempting the Constitution), which means, that the legislature now exercise legal interpretation while the judiciary in China only take charge of jurisdiction. At the same time, because China does not set up a constitutional court, the highest judicial organ is the Supreme People’s Court located in Beijing’s. But, the Supreme People’s Court has no right to make judgment directly over the Constitution.

It is essential to stress that the representation of Standing Committee in China is important for readers to understand how the administrative system works under it in practice. The National People’s Congress is held on first two weeks of March each year, which means most of the time is the Standing Committee takes charge of governing rather than the NPC itself. This is regulated in the article 59: “The National People’s Congress is composed of deputies elected from the provinces, autonomous regions, municipalities directly under the Central Government, and special administrative regions, and of deputies elected from the armed forces. All the minority nationalities are entitled to appropriate representation.” It is stated in the constitution that: The National People’s Congress exercises the following functions and powers: (1) to amend the Constitution; (2) to supervise the enforcement of the Constitution; (3) to enact and amend basic laws governing criminal offences, civil affairs, the State organs and other matters. Further the function of The Standing Committee of the National People’s Congress is expressed as: (1) to interpret the Constitution and supervise its enforcement; (2) to enact and amend laws, with the exception of those which should be enacted by the National People’s Congress; (3) to partially supplement and amend, when the National People’s Congress is not in session, laws enacted by the National People’s Congress, provided that the basic principles of these laws are not contravened; (4) to interpret laws.

Those rules show that according to constitution, beside the National People’s Congress as the law-making authority, its Standing Committee is also authorized to enact and amend laws. In addition, as the highest organ of state power, the National People’s Congress is granted the power of amending the Constitution. At the same time, the article that “The Standing Committee of the National People’s Congress exercises the following functions and power: (1) to interpret the Constitution and supervise its enforcement…” implies that essentially the Standing Committee also partly have the right to explain the constitution, thus in way they have amending power on the constitution. This is because explaining the law means creating or at least adding a new meaning on the interpretation and functioning of the law.

As should be clear already in the constitution of China there is a complex set of relationships prescribed between the National People’s Congress, its standing committee and the National Party. As has been suggested above this tension is also present in provincial and local settings. These relationships are fundamental for understanding the way law is formulated, exercised and enforced. This is also the reason why I have spent some time quoting the constitution provisions here, in order to help the reader understand the effectiveness and limitations of the laws and rules enacted by the Standing Committee. Further, basically constitution is treated as the fundamental contract between state and people in order to clarify the duty and power of State and the people’s right. Constitution is the first and most important original basis on understanding China’s political structure.

2.2.3. The administrative organ of China

The administrative system of China is based on a series of regulations and practices in regard to the composition, system, power and activities of the state administrative organs. The central administrative includes: the central administrative organs under the system of the National People’s Congress and the leadership of the central administrative organs over local administrative organs at various levels, as explained above. It means that the State Council is the central administrative organ and the highest administrative organ of the state. The State Council is composed of the Premier who has overall responsibility for the work of the State Council. In addition, the executing authority is the supreme state administrative organs, the premier, vice-premiers, head of ministers and ministers in charge of commissions, the people’s bank, an auditor-general and a secretary-general. The ministers assume overall responsibility for the work of the ministries and commissions.

Under the state council, the central people’s government, is the highest organ of state power, the executing authority is the supreme state administrative organs. The secretary-general of the state council shall, under the leadership of the premier of the state council, be responsible for routine work. The state council shall establish an office by the secretary-general to the leadership.

2.2. The Administration of China (Relationship between government and provincial/local government)

The relationship between government and provincial/local government is regulated by the constitution into provinces, autonomous regions, and municipalities directly under the Central Government. For historical reasons there are four kinds of entities in the second administrative level. For example, in second administrative level the main form are the provinces

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18 The Constitution of the People’s Republic of China, article 85, 2004 “The State Council, that is, the Central People’s Government, of the People’s Republic of China is the executive body of the highest organ of state power; it is the highest organ of State administration.”


20 The Constitution of the People’s Republic of China, article 30, 2004 “The administrative division of the People’s Republic of China is as follows:(1) The country is divided into provinces, autonomous regions, and municipalities directly under the Central Government; which means that except the central government at the top or the first level within political system.”
such as Hebei province, Shannxi province, Guangdong province and others, amount to 23 provinces in total. In addition to this Beijing, Shanghai, Tianjin and Chongqing are municipalities which lie directly under the central and at the same administrative level as the provinces. There are also five autonomous regions such as Tibetan autonomous region, Xinjiang autonomous region, Ningxia autonomous region, Guangxi autonomous region and Neimenggu that lies on the same administrative level as the provinces (Fig. 2). Hong Kong and Macao are also two of the special administrative regions that apply their own law system and independent administrative system. In the third administrative level provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities. Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities. Both counties and autonomous counties are further divided into townships, nationality townships, and towns.

All autonomous regions, autonomous prefectures and autonomous counties are areas with a high degree of independency from national administration as regulated by the Regional National Autonomy Law of PRC\(^\text{21}\). The law prescribes that organs of self-government shall be established in national autonomous areas as local organs of the state power. Further, the organs of self-government shall exercise the power of autonomy within the limits of their authority as prescribed by the constitution. It means that the minority nationalities, under unified State leadership, practise regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. As I will discuss in Chapter 3, regional and local autonomy is has a long tradition, and existed also in the traditional Chinese system as a way to negotiate administration of different ethnic groups (today under the fundamental principle of ‘democratic centralism’\(^\text{22}\)). By this law and other laws, the State can modify laws and policies of in the light of exiting local conditions. As I will discuss in more detail in Chapter 2.3.1 the Regional


National Autonomy Law also affects the law system hierarchy. This to me is a very Chinese way to handle different ethnic group in administration under the fundamental principle of ‘democratic centralism’. In China’s political system ideology, centrisms as ideology of the ruling class has played an extremely important role in setting up a top- down order inside China as an empire as will be discussed in Chapter 3. Regional people are allowed to set up so-called self-governance in regional autonomous areas. Admitting their rights of local autonomy in administration, is in part to fulfil the ideal of ’democracy‘ but in practices is is also a flexible way of exercising state power. I will discuss it also in Chapter 2.3.1 about the law system hierarchy.

2.3. The Legal system (The judicial organs and the pro-curatorial organs)

In order for the reader to understand how the environmental laws have been formulated and implemented I will introduce China’s legal system here. Because the judicial organ and the procuratorial organs follow the same organizing principle I need to explain the judicial organs as example. The legal system is defined by the constitution, the people’s court is a judicial organ of China which composed by a Peoples Court and a Special Peoples Court. China has set up four levels of judicial and pro-curatorial systems in accordance with administrative divisions.\(^{23}\) The Supreme People’s Court is the highest judicial organ and the people courts act at various local levels, together with military courts and other special people courts.\(^{24}\) One characteristic of the judicial system in is the division of the People Court into two parts normal people courts and special court such as military courts, railway courts, forest courts and so on. The constitution states that the peoples procuratorates of the State organs for legal supervision\(^{25}\) including the Supreme People’s Procuratorate that is the highest and the people’s procuratorates at various local levels, military procuratorates and other special people’s procuratorates.\(^{26}\)

The procuratorates system is constructed similarly as the judicial. Under the PRC Constitution, the judicial system is made up of the Supreme People’s Court, the local people’s courts, military courts and other special people’s courts (Fig. 3). The local people’s courts are comprised of the basic people’s courts, the intermediate people’s courts and the higher people’s courts. The basic people’s courts in turn are organised into civil, criminal, economic and administrative divisions. The intermediate people’s courts are organised into divisions similar to those of the basic people’s courts, and are further organised into other special divisions, such as for instance the intellectual property division. The higher level people’s courts supervise the basic and intermediate people’s courts. The people's procuratorates also have the right to exercise legal supervision over the civil proceedings of people’s courts of the same level and lower levels. The Supreme People’s Court is the highest judicial body in the PRC as it supervises the administration of justice by all of the

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\(^{23}\) The Constitution of the People’s Republic of China, article 123, 2004: “The people’s courts of the People’s Republic of China are the judicial organs of the State.”

\(^{24}\) The Constitution of the People’s Republic of China, article 124, 2004: “The People’s Republic of China establishes the Supreme People’s Court and the people’s courts at various local levels, military courts and other special people’s courts.” The Constitution of the People’s Republic of China, article 127, 2004: “The Supreme People’s Court is the highest judicial organ”.

\(^{25}\) The Constitution of the People’s Republic of China, article 129, 2004: “The People’s Republic of China establishes the Supreme People’s Procuratorate and the people’s procuratorates at various local levels, military procuratorates and other special people’s procuratorates.

\(^{26}\) The Constitution of the People’s Republic of China, article 132, 2004: “The Supreme People’s Procuratorate is the highest pro-curatorial organ.”
people’s courts. The people’s courts employ a two-tier appellate system. A party may appeal against a judgement or order of a local people’s court to the people’s court at the higher level. Second judgements or orders given at the same level and at the higher level are final.

Fig 3. The court system in China (made by author).

First judgements or orders of the Supreme People’s Court are also final. however, the Supreme People’s Court or a people’s court at a higher level finds an error in a judgement which has been given in any people’s court at a lower level, or the presiding judge of a people’s court finds an error in a judgement which has been given in the court over which he presides, the case may be retried according to the judicial supervision procedures.

2.3.1. The law system hierarchy

China is a unified multi-ethnic country with a unitary political system. There has seven categories and three different levels cover the whole of the laws. The seven categories are the Constitution and Constitution-related, civil and commercial, administrative, economic, social, and criminal laws and the laws on lawsuit and non-lawsuit procedures. The three different levels are state laws, administrative regulations and local statues. The Law on Legislation of The People’s Republic of China\textsuperscript{27} states the State legislative is exercised by the National People’s Congress and its Standing Committee\textsuperscript{28}. As the supreme authority of China, the National People’s Congress enacts and amends criminal, civil, and state organ laws and other basic laws which sets the principles of the whole law department. The Standing Committee of the National People’s Congress enacts and amends laws (excepting those that shall be enacted by the National People’s Congress). During the period of prorogation of the National People’s Congress, the Standing Committee can make partial amendments and supplements to the laws enacted by the National People’s Congress, but such amendment or supplement must not contravene the basic principles of the corresponding laws\textsuperscript{29}. An example is the Environmental protection law of the PRC that will be discussed here in the

\textsuperscript{27} Law on Legislation of The People’s Republic of China, adopted at the 5th Session of the 7th National People’s Congress on March 15, 2000, amended in 2015.

\textsuperscript{28} Article 7, Section 1; Chapter 2: Laws.

\textsuperscript{29} “Law on Legislation of The People’s Republic of China”, article 7
coming chapters, this is a the fundamental principle of the whole law system related to the environment and was adopted by the Standing Committee, related laws, regulations and rules that formulated by other departments are therefore not allowed to violate it.

The laws and regulations system in China can be divided into two kinds depending on different formulate subject: that is central level and local level. In China’s multilevel legislative system, laws do not have the same legal validity when it promulgated by different level. The first central level laws are those which are formulated by National People’s Congress and its Committee, this also includes the laws formulated by Environmental Protection Department. Basically they are referred to as laws and regulations\(^{30}\). The National People’s Congress (NPC), focuses on the Constitution, basic laws, resolutions and decisions. Like the constitution of The People’s Republic of China is the foundation and the dominant legal department of China’s socialist legal system, and as such it is the highest law that all other sectors of normative legal documents has to be in in accordance with. The State Council – is responsible for administrative laws and regulations and other normative documents\(^{31}\). Ministries, Commission and Bureaus regulates department rules, regulations and other normative documents\(^{32}\).

The fact that laws and regulations system are composed differentially on central level and local level depending on different formulate subjects bring some troubles and confusions in the lawsystem, especially when it comes to the different regulations which are promulagated by different departments under the State Council. In theory, all State Council regulations should have the same validity, but in practice the matter is more complex as regulations might overlap and rule have jurisdiction over intercrossing fields (examples will be given in Chapter 7). The difference of specific provisions of laws will result in the selective procedures of both law enforcement and compliance. In the end these ‘selective’ procedures results in systemic problems of fragmented authority undermining effective enforcement in China as argued by Van Rooij and Wing-Hung Lo.\(^{33}\)

The effect of centralisation and de-centralisation of power when it comes to law has also been discussed by Kostka and Mol\(^{34}\) who argued that: “...the ambitious goals and regulations too often fail due to shortcomings in local implementation and civil society participation.” In China all of the


\(^{32}\) Examples are the “Circular on Adjusting Several Provisions on the Standards on the Elimination of Outdated Automobiles” (Jointly issued by the State Economic and Trade Commission, the State Development Planning Commission, the Ministry of Public Security and the State Environmental Protection Administration on Dec 18th, 2000).


legislature, judiciary and administrative organs are set up on the four different levels from centre, provincial, city and county. One of the results from the administrative system is that there has gap between good principal in the centre, and poor/bad enforcement on local level. Kostka and Mol called this a 'policy implementation gap’. This kind of gap does not only exist in environmental law and its enforcement, but also can be find very often in other parts of the legal and political system.
<table>
<thead>
<tr>
<th>Name</th>
<th>Formulate Body</th>
<th>Validity/ Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution</td>
<td>NPC, Standing Committee</td>
<td>The State, and in accordance with constitution</td>
</tr>
<tr>
<td>Law</td>
<td>The State Council</td>
<td>In accordance with constitution and nation laws</td>
</tr>
<tr>
<td>Administrative Regulations</td>
<td>The People Congress of Province, autonomous regions, municipality</td>
<td>Shall not contravene any provision of the constitution, national law and administrative regulations</td>
</tr>
<tr>
<td>Local Decrees</td>
<td>The People Congress of autonomous ethnic area</td>
<td>Shall not violate the basic principles thereof, and no variance is allowed in respect of any provision of the Constitution or the Law on Ethnic Area Autonomy and provisions of any other law or administrative regulations which are dedicated to matters concerning ethnic autonomous areas.</td>
</tr>
<tr>
<td>Autonomous Decrees</td>
<td>The People’ Congress of autonomous ethnic area</td>
<td>Shall not violate the basic principles thereof, and no variance is allowed in respect of any provision of the Constitution or the Law on Ethnic Area Autonomy and provisions of any other law or administrative regulations which are dedicated to matters concerning ethnic autonomous areas.</td>
</tr>
<tr>
<td>Special Decrees</td>
<td>The People’ Congress of autonomous ethnic area</td>
<td>Shall not violate the basic principles thereof, and no variance is allowed in respect of any provision of the Constitution or the Law on Ethnic Area Autonomy and provisions of any other law or administrative regulations which are dedicated to matters concerning ethnic autonomous areas.</td>
</tr>
<tr>
<td>Administrative Rule</td>
<td>The various ministries, commissions, the people’s Bank of China, the Auditing Agency, and a body directly under the State Council</td>
<td>Within the scope of its authority in accordance with national law, administrative regulations, as well as decisions and orders of the State Council.</td>
</tr>
<tr>
<td>Local Rules</td>
<td>The people’s government of province, autonomous regions, municipalities</td>
<td>Within the regulatory scope of the local jurisdiction</td>
</tr>
</tbody>
</table>
3. A short history of the Chinese traditional political system

“From the eighteenth century until today, from the time of the early Manchu emperors until the era of Mao and beyond, the Western images of China have repeatedly tended toward the extreme: …on one side, the horror image of Asiatic despotism ignorant of liberty and human rights; on the other side, the model of a polity ruled by philosophical mandarins.”

The Chinese legal code is a complex amalgam of political and legal theory and philosophy with deep historical roots. Before reviewing the emergence of the law system, in particular the environmental laws in China I will give a short summary of the history of political and legal theory and philosophy as discussed by historians in the context. Even though, China today is different from that of the previous empires I will argue here that the history of political and legal theory and philosophy is important for understanding the law system in the present.

Fig 4. Comparison between the old political system and today’s China (made by author).

3.1. The political tradition in China

In the eyes of the Chinese public, China and also Chinese culture have a deep sense of political engagement and long political tradition, despite the fact that 1949 the People’s Republic of China is defined worldwide as non-democratic state with Marxism Communist at its theoretical basis. Chinese society is a highly stratified society and, Karl A. Wittfogel used China as the prototype of oriental despotism characterised by: a strong centralized government, through the control of

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large public works that has enforced farmers into submission. China up until the last dynasty Qing was ruled by a feudal bureaucratic society. Some scholars also emphasize that an important feature of Chinese society is the existence of a gentry. The feudal bureaucratic system and the Gentry class-based elitism and oriental despotism have created a top-down authoritarian regime over time, all emphasizing centrism as a basis of rule. Centrism here is the connection between the highest centre of power and the grassroots level as mediated through the bureaucracy, to ensure that the nation will achieve the aim of administration, to maintain the empire.

For all the Chinese, the concept of Chinese people and China, lies in cultural meaning and identity, followed by the Chinese political sense, that is, when we think about China, we must avoid the drawing similarities with the formation of nation-states as that of the European historical experience. In a way, after the decline of the Roman Empire, the political authority in Europe has been shattered and failed to be exercised within the scope of an empire for many centuries. Napoleon’s successes in the early 19th century were already one of the biggest expansions that a European country had reached after the Roman Empire. However, in comparison, the size of the Napoleonic Empire was still quite limited compared with the extension of empires in China’s history, both spatially and temporally. As we know from history, China as an empire has not only maintained a unified empire, but has also continued to foster new empires. Since 221 BCE, when the Qin Dynasty first conquered several states to form a Chinese empire, the country has expanded, fractured and been reformed numerous times, but despite this as I will argue below the legal system has been maintained as a strongly centralised system exercising power through a well-built administrative system at the same time as it has maintained relative autonomy of the provinces. Further, as I will explain below, this political arrangement has resulted in a legal system (and a theory and philosophy of the legal system) that can be described as a combination of pragmatism and opportunism.

3.2. A brief overview of Chinese history

China, covering approximately 9.6 million square kilometres, is the world’s second-largest country by land area, and either the third or fourth-largest by total area, depending on the method of measurement. China is also one of the most populous countries in the world, with a population of over 1.35 billion and a unified nation consisting of many different ethnic groups. Fifty-six different ethnic groups make up the great Chinese national family. Concentrations of ethnic minorities

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38 Qing Dynasty, the last dynasty of China, which was govern by Manchurian (1632-1912).
42 The Han people accounts for more than ninety percent of China’s population, the remaining fifty-five groups are generally referred to as “ethnic minorities.” Next to the majority Han, the Mongolian, Hui, Tibetan, and Uygur peoples comprise the largest ethnic groups. China’s China officially recognizes 56 distinct ethnic groups, the largest of which are the Han Chinese, who constitute about 91.51% of the total population. The Han Chinese – the world’s largest single ethnic group – outnumber other ethnic groups in every provincial-level division except Tibet and Xinjiang. Ethnic minorities account for about 8.49% of the population of China, according to the 2010 census. Han people accounts for more than ninety percent of China’s population, the remaining fifty-five groups are generally referred to as “national minorities.” Next to the majority Han, the Mongolian, Hui, Tibetan, and Uygur peoples comprise the largest ethnic groups. The relation among China’s ethnic groups can be described as “overall integration, local concentration, mutual interaction.”
http://english.gov.cn/archive/china_abc/2014/09/02/content_281474985266381.htm
reside within predominantly Han areas, and the Han people also reside in minority areas, indicating that there have been extensive exchanges among China’s ethnic groups since ancient times. The population of minority group is the reason for why China has five autonomous regions such as Tibetan autonomous region, Xinjiang autonomous region, Ningxia autonomous region, Guangxi autonomous region and Neimenggu autonomous region in province level.

Over the millennia, Chinese civilization has been influenced by various religious movements. The ‘three teachings’, including Confucianism, Buddhism and Taoism, and have been significant in shaping Chinese culture. I will make a small discussion later on 3.3 about the philosophy of law in old China. Elements of these three belief systems are often incorporated into popular or folk religious traditions.

Generally, Chinese politics is a combination of internal and external influences. The Republic of China (ROC) overthrew the last dynasty in 1911, and ruled the Chinese mainland until 1949. After the surrender of the Empire of Japan in World War II, the Communist Party defeated the nationalistic Kuomintang in mainland China and established the People’s Republic of China in Beijing on 1 October: 1949. As the People’s Republic of China was established it did not destroy completely the traditional way of thinking and behaviour. On the contrary, there are similarities of continuity and connection between the communist regime and the old traditional rule. In one way, we could conclude that all societies are the products of its past history.

In this old- long history empire China, one distinctive feature of traditional politics is the clear boundary between the elites who hold power as minority and the powerless people at the base of that hierarchy, as has been discussed above. Correspondingly, the authoritative hierarchical structure of the whole of China reflects and is incorporated in social stratification at all levels of society. In the political elite group, the emperor was treated as the core and symbol of whole imperial power, but he shared power together with bureaucratic group that exercised power regionally and locally through the administrative system. Presently, the authoritative system still exists; but the Communist Part of China is the new core and symbol of central authority.

The Chinese Empire was governed through a model of national unity (especially the Chinese Empire in the first millennium), but also has experienced several continued periods of division. The Qin dynasty (BC 221- BC 207) is the first unified dynasty in Chinese history, that also brought a unified central government. The feudal dynasty and the bureaucratic system thus has been built over 2200 years, until the last emperor Pu Yi in last dynasty Qing abdicated after the 1911 Revolution. Although China has experienced more than 80 different dynasties after the Qin dynasty, the structure of the imperial system did not change fundamentally over these changing empires. Until today the model for governance is still very much in terms of a unified empire. Chinese people have long succeeded in creating an infrastructure to support this view through the constant re-creation and re-formation of the imperial system, and coupled ideological and organizational resources to support it.

To most ordinary Chinese people, Chinese people and culture has long been accustomed to have a supreme power, in the past this supreme power was related to the emperor, the prime minister and the Bureaucratic administrative system, today we call it the Chairman and the Communist Party. Only by understanding this, can one understand why the Communist Party’s China, since the establishment in 1949, could maintained itself even though it experienced the famine, the Cultural

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44 Examples are the Han dynasty (BC 202- AC 5, AC 25- AC 220) and also Tang dynasty (AC 618- AC 907).
45 Wong, R. Bin, 1997, p 146.
46 See similar discussion also in Wong, R. Bin, 1997.
Revolution, the Tienanmen Square massacre in 1989, the Bo Xilai case and through environmental crises. To me this is also an explanation on, why, as China is now becoming increasingly more open, Chinese people still accept that the non-democratic system in China does make sense and is reasonable.

Throughout China’s cultural tradition, the Chinese empire orientated a power balance around an extremely centralised (supreme) power. But the supreme power has been divided into two parts; the emperor’s power and the prime minister’s power. The emperor’s authority has actually been limited by the prime minister in a large degree. Thus the Emperor has not been the highest decision-making authority, as often portrayed: Especially in most of Han nation’s dynasties, including Qin, Han, Sui, Tang, Song, Ming and others, prime minister and most of elite involved in the administrative system had the real powers as entity, while the Emperor existence as a symbol (albeit the highest) of national unification taking responsible for ceremonies and worship.

The period when power was most centralised around the emperor occurred in the last Qing dynasty, which was ruled by a non-Han nation called the Manchu nation from north-eastern part of China. Considering that non-Han population was under extremely unequal conditions, in order to avoid challenges from the Han Chinese. The Qing dynasty concentrated the supreme power into the hands of the Manchu nation as a minority in China, as a kind of political self-protection. But this centralisation of power to the emperor himself was unusual for the history of China.

One important aspect of the political philosophy of China is the reference to ‘tradition’ even through regime changes. Today China’s political habits contain a series of political ‘traditions’ which partly come from the long history of the empire, including the last feudal dynasty, and partly from the influence of the Soviet Union. Perhaps it is precarious to say that those political traditions have not been changed, but at least, and this is the argument I want to make here, they have existed continuously to a considerable degree. These political traditions have sustained a level of performance in the political system, such as mixed autonomy of local governance, political ideology and morality as the official ideology and so on.

With this I want to emphasise that the so called ‘top-down’ hierarchical political system of China is not the invention of the Communist Party, but the continuation of the thousands of years of centralisation and allocation of power and the authorisation of it through the administrative system. The complexities of China’s population, the vast land area, multiple ethnic and religious compositions etc., also shaped politics. Administration had to take into account the geographic and environmental differences between provinces, between urban and rural areas, north and south, and between eastern and western regions. Administration also had to negotiate ethnic differences and the balance between majority and minority groups: China’s various nationalities include Han nation which is dominant and many other minority groups, either living together or separate. In order for a ruler to maintaining the symbol of highest authority, it has been necessary to admit the lifestyles and religions of ethnic group’s to avoid clashes between the ethnic groups.

These huge differences has, as I argue, determined China’s political system to ensure that power lies with the highest central authority (imperial emperor, or the ruling party the Communist Party modern China) but at the same time the uniqueness and autonomy at the provincial level is recognised, resulting in an ambiguous attitude between centralisation and decentralisation, as is still prevalent today (see Chapter 2.3.1.). In China’s political ideology, centrism of rule has played an extremely important role in shaping the Chinese empire by setting up a top-down order inside the Chinese society at the same time as it has also been adaptable in its way of exercising power. Thus, one of the political historical features of in China is the emphasis on the
ambiguity of power and procedures which allows and admits jurisdiction of local governments to deal with different local conditions.

3.3. Philosophy of Law in China

Through history an important means whereby central authority has governed has been through moral; law has merely been a tool to achieve the aim of government. The main ideology of China is Confucianism also known as Ruism which is a philosophical system. The particular emphasis on the importance of the family and social harmony in Confucianism, stress the value of self-cultivation and self-creation as the important way of maintaining social order. The core of Confucianism is humanistic; constituted in the belief that human beings are fundamentally good, improvable, and perfectible through an individual focus on the cultivation of virtue and maintenance of ethics. The legalism of Chinese philosophy is called Fa-jia, which emphasize political method in order to support the ruler in the management of the state. Confucianism and Fa-Jia’s differs in a fundamental way. The former focus on self-moral as principle, while Fa-Jia rejects it. This situation has as I suggest also affected the law system. One of the strongest prevailing trends in Chinese history when it comes to both political and juridical theory and philosophy is the tradition of pragmatism; here the law has long been treated as a tool, and its value has been assessed through the criteria of opportunism and pragmatism. Under the influence of this philosophy, law is not the highest authority in China, whether it is respected or not depends on the real purpose of law (historically to help rulers govern) and on the basis of its functionality. The legal instruments have been defined on the basis of mutual influence based on the traditional doctrine and government, and this philosophy of law has also shaped the legal systems which depend on the value and functionality as perceived by individual leaders, what can also be called legal instrumentalism.

3.4. People’s Republic of China (PRC) and contemporary Chinese politics

The first communist government in China was established by CCP from 1928 to 1934 stemming from the Jiangxi revolutionary base. From the beginning of this period, the Soviet model became

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47 Confucianism developed during the Spring and Autumn Period from the teachings of the Chinese philosopher Confucius (551-479BC), sometimes described as a religion.
48 Some of the basic Confucian ethical concepts and practices include rén, yi, and lǐ, and zhi. Ren ("humaneness") is the essence of the human being which manifests as a compassion, it is the virtue-form of Heaven
49 The term (fa-jia) was translated as Legalism as a classical school of Chinese philosophy, was introduced by the Chinese historian Sima Tan (c.165 BC – 110 BCE) in his essay, “The Essential Implications of the Six Houses of Thought.” (The other five schools are Confucianism, Daoism, Mohism, the school of Names, and the school of naturalists.)
50 Although the emperor acted as a patron of Confucianism, his policies and his most trusted advisers were Legalist.-An official ideology cloaking Legalist practice with Confucian rhetoric would endure throughout the imperial period, a tradition commonly described as wài rú nèi fǎ (Chinese: 外儒内法; literally: "outside Confucian, inside Legalist")
51 But after 1949 when Community Party set up China under the guidance of Marxism- Leninism and Mao Zedong thought, the law was also framed as the tool of class struggle (Mao Zedong Anthology, p 690).
one of the main directions in the formulation of the legal and law system that China would later develop. The entire legal system, including the Constitution, is deeply influenced by Soviet Union. For example, in the definition of the Constitution, the People’s Republic of China also believes that the Constitution is a tool of class struggle and a reflection of the will of the ruling classes, which means that it will be revised, modified or repealed through the changing relationship of the class forces. This interpretation is based on the Lenin’s view on the Constitution. This is another aspect to strengthen the influence of legal instrumentalism in China. Besides, since the last feudal dynasty -- the Qing dynasty collapsed in 1911, there have been only two influential and mass-based political parties, that is the Nationalist party and the Communist party. Both the basic organizational structure of national party and communist party in the 1920s was designed with Soviet advisers. The influence from Soviet model is also reflected in the government structure and organization after the 1949 establishment Communist China.

During the war against Japan and the civil war, this time on behalf of China’s legitimate government, the Constitution in place was the so called Republic of China Constitution. This was based on the implementation of legislative, judicial, executive, supervisory authority, and separation of powers, and is still valid in Taiwan today (lasting from 1912 until 2015). Between 1949 and 1954, the People’s Republic of China led by the Communist Party of China was established, but for political reasons China's national structure was kept as a temporary administrative system. In 1954 a new guiding principle was introduced with the first constitution of People’s Republic of China. China under Mao Zedong (1949-1976) China was wrecked through reforms and campaigns as a means to complete the ‘socialist transformation’ of the Chinese Communist state. The land and collectivisation reform, The Great Leap Forward (1957 to 1960), and the Cultural Revolution (1966-1976) were examples of such campaigns that paralysed China politically. The stated goal of the Cultural Revolution was to preserve the ‘true’ Communist ideology and re-impose Maoism thought as the dominant ideology in whole country, in reality it significantly affected China not only on economically but also on socially and politically and also environmentally as will be discussed in the next chapter.

The Great Leap Forward, also severely weakened the authority of the central state organs. In 1958, a new type of local administration called ‘the people’s communes’ appeared, that was intended to shift power to the rural areas. With the Cultural Revolution that broke out between 1966 and 1976, the spirit and principles of the 1954 Constitution was completely broken. Only in 1978, after the end up of the Cultural Revolution and the death of Mao Zedong, China adopted a new constitution called 1978 constitution; the original 1954 constitution was completely withdrawn from the historiography of China.

By 1982, an increasing pressure had been put on the Communist party to open up for reform. In order to meet the needs of economic reform and a market economy, a new 1982 constitution was introduced that has been in valid until today and that has been quoted extensively in Chapter 2. The 1982 constitution lays down the principles and foundations of the contemporary Chinese legal system.

The period from the 1980s until today has played an important role in shaping contemporary China. As discussed by He et al. The central Chinese government since the 1980s have given more autonomy to provincial, municipal and lower governmental entities because it was felt that

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centralised control was too inflexible and bureaucratic and that it was also hampering economic
development. Thomas and Senze\textsuperscript{54} similarly argued that since the 1980s, the operative scope of
administrative levels below the central government has significantly widened. Thus, under the
principle of economic growth, administrative power has partly been shifted from the centre to the
local especially the provinces, municipalities in order to according with the meet the needs of each
specific region.\textsuperscript{55}

\textsuperscript{54} Heberer, Thomas and Senz, Anja 2011.
\textsuperscript{55} Xia, Xinhua, 2007, Modern China: the research on Constitution and constitutionalism. Beijing: China legal
publishing house.
4. The making of environmental law in China

“The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards.”56

As the political system the Chinese legal code is a mix of custom and statute, largely focused on criminal law, though a rudimentary civil code has been in effect since January 1, 1987 and new legal codes have been in effect since January 1th, 1980. Continuing efforts are being made to improve civil, administrative, criminal, and commercial law. Since 1979, when the drive to establish a functioning legal system began, more than 301 laws and regulations, most of them in the economic area, have been promulgated. After China’s entry into the WTO, many new economically related laws have also been put in place, while others have been amended. Below, I will analyses the different Chinese laws in that regulate environmental protection in China and also discuss the context in which they were shaped. As a developing country, if we compare China with other developing countries, we can concluded that China started to build up the institutions for environmental protection from central level earlier than many other countries.

4.1. Law development in the 1970s

The Great Leap Forward and the cultural Revolution were aimed at transforming the natural environment to serve human needs. Mao Zedong expressed his philosophy of transforming nature in the following quote:

“If people living in nature want to be free, they will have to use natural sciences to understand, overcome and change nature; only then will they obtain freedom from nature.”57

Mao’s conceptualization of the relation between humankind, science and nature led to grave ecological destruction as has been discussed by many environmental historians58. The 1970s saw the end of the Cultural Revolution and this was also the starting date of environmental protection legislation in China, most likely as a response to the growing environmental problems. In 1978 (2

56 Constitution of the People’s Republic of China, article 26, 2004
years after the death of Mao Zedong) the revised ‘Constitution of People’s Republic of China’ 59 made provision on the environmental protection for the first time, formulated with the words:

“The State shall protect the environment and natural resources, prevent pollution and other nuisance.” 60

The inclusion of environmental in the new constitution may also be linked with the first international conference on environmental issues - The International Global Conference on the Human Environment of United Nations was held in Stockholm in June 5, 1972. Under the influence of Stockholm Environment Conference, the State Council of China convened the first national Conference on Environmental Protection in 1973, and promulgated the first legal document named the Several Provisions of Protecting and Improving Environment Draft. In 1974, the State Council also publicized a document on prevention of pollution of coastal waters. 61 This was the first regulation of coastal waters pollution prevention in China focusing on the prevention and control of pollution of coastal waters and especially on spill from oil tankers, Emissions of non-oil tanker ballast water, tank washings, domestic waste and other waste. During the 1970s, China also enacted a number of new environmental standards, in order to build up national environmental management and to obtain quantitative indicators of environmental health/threats. The inclusion of environmental protection in the 1978 national constitution also provided a constitutional basis for China’s environmental protection work and environmental legislation in the following decades.

4.2. The environmental law after 1979

“Public policies were put under observation in order to determine whether policy aims were being followed and goals reached. Effectiveness in task fulfilment and/or problem-solving in public affairs were the key issues.” 62

On September 13th 1979, the Fifth National People’s Congress passed the First Environmental Protection Law 63. This 1979 act was in accordance with the provisions regarding protection of the environment as formulated in the 1978 Constitution (quoted above). It was also constructed through the assistance of foreign experts on environmental legislation. The law specified the provisions of the principles of environmental protection including; basic system and pipe management measures, environmental impact assessment, the polluter’s responsibility, sewage charges. It also specified that basic construction project had to implement the ‘three simultaneous” as part of the mandatory legal system. In order to address the serious ratio imbalance between economic development and environmental protection the State Council issued a decision to strengthen environmental protection in the national economy. 64 This was complementary to the 1979 Environmental Protection Law but also specified a more comprehensive program of environmental protection. As I have explained in Chapter 2.3.1 regarding the law system hierarchy, the state council is supposed

59 The Constitution of People’s Republic of China (1978) refers to the version be revised after Cultural Revolution, was the third version of constitution since 1949.
60 “Environmental Impact Assessment Law of PRC”, October 25th in 2002, the Ninth Standing Committee
63 The Environmental Protection Law of People’s Republic of China (Trial) 1979.
64 The Decision of Strengthening Environmental Protection in the National Economy on the Adjustment Period.
to lay down administrative regulation and rule in order to complete the upper level laws. In this sense, the publication of the decision to strengthen environmental protection by the State Council could be interpreted as an attempt by the State Council to push the *Environmental Protection Law* into practise.

On December 26, 1989, the eleventh meeting of the 7th National People’s Congress Standing Committee adopted the ‘The environmental protection law of the People’s Republic of China”, which is a milestone of the work of environmental legislation and practice in China. Compared with the trial law of 1979, it signifies a much more defined legal framework with a clear definition of ‘environment”. Here is established the principle of ‘environmental protection and economic and social development in harmony’. The definition is important, as I want to ask the reader to pay special attention to as in the 40 years prior to the 1989 Environmental Law (since 1949 to 1989), the leader of China had expressed the principle that humans can and should conquer nature which means that the nature and environment was treated as object for utility rather than harmony as expressed in the 1989 Environmental Law.

After a thorough revision, a new Environmental Protection Law was enacted by the Standing Committee of the Twelfth National People’s Congress of China in April 24, 2014. It came into force from January 1, 2015 as ‘People’s Republic of China Environmental Protection Law”. The developing authority was the People’s Congress Standing Committee of China. The law serves to protect and improve the environment, to prevent pollution and other public hazards, to protect the public health, promote the construction of an ecological civilization, and promote a sustainable economic and social development. This concept of environment in the law refers to all the effects of human survival and development. It includes the whole variety of natural elements and artificially transformed ones, including air, water, oceans, land, minerals, forests, grasslands, wetlands, wildlife, natural heritage, cultural sites, nature reserves, scenic spots, and urban and rural areas.

The principles of environmental protection include protect priority, prevention, comprehensive management, public participation, and damage responsibility. The law states that all individuals and all organisations and bodies in the society have an obligation to protect the environment. It also states that various levels of the local governments must take responsible for the environmental quality within their respective administrative areas.

### 4.3. The validity of the environmental protection laws and governance structure

Depending on content the environmental protection laws could be divided into the following: Framework Provisions, Prevention and Control of Water Pollution, Prevention and Control of Air Pollution, Solid Wastes Management Noise and Vibration Management, Hazardous Chemicals Management, Natural Conservation and Biosafety, Environmental Enforcement, Pollution Discharge and Levying, Environmental Labels and Products, Environmental Engineering, Certification Management and EIA, Environmental Standards and Monitoring, Nuclear Safety.

Depending on the different law-making bodies and according to the *Law on Legislation of The People’s Republic of China* that regulates the structure for law making in China, the environmental laws could be divided into levels: First level relates to the protection provisions

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65 Diamond, Jared, 2005, also mention and discuss, p 373.

formulated by the NPC; the second level relates to the Environmental Laws formulated by the Standing Committee of NPC; the third level relates to policies and regulations formulated by the State Council and the forth level is related to local regulations (see Table 2).

The mixed autonomy of central and local governance, explained in Chapter 2, has had an important role in the failure of environmental policies. The structure of the administrative system, the ambiguity of legal subject has been suggested as one factor that affects environmental protection in China which also raised by Chai Jing on her documentary *Under the Dome* 67. As discussed by Heberer and Senz the state level sets generalised standards only that requires local interpretation and also modification of the law:

“In principle, the Centre formulates policies in the form of basic environmental ideas, thus putting the focus on issues considered urgent. Instead of precisely specified policies and legal norms, the party-state prefers to set generalised standards which require local interpretation and thus leave room for local modification.” 68

Lower levels of government depend more on the individual decisions of lower level officials rather than the formalised decision process that occurs in central governance 69. Generally, the attitude of local individual officials to which extent there is a need to protect environment rather than promote economic growth and development, is decided by the different economic conditions in different region. For example, the rich provinces like Beijing, Shanghai, Guangdong are in a much better position to tackle degradation and to implement prevention measures 70.

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67 Chai, Jing, 2015, *Under the Dome*.
68 Heberer, Thomas and Senz, Anja, 2011.
Table 2. Validity of the environmental protection laws (made by author)

<table>
<thead>
<tr>
<th>Validity level</th>
<th>Making body</th>
<th>Wording</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>First level</td>
<td>The NPC</td>
<td>The protection of the provisions of the Constitution, such as “The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards”.</td>
<td>Defines the basic principle of environmental protection in China and acts as a guide to environmental protection</td>
</tr>
<tr>
<td>The second level</td>
<td>The Standing Committee of NPC.</td>
<td>Laws such as <em>The Environmental law of PRC</em></td>
<td>The comprehensive law of environmental protection</td>
</tr>
<tr>
<td>The third level</td>
<td>the State Council, the State Environmental Protection Administration and other Administrations</td>
<td>Policies and Regulations Such as “Suggestions of the State Council on strengthening major activities of environmental protection”</td>
<td>Make sure laws are implemented</td>
</tr>
<tr>
<td>The forth level</td>
<td>the local People’s Congress and their standing committees</td>
<td>local decrees, autonomous decrees and special decrees</td>
<td>Make sure law fix to locally</td>
</tr>
</tbody>
</table>

Due to the fact that since the 1980s long-term of economic development as the primary management objective in China on all levels, the power and influence on policy of economic authorities is much more stronger than the environmental protection department within the inside of administration construction. As introduced in Chapter 2-4, the complex relationship not only exists among different administrative level but also between Party and government, centre and local levels. Here I will go further to point out that, the complex relationship even exist among the different departments inside of government. The difference in power is also another reason to explain the difficulties of pushing environmental laws into practise. I have mentioned already several times that the core of the Chinese political ideal is centrism. This centrism demands that lower level politics should always be consistent with centre and make sure the policy of centre will be implemented on local level. Since the 1980s, the major duty of local government has been to promote economic development rather than to protect environment. From this it is not difficult to understand that there may be emerging conflicts between the central policy (or guiding principle) and local interests. The policy maker in centre does not take potential negative impacts of environmental protection enforcement, such as loss of taxation revenues, employment and so on, into account. In the end the imbalance between national priorities and local interests result in the
implementation gap discussed by Kostka and Mol\textsuperscript{71}. In the literature there is a standing argument about the role of local government, some commentators\textsuperscript{72} has claimed that local government is the biggest obstacle to environmental policy implementation for the reasons that it has a lot of power but no strict control, at the same time as local government is also more inclined to be more development focused on the cost of environment. However, some other comments have pointed out that local governments have initiated many good practices to fit to the central’s mandates and have also built up their own green policies\textsuperscript{73}.

4.4. The development of the state environmental protection department

In 1972, more than 10000 fish that died suddenly in a reservoir called Guan ting Reservoir\textsuperscript{74} located in Yanqing County of Zhangjiakou City. Under the ideological dogma of the Cultural Revolution that focused on class struggle, some individuals in government claimed the cause of the mass death of fish was due to a poison made by a ‘class enemy’. As a result of the environmental crises the premier Enlai Zhou (First premier in China from 1949–1976) set up a commission, a leading group of researchers, in order to identify the cause of the fish mass death in Guan ting reservoir. This commission came to form the first environmental protection department in China.

In 1973, the government also began to set up a national agency called the office of Environmental protection leading group lead by the state council (the state central office). In 1982, the state council established the agency of environmental protection. This was in connection with the first institutional reform under and the agency was put under the Ministry of urban and rural construction and environmental protection, which later changed the name into simply the ministry of construction.

In 1984, the name was changed into the administrative of environmental protection which may perhaps indicate a stronger emphasis on environmental protection issues but the organisation still belonged to the ministry of construction. In 1988, due to another institutional reform in the state council, the Bureau of environmental protection was separated from the ministry of construction. This was because the bureau of environmental protection had become too dependent on the ministry of construction and was lying only at vice-ministerial level. In 1998, the administration of state environmental protection was upgraded to the ministerial level, then under the state council directly. This gave environmental protection more power as it had previously under the department upon which it was set to enforce regulation and monitor that they were followed. As it was now incorporated in the State Council, it could also participate in high level decision making and shaping of policy. This was finally confirmed when in 2008, environmental protection department (MEP) became a component department of the State Council.

The role of the environmental protection department of the State Council is to implement the national environmental protection with a unified supervision and management all over the country. Administrative departments of environmental protection at or above the county level shall

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\textsuperscript{71} See discussion also in Kostka, Genia and Mol, Arthur P.J. 2013.


\textsuperscript{73} For more examples of good and bad local practices see: “How to Spot a Fake Eco City?”. Available at http://www.chinadialogue.cn/article/show/single/ch/4488-How-to-spot-a-fake-eco-city (Accessed 1, December 2015)

\textsuperscript{74} Diamond, Jared, 2005, p 364. This river was declared unsuitable for drinking water only in 1997.
supervise a unified supervision of the conservation of resources and environmental protection within their respective areas of control.

4.5. Environmental Law and the problem of public disclosure

One problematic aspect related to the environmental law of China is the relationship between the law and public disclosure. According to the constitution article 26 (2004) quoted in the beginning of this chapter it is a basic and authority rule of the public to participate in environmental issues. As the fundamental law of environment protection, the Environmental Protection Law also stipulates that all units and individuals shall have the obligation to protect the environment and right to report pollution or damage to the environment.

Both of the two laws belong to the principle of information disclosure and the right of the public to have information and report information. This is stated both in the Regulations of Information Disclosure adopted by the State Council, and in the law Measures for Public Participation in Environmental Protection adopted by MEP. The latter law has been effect since September, 2015 and Article 5 does establish that Environmental Impact Assessment should be encouraged by the state but does not designate responsibility or procedures. The importance of public disclosure is further specified in the MEP Article 11:

“While developing a plan that might cause adverse environmental impact and directly relates to public environmental interests, the department for the special plan development shall hold demonstration or hearing, or solicit related units, experts and the public by other means for comments on the draft environmental impact report before the draft plan is submitted for approval.”

Here, the requirement of hearing is specified as under the responsibility of the department ‘for the special plan development’. There is also no specification of how/and in which situation the hearing should be held. From the perspective of Chinese law and practice, the ways in which the public can participate is not only through holding hearings but through expert consultation and other. The administrative departments and the decision-making departments have loose range on choosing the way public participation. This means that the administration is allowed to choose whether to use a hearing or consultation experts as a basis for public disclosure and participation.

The principle of public enclosure also builds on the condition that the public has all the tools available to form an opinion. As follow the government and administration department must disclose all of the information related to the environment timely, through for instance impact assessments that are publicly available. However, as has been shown by past people participation consultation processes (see Chapter 5.4., 6.1.) the main interest of the government is usually economic. Therefore when the government chose expert consultation, they also select experts who have the same standpoint as the government to facilitate decision. Formally politicians can say that the procedure is in compliance with the laws, but in essence it lacks public participation during the policy making and decision process. Herein lays the most serious conflicts between government and individual citizen when it comes to environmental pollution today.

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75 Environmental Protection Law of People’s Republic of China, article 6: Quoted in the beginning of Chapter 5.

76 Environmental Protection Law of People’s Republic of China, article 5: Quoted in the beginning of Chapter 6.
4.6. Government, individual and enterprise

If we look at the pollution circular chain illustrated in fig 9 we find that there are three parties with stakes in environmental protection. So far I have discussed the link with the individual or citizen (through public participation and disclosure) and I will develop this further in Chapter 5. But another important stakeholder is of course enterprises that are regulated through the environmental impact assessment system (see Chapter 6). The special characteristic of environmental protection is that, among the triangle relationship within powerful government, economic powerful enterprises and individual citizens, the citizens have a weak position. As we all know that the enterprise aims to maximum the pursuit of economic interests. Despite recent advances in Corporate Social Responsibility, relying on the so- called ‘self- moral regulation’ when it comes to enterprises will not achieve the aim of environmental protection. Lack of information and inability to get the relevant information in time makes it impossible for individual citizens to safeguard their rights or to safeguard environment. The government must take a very active role under such a situation. Because, in addition to the enterprise, the government is the only subject which has the ability and power to control all the details around production and to predict the environmental impacted under produce activities. The environmental impact assessment system is one of the key ways of monitoring production, also, the environmental impact assessment report made on this basis should
be regarded as the main basis for the government to authorise a project or not as will be discussed in Chapter 6.

In 2011, The MEP also recognized the big gap between the need for environmental protection and the capacity of government to meet the demand\textsuperscript{77}. Therefore MEP announced that it will establish a database of sources of environmental risk of major economic sectors and create an information-based professional environmental risk management system.\textsuperscript{78}

The weakness of MEP also has effects on the enforcement and monitoring of the law. As an example can be given, the \textit{Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution}\textsuperscript{79} has not been quoted as a basis for any lawsuit since it became effective in 2000. Chai Jing argues that the reason for the lack of lawsuits based in this law is that “the subject of law enforcement is not clear” however it is also linked with lack of monitoring and enforcement.\textsuperscript{80}

4.7. Discussion

The ambiguity of the power and procedures that is seen in the law system and the implementation of environmental law is, as I have explained here related to both history and geography. One of the features of ruling in powers in China has been to centralise power while at the same time emphasising procedures which allows and admit local government’s jurisdiction over laws and regulations that concerns local conditions. If we look back on China’s history and take geography, and population into consideration, it is reasonable to free local administration to be adaptable to different local situations. Just like Jean, Jacques Rousseau recommended in 1762:

\begin{quote}
“long distances make administration more difficult…Administration therefore becomes more and more burdensome as the distance grows greater; The same laws cannot suit so many diverse provinces with different customs, situated in the most various climates, and incapable of enduring a uniform government”.\textsuperscript{81}
\end{quote}

The tradition of ambiguity between centralism and autonomy continues also under the tradition the Communist Party, emphasising the central decision making under the principle of democratic centralism, as discussed in Chapter 2. Local especially the provincially is much more focus on urban planning, construction, or labour and social security rather than environmental issues. The

\begin{itemize}
\item \textsuperscript{79} “Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution” adopted at the 15\textsuperscript{th} of Standing Committee of the 9\textsuperscript{th} National People’s Congress on April 29, 2000; promulgated by the President of the People’s Republic of China on the same date, effective as of September 1, 2000.
\item \textsuperscript{80} Chai, jing, 2015, Under the Dome.
\item \textsuperscript{81} Jean Jacques Rousseau, 1762. The social contractor principles of political right, article 9, the people (continued). See also the relevant quote: ”As nature has set bounds to the stature of a well-made man, and, outside those limits, makes nothing but giants or dwarfs, similarly, for the constitution of a State to be at its best, it is possible to fix limits that will make it neither too large for good government, nor too small for self-maintenance. In every body politic there is a maximum strength which it cannot exceed and which it only loses by increasing in size.”
\end{itemize}
ambiguity is embodied also in the law: the law does not define clear rules or conditions but recommends as a principle to “adopt measures suiting local condition”. Law on substantive regulations is specific but used to ambiguous when it comes to procedural regulations. In other words the laws and policies are specific as a principle, but at the same time they give administrative space or freedom to local governance. For example, over the past few years China has enforcement environmental regulations, and has officially embraced public participation as a way to bolster environmental protection. This has been done through public hearings, strengthened access to information including intergovernmental coordination meetings, advance briefings, surveys, solicitations of opinion, as well as government hotlines and Internet communications. However, as I will discuss in more detail in Chapter 5 there is a lack of mandatory provision on when a hearing is demanded, when solicitations of opinion instead of public hearing should be made. This is what I described as ‘the ambiguity of the procedures’. The consequence is the government agency or related office tends to choose intergovernmental coordination meetings or solicitations of opinion rather than holding public hearing in order to avoiding facing resistance from public directly and to be able to make a final decision as quickly as possible.

Under the system of Communist Party and democratic centralism there is also an added complexity lying in the fact that the effectiveness of state departments may depend on involved individual’s political position in the Communist Party, rather than function of department. This is also make sense on the environmental protection issues in China. The effectiveness of the departments could play depends on the person’s political position in communist party, rather than the function of department. This also affects the law-system and environmental protection issues in China. The dilemma of environmental protection is two-fold; firstly the position of Environmental Protection Department is not as important as Economic Department, secondly the long-terms of emphasis of policy lies on economic development, ignoring the long-tern consequences of a lack of overall strategy of natural resources and environmental protection. For example, the Economic Department, as one of the departments under the State Council has the same legal status as other departments, but as promotion of economic development is the main aim and task of government, the National development and Reform Commission which take charge of promoting economy under the State Council have a much stronger influence then the Environmental Protection Department during the decision- making process at the State Council meeting. In this situation, even though a certain project might lead to pollution in the future, the proposal from the Environmental Protection Department could still be rejected in the end. For instance, Gong has described how local administration/administrators have a wide leeway in shaping and implementing local policy but are also more inclined to focus on the protection and promotion of local social and economic interests rather than on environmental concerns.

The impact of the fuzziness between powers and procedures in environmental law results in expanding the power of government both on state especially on local level. In addition, I have argued that the problem of public disclosure remains one of the most serious challenges to Chinese environmental law. The best way to ensure public participation is to formulate specific rules in order to protect public’s right to information on procedure in terms of information, assessment and procedures of control and mitigation. In the following chapters I will elaborate on these principles.

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on the basis of a few case study examples where the environmental law and practices linked to it has been tested beginning with information and public participation.
5. Testing the public participation principle

“All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.”84

In the previous chapters I have spent a lot of text on introducing the political system of China, its long history, constituted by a huge population, big geographical differences and many ethnic groups. Especially I have explained how China’s administrative system works through different administration levels from central to local, and also what is the relationship between different parts of the government. All those factors plays an important role in understanding why China’s pollution is becoming worse and worse even though there has more than 30 environmental-related laws. Those factors are a part in explaining how laws work or not. In one way, law is just some words written on paper, it make no sense without enforcement. Jared Diamond (2005) argued that:

“Many environmental protection laws and polices [in China] that have been adopted on paper are not effectively implemented or enforced […] China’s exiting environmental laws were largely written piecemeal, lack of effective implementation and evaluation of long-term consequences, and are in need of a systems approach.”85

The starting point of administrative law is that unlimited power will result in abuse of power (John Locke stated the similar opinion in his book Two treatises of civil government86. That is to say, the greater the power is, the higher the probability is that laws will be abused, leading to the violation and deprivation of civil rights. One of the cores of administrative law is therefore to limit executive power. In China’s constitution this balance is also emphasised through the people Courts and the relative autonomous relationship between the state on the one hand and provinces and municipalities on the other hand. But public participation is also crucial to balance executive power, and I will discuss this here in terms of two related parts, the one related to public right and the other related to right of disclosure. In China the right of disclosure as defined by the Environmental law and I will also here discuss a few cases where this has been exercised. But first I will begin by discussing the rationale of public decision making in environmental issues from the perspective of government administration.

85 Diamond, Jared, 2005, p 375.
86 John Locke 1689, Two treatises of civil government.
5.1. Public decision-making from the perspective of government administration

Public participation mainly refers to citizens being able through various channels and forms of the law, to participate in the management of state affairs, and to manage economic and cultural undertakings and social affairs. It is an important right for citizens not only to participate in politics, but also an important way to achieve the goals of social planning and management. In a representative political system, citizens reach a consensus with the government, and thereby transfer a part of their rights on behalf of implementation, and this is basic source of power of government. Under Chinese traditional public administration theory, the central government enforces a political domination which is characterized by rationality. You can expect the administration to be based on an internal logic of rules authorized by law and administration. From the perspective of the central government, civil compliance therefore is not an individual choice as the government makes decisions on the basis of the interest of the public through expert knowledge. Under the bureaucratic mode of rational decision-making, scientific and legitimacy of environmental decision-making depends on officials and experts. Within this decision-making model, the space of the public to express their views and for true public participation is very small. Officials tend to think that the public does not have the expertise and experience in relevant fields and therefore they also cannot assess this information.

From the perspective of the government, representatives of the public do not have the expert knowledge to prove effects of pollution of environmental degradation or to make informed decisions about them. Lack of ability to carry out scientific analysis on environmental issues and the right decisions, often used by personal subjective opinions about individual characteristics significantly, it is difficult as a whole reference administrative decisions. In addition, public participation in decision making is lengthy administrative process, greatly increasing the decision-making time, risk and also the costs of administration. Therefore, in administrative decisions both because of a professionalism and efficiency of thinking, China depends on long-standing decision-making practices and the importance of government leadership, ignoring public participation.

Since the reform and opening up of China in the last three decades, China has maintained a rapid economic growth. This growth has on the one hand greatly enhanced the level of China’s economy, on the other hand it cannot be ignored that the economic growth has changed the social structure, stakeholders are increasingly diverse, ordinary peoples living requirements are no higher than in the past, and issues of social-economic equity and environment is manifested in public consciousness.

Tensions between the government’s self-portrayal as rigid enforcers of environmental protection on the one hand and civil rights awareness on the other, is gradually causing an awareness of the huge gap between the environmental law and its performance. Mass demonstrations growing both in numbers and participation has been particularly apparent in recent years in connection with environmental issues/disasters, including the recent Xiamen PX project events (2007, discussed in Chapter 7) and the 2015 Tianjin explosion (discussed in Chapter 8). Alongside these events can be added a much longer list including the Panyu waste incineration event in 2009 were there was a civil demonstration against the waste incineration project in Panyu, Guangdong province in 2009. Another example is the Qidong event in 2012 a factory release of sewage into sea illegally and local residents mobilised against the company. Other similar events that can be listed is the Shifang

88 Xu, Bangyou, 2005.
project events (2012), the Kunming PX incident (resulting in similar demonstrations as against the Xiamen PX project 2013, see chapter 6) and the Hangzhou garbage power plant. As the most populous country in the world, which also has the highest production rate of steel, cement, aquaculture produced food, as also the highest production and highest consumption of coal, fertilizers, and tobacco, China’s management of social and environmental affairs compared to thirty years ago, has become more ‘complex and locally fragile’ as stated by Jared Diamond. With the rapid economic development, the 1.3 billion population pressure, the urban-rural gap, the gap between east and west, and the awakening of civil rights awareness (through media technologies) the Chinese government, before making administrative decisions, need to take into account many more factors than before. It is clear the government alone is divided and unable to cope with the demands of the different interests of globalization and the information age, so in this context cooperation and consultations between interest groups is particularly important.

The world as a whole is undeniably challenged by environmental degradation and global warming. It may not always be possible to determine the source of degradation, contamination, environmental pollution, biodiversity loss and the potential consequences. The effects of long-term environmental pollution, coupled with the loss of environmental and ecological integrity, safety and the risk of irreversibility, are making the seriousness and complexity of environmental problems more severe than expected. Problems range from air pollution, biodiversity and cropland losses, desertification, disappearing wetlands, grassland degradation, to increasing scale and frequency of human-induced natural disasters, these and other environmental problems are causing enormous economic losses, social conflicts, and health problems within China, causing both public and national level attention and worry. Initiatives with regard to the right-to-know principle and the mandatory disclosure of environmental information have been increasing in China since the 1990s. This is important as, the central and local governments do not have the full resources, or the grasp of information relating to environmental matters, environmental science, environmental information, and so on following all the links necessary to form decisions. Therefore state and local mitigation, monitoring and assessment must rely on environmental protection organizations, cooperation between stakeholders affected by pollution and citizens groups. The development of public participation in environmental information and decision-making in China finds its origin in the Principle 10 of the Rio Declaration at the United Nations Conference on Environment and Development (UNCED) in 1992.

5.2. Public participation rights in environmental protection issues

As reviewed in Chapter 4.5 and as stressed in the quote that introduced this chapter, public participation is a fundamental principle of environmental law. In addition China has promulgate several laws from constitution to single law of different department and also policy and regulations in order to promote the public right on participating public issues including environmental protection against pollution. For instance in the Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution, Article 5, states:

89 Diamond, Jared, 2005.
90 Diamond, Jared, 2005.
“All units and individuals shall have the obligation to protect the atmospheric environment and shall have the right to report on or file charges against units or individuals that cause pollution to the atmospheric environment”.  

Public rights is especially important when the relevant government departments making major environmental decisions may affect the public interest in the administration process, public opinion should become one of the elements to be included in the consideration. Citizen’s right in relation to the environment was formulated by the Rio Declaration on Environment 1992 and development of the Declaration of Principles in Article 10. These declarations stipulated that environmental issues are best dealt with in the participation of all concerned citizens at the relevant level.

At the national level, each person should have appropriate access to information concerning the environment held by public authorities, including information on hazardous substances within their communities and activities, and everyone should have the opportunity to participate in the decision-making process. States should provide extensive information to facilitate and encourage public awareness and participation. This provision clearly reveals several important principles of citizen participation in environmental issues. First, the state has a key role in provide citizens with access to information and to create arenas for participation during decision-making processes. Secondly, access to information must be given through appropriate channels. To protect the right of citizens to participate in environmental issues in the program elements can be achieved, and what is the proper way, from a results point of view is important whether citizens obtain the right to participate in fact influence factor. In addition, the state has the obligation to provide a wide range of relevant information, only state and government have the ability to provide useful information for citizens, the obligation of the State is often intentionally or unintentionally ignored, only the decision-making power of the state stressed.

The important law currently referring to the public participation regime are mainly the Environmental Impact Assessment Law (EIA law) in 2003, the Administrative License Law (ALL) in 2004, and Regulation of the PRC on the Disclosure of Government Information in 2008. All of these laws demand public participation under certain situation when it meets the necessary conditions. Generally, these laws have set up the mandatory disclosure obligations on government. For example, according to the Environmental Impact Assessment Law, Certain ‘special plans’ that may possibly cause adverse environmental impact and directly interfere with the environmental rights and interest of the public requires public participation. It is also stated that when the license is of direct significance to the interest of the applicant and others and the hearing is requested following a public notice period. Further, the aim or goal of the public hearing should be to

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92 Similar measure for public participation is stated in other laws as the Prevention and Control of Pollution from Environmental Noise” article 7, “All units and individuals shall have the obligation to protect the acoustic environment and shall have the right to inform against and accuse any unit or individual that pollutes the environment with noise.”

93 Rio declaration (earth charter), 1992, article 10 that, Environmental issues are best dealt with in the participation of the relevant level of all concerned citizens. At the national level, each individual shall have appropriate access to information concerning the environment held by public authorities, including information on hazardous substances within their communities and activities, and everyone should have the opportunity to participate in the decision-making process. States should provide extensive information to facilitate and encourage public awareness and participation. It should provide an effective way of using the judicial and administrative proceedings, including redress and remedy.

94 The Environmental Impact Assessment Law, article 11.

95 Administrative Licensing Law, article 47.
provide a procedural outlet for public input and local government accountability, and also give more power to the environmental department in order to achieve the aim.96

5.3. The relationship between the Public participation rights and the public’s right to know

The most important condition in a decision-making process related to environmental protection is that stakeholders must have access to, understand and grasp the environmental knowledge and information. Otherwise, any environmental decision-making from the side of the government will likely be wrong or misinformed. Further, public participation will be blind, creating a frustration resulting into public mobilisation of protest. Public understanding and knowledge of the requirements of environmental information, is part of the enjoyment of the public’s right to know. The principle of right to know thereby is the means whereby to achieve public participation can be mobilised in community management affairs of procedural safeguards. Right to know is the theoretical basis of information that is disclosed directly. In the modern rule of law, the government and administrative authority, related to national, social, economic and organizational management and other aspects, whether it is closely related to the vital interests and civil society, or national and political development, government agencies have an obligation to open government information to the public.

As a part of the opening up of China and in response to internal and external criticism the Regulation of the PRC on the Disclosure of Government Information was promulgated by the State Council in April 2007 (and it came in effect on May 1, 2008). According to this, information from administrative organs of government should be voluntarily disclosed if related to: citizens, legal persons or other organizations vital interests. Other requirements for disclosure stated was the need for information to be widely known or to mobilise public participation as also information reflecting the administrative organ institutional settings, functions, procedures and other conditions. According to the regulation, government information should be disclosed in accordance with the laws, and regulations and relevant state regulations should be voluntarily disclosed.

Information of importance for public disclosure was pinpointed as especially important when involving major construction projects, environmental protection, public health, safety, food and drug, product quality, major issues of urban and rural construction and management. The manner and procedure was also specified, saying that the administrative organ shall take the initiative to open government information through government gazetting, or government websites, press conferences as well as newspapers, radio, television, etc., in order to facilitate public acess. It was also stated that Governments at all levels should also set up the government information sites in the national archives and public libraries and equipped with the appropriate facilities. The date when the voluntarily disclosed government information should be released was at 20 working days. The administrative organs at all levels should publish an annual report of government information before March 31st each year. Citizens, legal persons and other organizations involved in the way, including telephone, letter, fax, Internet and others.

With this amendment the principles of both citizens right to participate and citizens right to know (or right of disclosure) in relation to environment is instated in the legislative system of PCP,

however a major question is how this is applied in practice. Below I will give one example and I will also give more examples in Chapter 7 and 8 that test this principle.

5.4. Public hearing as a principle of right to know

Since 2005 a few hearings has taken place, the first was related to the Old Summer Palace Lake, Beijing that was the first time a formerly hearing was held by administration department in China. In one way we could say that hearing is widely displayed in China as a model example of the public hearing process, an important symbol of the progress of the socialist democratic legal system, and also a test of the Environmental Law wording on strengthen public influence on making environmental policy decision. The hearing was broadcasted nationally on national television and covered profusely in news media in what providing has been called ‘a huge civic legal education benefit’. I will therefore elaborate on this case below.

5.4.1. The Old Summer Palace Lake Hearing

The Old Summer Palace Lake (also called as Yuan Ming Yuan) is a vast area of lakes, gardens and palaces in Beijing protected as a World Heritage Site since 1998. In March 2005, the Old Summer Palace management office prospected to lay an impermeable plastic lining in the lake beds of the park, to prevent water seepage, a project worth 30 million yuan (US$3.6 million). The project was started illegally, before any environmental impact assessment had been carried out. The ecological effects of the project, which was largely finished by the time the State Environmental Protection Agency (SEPA) was alerted, has been described by ecologist as a ‘devastating ecological disaster’. SEPA (now the Ministry of Environmental Protection) ordered the Old Summer Palace management office to halt work and to commission an environmental impact assessment. In connection with this the first state level public environmental hearing was organised by SEPA. It was announced that a hearing would be held in connection with the Assessment Report but in fact, the hearing was held shortly after this announcement.

It was the first time in China’s administration history that the government, the project managers, the constructor, and the public who representative of the people could sit down to argue certain issues together face to face formally. However, though according to the South China Morning Post (cited in commission of China 2005) SEPA published the event broadly. The Beijing Municipal Publicity Department issued a directive to limit media coverage of the controversy. What is ironic is that park administration defended their actions by the argument that they were trying to prevent water seepage that is they aimed to ‘protect’ the environment rather than to make a construction which would ‘impact’ it, which implied that it was no necessary to obey EIA law, because according to law only projects which may cause adverse environmental ‘impact’ should be ask to follow the EIA.

The Government finally took the decision to order the Old Summer Palace management office to change their project plan after the hearing and to commission an environmental impact assessment. Unfortunately, neither the project-management, the office of the Old Summer Palace nor the Beijing Electric Power company as the constructor, were asked to take responsibility for the activities that had already been carried out.

In February 2006, the year after the public hearing, SEPA released its *Temporary Measures for Public Participation in Environmental Impact Assessments*. This document was only valid for one year. The key law in China’s current environmental public participation regime basically is the 2003 *Environmental Impact Assessment Law* (EIA Law) 2003 and the *Measures for Public Participation in Environmental Protection*. Both require public participation under certain circumstances, and introduce certain disclosure obligations. However the law leave discretion to local authorities or certain agency that they could get to select the way from among a variety of other public participation tools, such as public hearing, surveys and others. The Old Summer Palace Lake (also called as Yuan Ming Yuan) hearing is valued as the first official hearing and be used as “a model example of implementation of the public hearing process”\(^{103}\). On the one hand e Old Summer Palace Lake hearing could be advocated as positive example, being the first public hearing in China. On the other hand I would the case could be used to prove how powerful the local administration is in the making- decision process, and how there is an imbalance between two sides: in this case the government that stood on one side as the decision maker, and citizens that stood on another side as the potential victim of threatening serious ecological damage. This imbalance not only existed during the making- decision process, but was also seen during the public hearing process.\(^{104}\)

5.4.1. The Daba Tiger Hearing

A second case related to a matter of illegal hunting. In October 2007, a hunter has published a set of photographs of a South China tiger that he claims were taken in the Daba Mountains. The villager from Zhen ping County\(^{105}\) in Ankang City, Shaanxi Province of China, claimed to have risked his life by taking more than thirty digital photographs of a tiger. The Shaanxi Provincial Forestry Bureau then held a press conference, backing up Zhou’s claim and announced to establish special protection area on the basis of his conclusion. However, the photographs aroused suspicion, and many expressing doubts about the authenticity of the digital picture. The forestry department of Shannxi Province then organized expert hearing, but no experts in terms of tiger or feline researcher were invited to attend the hearing.

This case clearly reveals that because of the lack of specific and clear legal provisions, the local administrative discretion rather aims to limit the public participation and the public interest. The Public participation system should recognize and protect the rights of the public, not only single-sided put emphasis on the obligations of citizens. According to the law, government has the obligation to ask public take part of the decision- making process but local administrative rules and regulations and other normative documents within the regulatory scope lies within the frames of the local jurisdiction\(^{106}\) (eg. municipal, provincial, provincial capital, large city levels). The ambiguity is embodied on the basis of the law: the law does not define clear rules or conditions but recommends as a principle to “adopt measures suiting local condition” means that, all those


\(^{104}\) See similar discussion in Allison Moore and Adria Warren 2006.

\(^{105}\) Zhen Ping County is also the place where I have worked from 2004 until 2008.

\(^{106}\) as specified in the “Law on Legislation of The People’s Republic of China”. 
provinces could amend their own rules and regulations in the name of ‘suitability of local condition’ unless it is against the constitution.

In the case of the Daba Tiger Hearing the Shaanxi Provincial Forestry Bureau then held a press conference, even organized expert hearing, but lacking of the specific provision in which situation a public hearing should be held, or when to organise an expert hearing, protection of public right to know does not work in practice. Further, those failed so-called events of public participations have weakened the public-trust to officinal totally, setting the scene for conflict in days to come.

5.5. Measures for Public Participation in Environmental Protection

As I have mentioned in Chapter 5.1 the legitimate exercise of the executive power in China is the government, or supreme administration. Nikolas Rose and Peter Miller argued that the ‘mentality’ of governing can be distinguished as the rationalities and technologies of government, a way of representing and knowing a phenomenon and a way of acting upon it in order to transform it.107 According to this, law could also be divided into substantive law and procedural law based on the different content.

As the head of central government, the state council is entitled to take charge of public participation through the law but the lack of guidelines creates a maneuverability which means that decisions on the manner and content of public participation remains to be defined at the local institutional level. The administrative departments and the decision-making departments have loose regulations on choosing the mode of public participation. For example, the administrative departments and the decision-making departments have the power to choose among the options to hold a demonstration or hearing, or solicit related units which give the executive authorities a greater autonomy and at same time limits the effect of public participation to a certain extent. Besides, the local and provincial level also has different tolerances when it comes to public participation; especially when it comes to provincial Environmental Protection Bureaus (MEB). Provincial EPBs are central in implementing the hearings but they are at them same time placed under the direct supervision of the MEP and are also responsible for supervision of the lower-level EPBs.108 Locally administrators tend to view public participation as a trouble maker, as something which would definitely cause chaos and even social disorder. To them a good political achievement is take everything in their own hands, they insist on they are the representatives of the people, their role as this ‘representative’ is to manage on behalf of the people. In their minds they also have the ability to make wise administrative decisions, rather than let people participate in decisions. Public participation in this way is seen as an obstacle, as something which would create trouble to the decision-making process. The local government thus, rejects doubts and objections from the public as through instinct; usually relegating objections of individuals as driven by pursuit of personal interests. These realities as viewed from a local administrators point of view are based on the considerations of the efficiency of administration, generally the executive tend to choose holding a hearing with experts who are more easily affected (and fewer) compared to public hearings. Because the executive owns the final power on choosing experts, the experts are chosen selectively during the procedure of the advisory council, on the basis that he/she is on the same side with government on

related issues, or they intend to exclude those who hold the different views with them. The result is that the government utilizes the fuzzy space in the laws to meet the procedure.

Generally, local government is used to working behind closed door and – according to one commentator 109 – though the decree of public participation may change doors into being transparent, the doors remain closed. In essence it is a disguised exclusion of the public from participation that fails to achieve the purpose of environmental protection. This I propose both influence the public’s confidence with the law but also reduces the credibility of government, particularly as environmental pollution incidents has intensified confrontation between official and civil society.

109 Renmin Ribao, 2008 朱建刚，环境政治三方角力下公民的力量【N】，南方都市报，2007-11-19

“The State shall encourage relevant units, experts and the public to participate in environmental impact assessment by proper means.” 110

“While developing a plan that might cause adverse environmental impact and directly relates to public environmental interests, the department for the special plan development shall hold demonstration or hearing, or solicit related units, experts and the public by other means for comments on the draft environmental impact report before the draft plan is submitted for approval.”111

In 1973 China began to carry out environmental impact assessment (EIA) system on major construction projects. The legislative document regulating this practice was the Several Provisions of Protecting and Improving Environment Draft launched in 1973. As discussed in Chapter 4 the act was a response to the Stockholm Environment Conference112 that caused the State Council of China to convene the first national conference on environmental protection in 1973. In 1979 China also formulated the first Environmental Impact Assessment (Pilot) which provided a constitutional basis for China’s later environmental protection work and environmental legislation The Environmental Impact Assessment Law was formulated in 2002 (October 25), at the Ninth Standing Committee of NPC (National People’s Congress).

We could find out that, according to the law, both ‘land utilization’ together with ‘special plans” shall organize environmental impact assessment. The only different is, public participation is also be required on ‘Special plan’, and there hasn’t mention the public participation on ‘land utilization’. That kind of ‘soft’ regulation allows these cases to multiply and destroys the value of an EIA system – which lies in prevention. The consequence of the regulation is seen in the case about the Old Summer Palace Lake 2005 discussed in the previous chapter.

When making arrangement for formulating plans for the utilization of land for construction in or development and utilization of certain areas, river basins and sea areas, the relevant departments under the state council, local people’s government at or above the level of the city divided into districts and the relevant departments under them shall see to the environmental effects are evaluated in the process of formulation and that in the plan is devoted to such effects a chapter or an explanation on the effects is given. This provision has set a precondition under which situation the environmental effects should be demanded to put into consider as mandatory part.

110 Environmental Protection Law of People’s Republic of China, article 5.
111 Environmental Protection Law of People’s Republic of China, article 11.
112 The United Nations Conference on the Human Environment (UNCHE), Stockholm, 1972
Table 3. Environmental Impact Assessment

<table>
<thead>
<tr>
<th>Formulated time</th>
<th>In 2002(October 25th)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The legal purposes</td>
<td>Implement the sustainable development strategise, prevention of adverse effects in planning and construction projects vs environment; promote the coordinated development of economy, society and the environment.</td>
</tr>
<tr>
<td>The Content</td>
<td>Analysing, forcasting and assessment the environmental impact; Proposing prevention or mitigation policies and measures; Tracking and monitoring.</td>
</tr>
<tr>
<td>The Implementation of the body</td>
<td>The National Environmental Protection Agency(which is responsible for setting up and developing the basic data and evaluation system of the environmental impact assessment); The relevent departments under the State Council(Take responsible for writeing the Environmental Impact Assessment); Local Government (Take responsible for writing the Environmetal Impact Assessment) Local Authorities (Take responsible for writing the Environmental Impact Assessment)</td>
</tr>
<tr>
<td>For the purpose of using land</td>
<td>The Environmental Impact Assessment must be prepared in chapters</td>
</tr>
<tr>
<td>For the other special programs, except using land (such as tourism, industry, agriculture, water, energy, transpotation, etc)</td>
<td>Prepare the Environmental Impact Assessment report</td>
</tr>
</tbody>
</table>

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113 Adopted at the 30th Meeting of the Standing Committee of the Ninth National People’s Congress in 2002, shall be put into effect on 2003.
Under this rule, only ‘utilization of land or certain areas’ is asked to prepare environmental effects in paper as part of application to government.

Competent departments under the state council, the local people’s government at or above the city level with establishment of districts and their competent departments, while organizing the compilation of relevant special plans for industry, agriculture, animal husbandry, forestry, energy resources, water conservancy, traffic, urban construction, tourism and natural resource exploitation (hereinafter referred to as Special Plans), shall organize environmental impact assessment before submitting the draft special plans for approval, and submit the environmental impact report to the authorities responsible for approval of the special plans. (Article 8). While developing a plan that might cause adverse environmental impact and directly relates to public environment interests, the department for the special plan development shall hold demonstration or hearing, or solicit related units, experts and the public by other means for comments on the draft environmental impact report before the draft plan is submitted for approval. The department for the plan development shall take into serious consideration the comments of related units, experts and the public on the draft environmental impact report, and enclose in the environmental impact report submitted for review an explanation on whether to adopt the comments or not. In this article, like what I show on the following chart that, not all of the project in China should be demand for public participation. The law doesn’t mention how to deal with ‘utilization of land’ when it comes to public participation, only ‘special plan’ is asked for it.

6.1. The example of the Xiamen PX Project

The Xiamen PX project events, which is seen as one landmark event in China’s environmental history, refers to the initiation of chemical project named Paraxylene project in Xiamen City, Fujian Province in the midst of an extremely well populated area. The project was taken through several environmental Impact Assessment Processes by several authorities and arouses large scale public protest that was to some degree successful. However, the asymmetry of information between government, the project investor and the public lead people created a general sense of insecurity around the entire project, from the initial environmental assessment, to the approval, until it was due to be put into production. The information about the PX project had been kept as a secret from the public until the National People’s Congress was held in March 2007. It is therefore an important case to study in order to assess the interaction between government, government authorities, private enterprise and the public.

The project has gone through the environmental assessment report lead by the state of Environmental Protection Agency in July, 2005 (upgraded to MEP in 2008\textsuperscript{114}). There were a series of decisions regarding the project which are summarised below:

- February 2004: The State Council approved the PX project.
- July 2005: The PX project has been passed through the EIP. Passed through the EIP means that, the environmental protection department\textsuperscript{115} which takes charge of EIA of project confidence officially that this project wouldn’t have a devastating impact on the nature and environment by the assessment, actually we could say that the PX


\textsuperscript{115} Here the environmental protection department is refers to the environmental protection bureau of Xiamen city.
project was in compliance with the requirement on legal procedural part, as such it was a legitimate project.

- July 2006: The development and reform commission of state approved the PX project.
- November 2006: The PX project started construction officially.

In March 2007, the Chinese People’s Political Consultative Conference (CPPCC) member and Xiamen University professor Zhao Yufang put forward a motion, signed by 105 other CPPCC members, claiming that the project location was too close to residential areas and that a leak or explosion at the site would put one million local lives in danger. However the place where the Xiamen PX project was prospected was found to be too close to the centre of city. There area covered the entire of Western Harbor of Xiamen and 1/5 of Xiamen Island within 10 km radius of the PX project. The potential effects of the PX project, would affect more than 10 million people within 5 km radius. The closest distance from PX to a residential area was even less than 1.5 km. The members put forward a Proposal of the recommendation of Xiamen Haicang PX Project Relocation. Both of the special status of proposal sponsors- member of political consultative conference plus the sensitive timing- during the annual parliamentary session, led the first time this controversy refers to public environmental be known and got attention by public.

This was the first time that the people of Xiamen city got to know about the plans of the chemical construction projects and that it involved their survival safety. In order to resist the PX project, people ‘walked’ to the municipal government of Xiamen to express their concern on 1st and 2nd of June, 2007. As public demonstration in China is sensitive, the word ‘walk’, is used by people to mobilise protects. People organised the walk online and via text messages to show their discontent.

From the investigations made by Heberer and Senz it is clear that prior to 2007 there had been no genuine evaluation process because of understaffing of responsible authorities and because environmental issues were regarded as ‘soft’ targets, an expression that will be explained more in the discussion of this chapter. Under the pressure of the public, the Xiamen municipal government in 2007 (in 30th of May) announced to suspend the chemical projects. The Xiamen government commissioned the Academy institution of China Environmental Sciences to conduct the Environmental Impact Assessment. The municipality also announced to commission a new EIA organization in order to re-value the entire chemical industry region, and also to include public participation system in the value process. The state environmental protection administration also announced on 7th of June that they would restart a new EIA process of all the heavy chemical projects within the whole region of Xiamen, including the PX project. On December the 5th, 2007 the Academy institution of China Environmental Sciences announced asking for public comment in varied of forms and a hearing was held 3-4 December.

On the 16th of December the Fujian provincial government made a final decision to relocate the PX project as a result of the EIA. After a week, the State Environmental Protection Administration publically announced the environmental assessment report and revealed that the investors of PX project started an illegal production of chemicals before they got permission from environmental protection administration.

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116 Zhang, Hubiao, 2010. The legitimacy dilemma and transcendence of Environmental activist- the case of Xiamen PX project, Lan Zhou Xue Kan, No 09, General No 204
118 Heberer, Thomas and Senz, Anja, 2011.
120 Zhang, Hubiao, 2010.
6.2. Discussion

Through the analyses of the whole process of Xiamen PX project we can conclude that, there are two pressures on local government: one is to promote economic development and the other to protect environment. The manner in which these two tasks are balanced will influence the result of management functions. The most important aim of local governments has been to promote local economic growth and in one way we could say that the local government is used to divide their task into ‘hard aims’ and ‘soft aims’ according to their presumptions about the value of the governmental centre e.g. the state level such as the State Council or the party (CCP). This is the reason why even though local government know clearly that a chemical project might damage both of the environment and people conflicting demands encourages local officials to produce distorted policy outcomes. As stated by Ran Ran\textsuperscript{121} local implementers:

\begin{quote}
\“…generally believed that China’s environmental policies are ‘soft’ laws with the character of high level conflict, ambiguity, and symbolism that are born to remain unimplemented.\”\textsuperscript{122}
\end{quote}

It implies that when the local administration/administrators faces conflict between economic growth and environmental protection, the demands of environmental protection could more easily be dismissed as a ‘soft’ task in order to achieve the ’hard task‘ of economic growth.

On one hand the Xiamen PX project example could be used to show, at least, today’s administration have started to listen to public opinion, on the other hand it also shows how powerful the government authority is during the whole policy-making process, especially comparing with the other two parties involved in Environmental Management, enterprise and individual. The end result was that government announced unilaterally to suspend a construction project which was permitted in the beginning.

As what can be seen from existing environmental cases, the legal structure of China emphasised government control of administrative power. Due to the fact that long-term of economic development has been the primary management objective, the power and influence on policy of economic authorities is much stronger than the environmental protection department with sits inside the administrative construction. Due to this lack of power of the MPE the implementation of environmental impact assessment system is weak and this means that it is difficult to prevent environmental pollution incidents in advance. Besides, the implementation of the information disclosure system makes the citizens and community could only wait passively and ask for compensation afterwards. Theoretically, both of the environmental impact assessment procedures and public participations should involve three parties, namely the government, enterprises and individual citizens, in fact as related here citizens were initially excluded totally, resulting in a general distrust in government in the end.


\textsuperscript{122} Ran, Ran, 2013.
7. The law as Mitigation: The Tianjin Explosions

The Tianjin 812 explosions happened in Tianjin 2015; the centre of explosions was the hazardous chemicals warehouse where hazardous chemicals in excess quantities were stored less than 1000 meters from the residential areas (Fig. 8). As interviews from the news media later showed, before the explosion residents did not know that they were living nearby a dangerous goods warehouse, either because Ruihai international deliberately concealed it, or because of dereliction of duty of government regulators, or both, we do not know. In this chapter will introduce the events around Tianjin Explosions first, then analyse how the environmental impact assessment worked on this case, and why local authorities failed to prevent the explosions despite the fact that China has already set up the environmental impact assessment system and security control to ensure that catastrophes like this will not occur.

Fig. 6. Fireball from the first explosion as seen from a distance (image from Wikimedia Commons)
7.1. The Tianjin Explosions, August 12, 2015

On August 12, 2015, an explosion occurred at 23:34:06 in Tianjin Tanggu Development Zone, Tianjin Bin Hai New Area, Dong Jiang Bonded Port. The explosion was at a local magnitude ML 2.3, which is equivalent to three tons TNT. A second explosion occurred 30 seconds later, about 2.9 local magnitude ML level, the equivalent of 21 tons TNT. (ML, means the distance to explosion centre around 100 – 1000 km). Until 15:00 pm on September 11, the numbers of the victims were 165 people and eight people were still unaccounted for. Among the victims were 24 police fire-fighters, 75 fire-fighters from Tianjin Port, 11 policemen, and 55 civilians. The number of injured people taken to hospital were 233, including three patients critically ill, 3 severely ill. A total of 565 people were admitted to hospital with small injuries but were later discharged.

The explosions took place in a warehouse for dangerous goods owned by the company Ruihai International Logistics Co., Ltd. According to the official website of Tianjin Dongjiang Bonded Port, the company Ruihai International Logistics Co was founded in 2011. Responsible for monitoring companies of dangerous goods in Tianjin is the Tianjin Maritime Bureau designated dangerous goods monitoring equipment depots and Exchange Commission of Tianjin port operations of dangerous goods license units. Several hazardous chemical accident drills had been conducted at Ruihai International as the official website shows. Latest in August 2014 the public security departments of the business carried out various security checks based on that the warehousing operations of Ruihai International was of a major commodity classification basically belong to hazardous and toxic gases.

In this chapter I will analyse the case of the Tianjin 8’12 explosion from the perspective of the environmental law and the implementation of the environmental law. I will follow the case from the first application of Ruihai International Logistics Co., Ltd to set up the warehouse, later to include dangerous as part of their operations, the permission process and the appeal processes to analyse how the implication of the various laws that regulates handling of dangerous good works in practice and what may be the difficulties in implementing the various laws.

7.2. The background

Tianjin belongs to one of the four autonomous National Municipalities, together with Beijing, Shanghai and Chongqing as discussed in Chapter 2.2 (fig. 4). Tianjin Port, also known as Tianjin Port, is located in the Tianjin Haihe River estuary, at the intersection of Jing (京) - Jin (津) - Ji (冀). It is located in what is named the Bohai Economic Circle, north China’s largest comprehensive port and an important foreign trade port. Tianjin Port is a sea port construction dug down in the silty shallows as an artificial deep-water channel. Tianjin Port Main Channel depth reaches 21 meters, to meet the 300,000-ton crude oil ships and the world’s most advanced container ship out of Hong Kong. Tianjin Port cargo throughput in 2013 exceeded 500 million tons, and container throughput exceeded 13 million TEUs. This made Tianjin Port north China’s first 500 million ton port. In November 15, 2003 according to the State Council, the Tianjin Municipal

125 This refers to the two cities region as Beijing (京, jing), Tianjin (津, jin), and also Hebei (冀, ji) province.
Committee approved the implementation of separating Tianjin Port into two administrative units. With this administrative functions of Tianjin port was forwarded to the Transportation Committee, Tianjin Port in a Tianjin Port autocratic (Holdings) Limited. In June 3, 2004, the Tianjin Port (Group) Co., Ltd. was formally established. According to the Port Law of The People’s Republic of China, ports may consist of one or more port areas. The Tianjin Port is composed by Northern port, Southern port, East port, Southern region of port economic zone, East region of port area. The responsibility of the ports is divided between the State Council and the relevant local people’s government as specified in the Port Law. This means that the administrative system of Tianjin Port is a ‘dual leadership’ that together Ministry department in central with Tianjin administrate department.

7.2.1. The administrative relationship between Tianjin and Tianjin Port

In China’s political administrative bureau-level system, Tianjin Transportation Committee belongs to the same bureau-level together with Tianjin Port. This means that the Tianjin Transportation Committee has no power on supervising Tianjin Port. Tianjin Transportation Committee belong to the Ministry of Transport of PRC that take responsible of the relevant transport industry, port work and others including the international shipping, international container and other relevant industry management in Tianjin. In general, as the only one authority transportation department in Tianjin, Tianjin Transportation Committee should take charge of all the relevant administrative issues within the jurisdiction of Tianjin, including Tianjin Port. But, despite this, after the 812 explosion happened, the official from Tianjin Transportation Committee has asserted again and again that they know nothing about Tianjin Port; they do not know how many companies there are in the port, they do not know what kind of hazardous chemicals have been stored there, they do not know the involving company Ruihai International, and so on. Thus, does this mean that there is somewhat of an administrative gap in the supervision of the Tianjin Port? To answer this we must go back to see the administrative reform in Tianjin Port in past years.

The earliest history of Tianjin Port can be traced back to Han Dynasty (BC 202- AC 220). Tianjin Port started become to treaty port since the Convention of Peking in 1860 after the Second Opium War. During the Republic of China (1912- 1949, nationalist party), Tianjin Port belonged to the Ministry of Transportation and Communications, although the substantial management power was in the hands of foreign countries at that time. After the PRC was established in 1949, the

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126 November 15, 2013. Forward Ministry of Transportation and other Departments Directly under Central Government and Deepen the Dual Leadership of Port Management System Advice Notice.

127 Adopted at the 3rd Meeting of the Standing Committee of the 10th National People’s Congress of the PRC on June 28, 2003, is hereby promulgated for implementation as of January 1, 2004, amended by the 14th Meeting of the Standing Committee of the 12th National People’s Congress of the PRC on April 24, 2015. Article 3 “Ports herein refer to the areas of water and land within certain range with corresponding dock facilities of functions for entry and exits of ships, anchorage, moorage, off and on of passengers, handling of commodities, lighterage, as well as storage. Ports may consist of one or more port areas.”

128 Adopted at the 3rd Meeting of the Standing Committee of the 10th National People’s Congress of the PRC on June 28, 2003, is hereby promulgated for implementation as of January 1, 2004, amended by the 14th Meeting of the Standing Committee of the 12th National People’s Congress of the PRC on April 24, 2015. Article 4, “The State Council and the relevant local people’s government of and above county level shall in the plan on national economy and social development embody the requirements for port development and planning dan protect and make rational use of the port resources by force of law.”

129 The Convention of Peking is a treaty between the Qing Dynasty and the United Kindom, France, and Russia in 1860. The convention between Peking and France specified that “The city and the port of Tianjin… shall be open to foreign trade…”
Communist Party of China has set up the organisation Tianjin Port of Ministry of Transport. The management reform entailed a transfer the management power from the Ministry to Tianjin. The Tianjin Port had been managed by the Ministry of Communications since 1949. Along with the rapid of economic development, especially with the expansion of foreign trade in the 1980s, the pressure of vessels and port increased. With the 1949 administrative organisation problems took a long time to solve and was low in efficiency; the State Council had to dispatch a joint working group in order to coordinate and solve problems again and again as trade expanded and railways, ports were all managed under the national ministries system. In 1984 therefore, the Tianjin municipal government reported up to the State Council about the Tianjin Port management system reform issues. The same year The State Council agreed to start the system reform in Tianjin Port from June 1, 1984 to the end of 1986. The management of Tianjin Port was after this reformed from the unified management by the central government to a dual leadership between the central Ministry department and Tianjin administrate department as discussed above. Gradually the port management was separated step by step, and the operational autonomy of Tianjin Port was also also expanded. Since that time, Tianjin Port became the first of decentralized local management port. The State Council approved to establishment the Free Trade Zone in Tianjin Port in May 12, 1991 and Tianjin Port was then later transformed into Tianjin Port (Group) Co., Ltd. as discussed above. Below I will pose a number of questions related to the management and monitoring of the port beginning with the issuing of licenses.

7.2.2. Question 1: Port operator license and the port dangerous goods operating licenses

According to Port Law of The People’s Republic of China, article 22, “The undertaking of port operation shall be available for the port operating licenses obtained from the administrative department with written application with registration made at the administration for industry and commerce.” In other words when undertaking any port operation, a company is required to obtain a port operating license first from the administrative department. The date Ruihai obtained the port operating license in June 23 2015; the registration Basic Fact Sheet, shows that Ruihai International obtained the transport sector port operators license of China (Tianjin) Port (certificate number is ZC-543-03). In accordance with the Port Law, the company that obtains the port operation license is also allowed to operate hazardous chemicals businesses. However, from the information on the business registration it is shown that the Ruihai company licence in November of 2012, was given ‘with the exception of hazardous chemicals’. That is Ruihai International was not permitted to operate hazardous chemicals at this time.

According to Regulations on Safety Management of Port Dangerous Goods formulated by the Ministry of Transport of the People’s Republic of China in 2012, article 19, for the undertaking of port dangerous goods operation the port dangerous goods operating licenses shall be obtained from the administrative department. The port dangerous goods operating licenses should be combined with a written application with registration made at the administration for industry and commerce. In 2013, the business content of Ruihai International within the port area was changed, but still excluded hazardous chemicals. Ruihai International only received chemicals business qualifications from Tianjin Department of Transportation in April of 2014 and this was valid until October 16, 2014 (Fig 7). The formal port operating license including hazardous chemicals was given only in June 2015, that is to say, there were at least eight months from October 2014 to June

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130 The Notification from Ministry of Communications and other Departments about how to Deepen Reform on Port Management System Directly under the Central and Dual Leadership, State Council, 2003.
2015, when there was no licence for hazardous chemicals. Media investigations\textsuperscript{131} have shown that Ruihai International was operating dangerous goods prior to obtaining a license. A reporter,\textsuperscript{132} on the 17th August after the explosion happened, interviewed a person who was responsible at Ruihai International, who gave the information that the company had been engaged in hazardous chemical operations since October of 2014, even though they did not have the necessary qualification to do so.

![Unpublished documents from Tianjin Transportation Committee](https://beijingnews.com.cn/news/2015-09-14/)

Fig 7. Unpublished (red circle on right fig) documents from Tianjin Transportation Committee about permit Ruihai company to operate hazardous chemicals goods (from he Beijing News (Chinese), 2015-09-14)

However, even if Ruihai International had had a valid license or not, the central question remain if the storage of hazardous chemicals by Ruihai International was legal under existing laws and regulations? A reporter survey\textsuperscript{133} after the incident found that the hazardous chemicals warehouse of Ruihai company had been verified by the relevant authorities in the port business license, safety assessment, EIA, etc. but few of the rules and regulations on hazardous chemicals had been followed by the company. According to the hazardous chemicals law, the distance of hazardous chemicals to each other shall be not less than 0.8 meters, but actually in this case it was only 0.4 to 0.5 m. According to the hazardous chemicals law a single product of hazardous chemicals should be no more than 500 kg, totalling no more than 2 tons. In the Tianjin 8’12 the actual amount stored is not known but has been estimated to between 6-30 tons. According to the hazardous chemicals law, the hazardous chemical storage should be placed at a certain designated heavy area, and the actual storage area must be situated in a specific transit, which it was clearly not. Lastly, according


\textsuperscript{133}谁为违规仓储危化品放行？The Beijing News (Chinese), 2015-09-14.
to the law, sodium cyanide shall not be stored in volumes larger than 24 tons, the actual storage here has been estimated to have been 700 tons.\textsuperscript{134}

A news media agency of China named The Beijing News\textsuperscript{135} presented unpublished documents on the investigation report about Tianjin 812 explosion on August 20 (Fig 10), showing that in 2015 Tianjin Transportation Committee approved the Ruihai International to operate hazardous chemicals goods from April 16, 2014 to October 16, 2014 before Ruihai International obtained the license. According to the document, Ruihai was allowed to storage including compressed gases and flammable liquids and other dangerous goods in the 18,000 square meters container yard area (including packing district). However, according to Regulation of the People’s Republic of China on the Disclosure of Government Information, all levels of administrative organs shall in a timely and accurate manner of disclose information which involves citizens interests, or where there is a need for public participation in the decision making process. The documents exposed by The Beijing News showed clearly that this document was not put through the process of public disclosure (as is underlined by the word ‘unpublished’ circled in the picture), this this document clearly violated the related laws and regulations on government information disclosure.

7.2.3 Question 2: An assessment report (could not be obtained from publicly available sources)

In a safety Assessment, Ruihai International was given a grade A security rating by the agencies reviewing the security conditions. Reporters later obtained the safety Assessment report approval that was issued in September 2013 from a member of Tianjin Port Authority Traffic Display\textsuperscript{136}. According to the Expert Group consent record, the engineering safety evaluation report and safety conditions pre-feasibility reports was prepared in line with the relevant provisions of the State and the Department of Transportation. But the safety evaluation report of Ruihai International hazardous chemicals warehouse has not been made openly available to the public. One responsible government person\textsuperscript{137} when asked about the report stated that as the dangerous chemicals production license port enterprise is issued by the transport sector, in principle as they do not involve state secrets, trade secrets or public safety they can be partially public. The government official stated however that, previously there has been no prior mandatory requirement on public information around safety evaluation reports. Despite that it is legally possible to release the record, until now, despite calls by media to publicise the safety report of Ruihai International, it still has not been made available.

7.2.4 Question 3: EIA Report

According to Port Law of The People’s Republic of China, article 15 “…The construction of the port engineering project shall go through the evaluation of environmental impacts by force of law…”. An EIA report was submitted by The data Centre of Tianjin Environmental Engineering Assessment Centre in on December 10th on 2013 that states that the company Ruihai International intended to reform its Logistics stacking area yard into a container yard, and that the dangerous goods turnover would be up to around 20,000 tons. The EIA report stated that:

\textsuperscript{134}谁为违规仓储危化品放行? The Beijing News (Chinese), 2015-09-14.
\textsuperscript{135}谁为违规仓储危化品放行? The Beijing News (Chinese), 2015-09-14.
\textsuperscript{136}谁为“瑞海国际”违规仓储危化品放行? The Beijing News (Chinese), 2015-09-14.
\textsuperscript{137}谁为“瑞海国际”违规仓储危化品放行? The Beijing News (Chinese), 2015-09-14.
“The construction content of the project is in line with the national industrial policy, in line with the overall site development plan, less impact on the environment during construction [...] the project has environmental feasibility.”

A resident poll is an important part of the EIA report process. The EIA report of Ruihai International shows that 130 questionnaires were disseminated to surrounding businesses and residents during the process of EIA of which 128 valid questionnaires was retrieved. The report was later obtained by reporters who quoted the conclusion of the poll, saying that:

“Basically they supports and endorses the construction of the project, there were no objections.”

But an interview by reporters (idem.) after the explosion showed that residents had no awareness that they were living in such a close distance proximity to a hazardous chemicals warehouse. In fact many of the residents only became aware of the fact after the explosion.

The investigation on the direct causes of the Tianjin 812 explosion is still ongoing. There is not yet any official information about what kind of hazardous chemicals are the direct reason to result in the explosion. The Tianjin Port has been associated with the hazardous chemical calcium hypo-chlorite for a long time. According to International Maritime Dangerous Goods Code and the provisions of the International Maritime Dangerous Goods Code, Calcium hypo-chlorite is a strong oxidant, and the calcium could result in fire if put together with organic material or ammonium compounds at light temperature. Tianjin has been one main export port of Calcium hypo-chlorite. A newspaper named Bohai Morning Post reported that just in the three months before the Tianjin 812 explosion the Northern Maritime Bureau of Tianjin Port reported three cases of ‘concealed’ and ‘false’ shipments of Calcium hypo-chlorite, valuing 3 million RMB. In August 19, one week after the 812 Tianjin port explosion, the Danish shipping company- Maersk Line container shipping company, which is one of the transport hazardous chemicals shipping company running in China, announced that they would stop providing commercial calcium hypo-chlorite. It is reasonable thus, to assume that at least some of the hazardous chemicals involved in the 812 Tianjin port explosion was calcium hypo-chlorite.

Concealed goods appear to be a common problem. The news agency The Beijing News had quoted an anonymous official from the northern maritime of Tianjin Port Bureau stating that in 2012 they bureau had found around 31 cases of concealed dangerous goods. It is peculiar however that this number went down to zero in 2013. It is unlikely that there was no hazardous chemicals transported during the year but more probable that the shippers concealed what they had shipped from dangerous goods as normal goods in order to avoid controls.

Presently, after the Tianjin 812 explosion there are more than 37 coastal ports in China that have started to refuse or at least limit receiving hazardous chemicals. But the act of choosing temporarily refuse or restrict hazardous chemicals by port authorities could simply be treated as a spontaneous and temporary reaction on the disaster in concerned administrative departments, rather than as a new policy.

139 The International Maritime Dangerous Goods Code (IMDG Code), international guideline to the safe transportation or shipment of dangerous goods or hazardous materials by water on vessel.
7.3. The regulatory negligence and dereliction on duty under different administrative subordination

To further exemplify the problem of regulation and mitigation I also want to introduce the problem of blind spot monitoring both on administrative subordination and regulations conflicts. Enterprises would choose to set up their factories in the province boundary such as the boundary junction between Beijing and Hebei province or the junction place between Beijing and Tianjin, which means the administrative conflict under different region authority. Most of the time, different local government are sensitive about interfering in issues which will extend to or influence the neighbour province, because it might make trouble for them. In such cases, they prefer simply not to deal with the issue of monitoring or enforcement. In this way regulatory ‘blind areas’ has appeared. More and more enterprises specifically target those areas as placement for factories and production and the regulatory blind areas as a result becoming more extended.

Regulatory blind spot does not only exist in jurisdictional conflicts set up in different regions but also occurs in regulations conflicts: such as, between the Bureau of Quality Supervision and the Safety Supervision Bureau, the manufacturers of safety evaluation license and the security permits. For instance, The Production Safety law of PRC and The License Regulation of Safe Production issued by the State Council in 2004 and amended in 2014 and 2015. Those enterprises in China that produce the dangerous chemical goods are demanded to get the license of safety in production from the Safety supervision department before organizing production. China has set up a strict manage system in order to control the dangerous chemical goods production. However, ironically, the direct result of this system has not been to enhance the safety measures of enterprises, but rather that many enterprises choose to produce without a safety license in what is called ‘unlicensed production’ in order to evade supervision.

Using Tianjin port as example, there is also a conflict between the Tianjin safe production license regulations and the Work Safety Supervision Bureau with the Quality Supervision Bureau as they are divided into two separate departments. According to Tianjin City Safety Authority (Plan to Implement the views of License Management Approach on the Issuance of Tianjin Dangerous Hazardous Chemicals Management) warehousing hazardous chemicals only requires companies to have a business license, not a production license. But the rule from the Tianjin Quality and Technical Supervision has demanded that besides the business license, hazardous chemicals warehouses must also apply for a production license. Both the Bureau of Quality Supervision and Administration Bureau departments belong to the same administrative level, there is no division between the two, which means they effect the same force of law. But, what happens is that because safety supervision Agency regulations require only an operating permit, this represent less of a threshold for enterprises than to follow the requirements of the Quality Supervision Bureau. For an enterprise it is simply more convenient to keep the operating license open, as production licenses. This will not have any impact on the company as if there is no subsequent tracking supervision later. Unlicensed businesses and companies only holding operating licenses are not required to have general safety assessments, or production safety assessment. Thus regulatory authorities would not know whether or not the business of was actually producing, and transporting hazardous chemicals and subsequently there would be no monitoring. This vulnerability also explains the context of the tragic event of the Tianjin Port 812 explosions.
7.4. Discussion

Whether it comes to the Xiamen PX project or the Tianjin 812 explosion, it is not difficult to trace some common characteristics. First, both projects got government permission, namely, it actually completed and fulfilled the formalities and legal procedures. Second, the local government in Xiamen and Tianjin had not fulfilled their responsibility about information and disclosure of projects, which resulted in a dramatic loss of trust from public towards government. In addition, as was revealed from the environmental reports, the investors of both projects had put the project in production before the project received the acceptance from the relevant administrative department. Both Xiamen PX and Ruihai International operated before they got licenses without being warned or penalized by the relevant supervision department. Both cases also exposed the serious problem that exists in China’s environmental protection regulatory framework both when it comes to the environmental impact assessment system processes and information disclosure.

What are the reasons for this discrepancy between law and practice? To answer this question, we must ponder a fundamental question, namely what is the responsibility of modern government. A second question to ask is, in the government administrative functions, does there have to be a conflict between the duty of maintaining public interest and the responsibilities of economic development?
8. Discussion

“As in every country on earth, politicians in China are also confronted with decisions about how to balance environmental damage and economic growth in a way that allows them to maintain their power […] To date in China, this has entailed the government slowly opening bits of space for environmentalists while maintaining as much control over environmental organisations as it can in its attempt to avoid what it perceives will be luan (乱, chaos).”142

In this thesis I have set out to how do we understand the role of the government during the time of environmental protection issues. I have explored here through a historical analyses case studies how different government levels effect, monitor and enforce the environmental protection laws. I have also analysed how the environmental law works in practice, first in terms of public right and enclosure, then in terms of the role of impact assessments, as exemplified through specific case examples. In the introduction I promised to draw on these case studies to discuss what is the reasonable for the Environment Protection Department is regarded as ‘a toothless tiger’ when it comes to environmental protection issues?

8.1. The relationship between government, enterprises and individual and environmental protection

The endless circle which seems to happen in China track the following chain: Enterprise illegal pollution – Dereliction of duty of environmental protection departments – the local government conceal the information and give the project permission due to economic interests – the project result in pollution, damage the interests of citizens – citizen sue in court – the imperfections of public interest litigation involving environmental protection result in local court refusing to put case on record – citizen cannot get effective remedy within the legal framework – they ask help from government – the media starts to report – reveals that local government concealed information during the administrative process -- citizens loose trust towards the government, negotiation breakdown – citizens call for demonstrations in order to put pressure on local government – the local public security department announces the demonstration as serious offence – ban the rallies and use force – intensification of conflict, violent resistance – the punishment on violent upgrades conflict further – the central government starts to intervene – halt relevant project, shut down polluting enterprises, compensate to citizens – event solved – new project result in a new pollution–

What we have learnt from the historical implementation of environmental law is that we should not simply treat the government as representative of public interest, ignoring that the government also seek to maximize the administrative interests, the same way as enterprises seeks to maximize

profits. Government has a variety of administrative interests. Therefore, the key question is how to make a balance between different conflict of interest between citizens and enterprise. To achieve this aim, the government must ensure to maintain a fair and impartial stance throughout the whole administrative process. Since the government cannot be assumed to represent the public interest, government policy is not always made on the basis of public interest; government still tend to consider economic development at the expense of citizens environmental rights. The judiciary therefore become to the last buffer valve of protecting citizens and defusing conflict.

For the consideration of administrative efficiency, as we have seen here, the local government used to exclude public participation intentionally during the decision making procedure. This resulted in that the citizens were unable to get all the information in advance of a project, even in cases were there was a hearing or public participation. Until the pollution or disaster is a fact – only when the legitimate rights of health and property interests have been violated by pollution – is information disclosed. This means that the government refuse to give out public information in advance, and shirk responsibility among the different departments afterwards.

Incidents of pollution and disaster lead to a lack of trust between individual citizens and local government, which weakens the credibility of the government in the end. Every time when a conflict happens, even though the government tried to make consultation with citizens in order to solve the problem, it is hard for the government to get responses from citizens, because of distrust. Citizens tend to believe that what the government aims to do is simply just delaying the matter, rather than trying to solve it. In this way citizens can only resort to much stronger radical ways of protest. Demonstration is still a sensitive word in China, generally the public security department does not give permission to individuals and groups to demonstrate. These force public protesters to invent new ways and words for public action of dissent such as the ‘walking’ described in Chapter 6 on Xiamen PX project. However, this kind of non-permitted demonstration give an excuse to government and public security department to punish protesters severely in the name of the regulation that “an unapproved public meeting is a serious offence of law”. Thus the legitimate rights of citizens to participate (under the environmental law) are overshadowed by what is judged to be illegal public dissent. This selective enforcement of law intensifies in the conflict between local government and citizen activists, leading to violence against the law and public outrage.

8.2. Environmental protection department – A ‘toothless tiger’?

Under China’s political system, the administrative power is divided into different parts which are controlled by different departments as discussed in the previous chapters. For a law to be enforced it does not rely only on the level of promulgate organ but the implantation of the law is also influenced by how powerful the department is. China’s environmental protection administration department has a unified management. The system of division of responsibility within the governmental system of mutual restraint and overlapping relationship between the various departments directly affect the effectiveness of environmental protection. From the analysis of the institutional structure of China presented here it is clear that despite that China’s environmental protection department assumes regulatory responsibilities of a ‘unified supervision and management of environmental protection’, the ‘consolidated supervision’ only exists as theoretical or nominal. The means to achieve the unified supervision are all decided by the policies and documents of CPC and the State Council, rather than on the basis of the Environmental Law. Despite the fact that the State Environmental Protection Administration was upgraded to the Ministry of Environmental Protection (MEP) in 2008, the ministry is still in a weak and in an embarrassed position; the previous government power operation mechanisms of responsibility and
power balance has not been changed. MEP has almost lost its voice during the whole procedure of making decisions on economic development and infrastructure nationally and locally. However, MEP is the first agency to be accountable every time environmental pollution incidents are being investigated.

I have repeatedly here brought up the local governance has played a special and also important role in the whole of China’s political system. When I describe the MEP, I have to ask you again to pay attention the difference between the MEP centre and the local Environmental Protection Bureaus. Research focusing on the institutional limitations of local Environmental Protection Bureaus such as Liaoning, Sichuan, Shandong have shown that they are powerless to handle the implementation of environmental protection tasks. The same way as MEP on central level is only a small part of China’s administrative departments, the local Environmental Protection Bureaus also are only one of the intricate network of local government which rely strongly on the coordination and consensus-building of inter-department in order to achieve bureau objectives.

The Tianjin explosion and Xiamen PX project case examples that have been discussed here are both related to administrative procedures of project approval. China now has a system of administrative examination and approval of laws, regulations and other rules stating that economic authorities, the industry department and also environmental protection departments have to be included in the approval procedures. This means that theoretically, a construction project before construction must pass through the formal approval of all the relevant government supervision and licensing department. But the problem lies not only in the environmental approval procedures, there have been a lot of ‘unapproved’ construction projects in those environmental pollution incidents. There has been no clear mandate for the content and responsibility to exercise control of the specific enforcement authority, and division of responsibilities blur the boundaries between the ‘unified management’ and the ‘division of labour in charge of management’. This eventually leads to a mutual power struggle among department’s, and the disclaiming of responsibilities and passing around the bill after disaster/contamination has happened.

Meanwhile, local government bodies as one part of prevention chain of environmental pollution take responsibility for supervision and management of pollution but at the same also intentionally ignore the polluting activities as they tend to be guided by, driven by economic interests. The Environmental Impact Assessment reports which should take into considered as basis of making decision is superfluous in this sense. Whenever a conflict between economic development and environmental protection has occurred, the department neither have ability to influence the final decision nor punish the polluting company. The environmental protection department has for a long time been marginalised in whole administrative making decision process. The metaphore of the journalist Jing Chai in the documentary ‘Under the dome’ of the MEP ‘like a toothless tiger’ thus is correct. Over time, omitting action or administrative duties on polluting activities become normal affairs in the environmental department.

8.3. Final discussion

Looking at the current court system of China which I described in part 2.3.1, the laws and regulations system in China can be divided into two kinds depending on different formulate subject: that is central level and local level. China’s court system is composed by two parts which parallels the geographic-administrative divisions according to the Organic Law of the People’s Courts\footnote{Article 2 of the Organic Law 9 (1979, revised in 2006).}, local courts system and special courts systems. First, the local courts include 32 higher people’s courts (provincial level), 409 intermediate people’s courts (prefecture level) and 3,117 basic people’s courts (county level). Besides, the special courts system is composed by the PLA military court, maritime courts and railway transport/reclamation/forest courts.\footnote{Zhang, Minchun and Zhang, Bao, 2012. Specialised Environmental Courts in China: Status Quo, Challenges and Responses. Journal of Energy & Natural Resources Law 30 (4): https://ssrn.com/abstract=2119866} As I have mentioned before, China has seven categories and three different levels cover the whole of the laws as a unified multi-ethnic country with a unified political system. The seven categories are the Constitution and Constitution-related, civil and commercial, administrative, economic, social, and criminal laws and the laws on lawsuit and non-lawsuit procedures. The three different levels are state laws, administrative regulations and local statues. The disputes are also divided into criminal, civil, administrative cases according to the categories. Environmental cases are covered by this court system. According to a survey, China has established almost 100 environmental courts in 15 provinces already in March 2011 and the number is still increasing.\footnote{For the dynamic situation and specific distributions of the courts, Zhang, Minchun and Zhang, Bao, 2012.} It appears as China has developed the specialised environmental courts rapidly in past years. However, a serious dilemma for the courts that is that there are, as I have shown difficulties in implementation. This to me explains, why people felt the environment problems are becoming more severe despite the fact that more and more environmental courts have been established. The formal trial system in China is divided into a sole judge or a collegiate panel (he yi ting), which is composed by three, five or seven judges or a combination of judges and people’ assessors. First-instance cases are tried by a collegiate panel (he yi ting).\footnote{People’s assessors have five-year terms, and only exist in basic people’s courts. The basic court would propose a list of people’s assessors, which consists of citizens over 23 years old appointed by the standing committee of the country’s people’s congress. In specific cases, a collegiate panel can consist of at least one judge, and the people’s assessors would be chosen randomly from the list have the same power as the judge or judges.} The mixed autonomy of central and local governance, as what I have explained in Chapter 2, that is the structure of the administrative system of China has an important role in the failure of environmental policies\footnote{Heberer, Thomas and Anja, Senz, 2011.} Second, China’s trial system making the lower levels of government dependent on the individual decisions of lower level officials rather than the formalised decision process that occurs in central governance.\footnote{Edmonds, Richard Louis 2011.} According to Civil Procedure Law of PRC, “the court of second instance being that of last instance.”\footnote{Article 10, “Civil Procedure Law of the People’s Republic of China”, Adopted in 1991, revised in 2012.} which means that generally the trial system in China is, in most of the cases shall be jurisdicted in the primary people’s court,\footnote{Article 17, “Civil Procedure Law of the People’s Republic of China”, Adopted in 1991, revised in 2012.} which is what we called the basic court. This means that, the attitude of local individual officials when it comes to need to protect environment rather than promote economic growth and development is decided by the different economic conditions in different region.

I do not intend to question here about the efficacy of environmental courts, what I want to claim rather is that the complexity of whole political system in China, especially the complex relationship between the CCP and the government, the central government with the local government, the
balance between GDP and nature protect and all of the factors I have described in part 2, 3, 4 should
remind people that, the reason for the resulting the pollution of China might be on an administration
level. Economic pressure stops the local government from considering of environmental protection
and encourages them only pursue economic growth, meaning that they neglect pollution and
environmental protection monitoring when it comes to enterprises and factories. On a legislative
level, I mentioned before that for a law to be enforced it does not rely only on the level of
promulgate organ but the implantation of the law is also influenced by how powerful the department
is. China’s environmental protection administration department has a unified management. Despite
that China’s environmental protection department assumes regulatory responsibilities of ‘unified
supervision and management of environmental protection’, the ‘consolidated supervision’ only
exists as theoretical or nominal. The means to achieve the unified supervision are all decided by
the policies and documents of CPC and the State Council, rather than on the basis of the
Environmental Law. The description of the environmental protection department as a ‘toothless
tiger’ is not merely a joke, but an embarrassing reality. No matter how many environmental courts
have been established already and how many will be in the future, the current situation of serious
pollution in China would not be changed without defining the problem amending it.

According to the National data from National Bureau of Statics of China (NBS), as the most
populous country in the world, with almost 1,400,000,000 people, accompanied with the huge rate
of economic growth, environmental problems are amassing; from air pollution to disappeared
wetlands, from biodiversity losses to soil erosion, from increasing scale to frequency natural
disasters, all of those issues have shown clearly that China today is facing serious environmental
problem. The environmental crisis is causing more and more health problems and enormous
economic losses. Here I have brought up examples disasters such as the Tianjin Explosions
(Chapter 7) and social conflicts such as Xiamen PX project (Chapter 6) resulting from poor
implementation of the Environmental law. Thinking of China’s huge population, China’s
geography and also the scale of the growing economy China’s environmental issues are enormously
complex and is spilling over to the rest of world. China’s environmental crisis does not only impact
China itself, but also affect the global world through sharing the same air, the same oceans, the
same atmosphere, and so on.

At the same time there is a huge growing interest in these environmental concerns; the
environmental documentary Under the Dome was shown on the February 28, 2015 and was viewed
more than 150 million times on internet within three days. Although the Communist Party’s
publicity department confidentially ordered the film to be removed, the documentary caused great
repercussion in whole Chirnese society and aroused a public discussion around the increasingly
serious environmental pollution crisis. In one way this example could be used to argue that until
today Chinese government is still keep strict control on certain sensitive issues but on the other
hand, the 3 day time window when the documentary was shown and the responses to it show how
complex the political situation in China is.

Many environmental protection laws and policies have been adopted in China, but for a long time
it seems they have only existed on paper, without being effectively enforced. Someone may argue
it is because of a lack of a related law that reach international standard. But since the first pollution
control project Beijing Guan Ting Reserve Water Pollution Control Project in 1972 until the release
of the revised Environmental Protection Law of the People’s Republic of China in 2015, more than
30 laws and regulations about environment, resources, energy and clean production, recycling
economy promotion have been formulated in China in order to prevent pollution and protect
environment. So the pollution in China is not due to the lack of appropriate laws and regulations.
Then, the next question is and that I have tried to address in this thesis: What are the reasons behind
the lack of effectiveness of the enforcement on the environmental protection law?
If we take the huge land area, the biggest population in the world, the big differences between north and south on weather and history, also considering these differences between Han nation together with other ethnic groups into consideration, and think about the ambiguity on power and procedures which allow and admit local governments to deal with jurisdiction and enforcement on the basis of different local conditions we may have some explanation. From the increasing environmental demonstration such as Xiamen PX project to Tianjin 812 explosion, also the so-called ‘APEC Blue’ showed environmental pollution has come to be known as a serious issue putting big pressure on China’s whole society.

The environmental protection issues are presently so complicated in China that it can no longer be solved by a single department. China’s leadership has started to put more meat on the bone of the 13th Five Year Plan this year, which will implement a number of laws aimed at improving the environment. A five year plan was discussed that is likely to adopt tougher environmental targets and restrictions on pollutants, as it aims for greener growth. Since the United Nations Convention on Climate Change entered into force over 20 years ago, global actions on climate change have matured. But there still large difficulties and challenges which humans must face and resolve. In the Paris Conference on 30th November 2015 the President of China, Xi Jinping pointed out that:

*China has seen rapid economic growth in people’s lives. However, this has taken a toll on the environment and resources [...] China is vigorously making ecological endeavors to promote green, circular and low-carbon growth [...] ecological endeavours will feature prominently in China’s 13th Five-Year Plan*.

In order to implement the aim, Xi has promised that:

>“China will, on the basis of technological and institutional innovation, adopt new policy measures to improve industrial mix, build low-carbon energy system, develop green building and low-carbon transportation, and build a nation-wide carbon emission trading market so as to foster a new pattern of modernization featuring harmony between man and nature. In its Intended Nationally Determined Contributions, China pledges to peak CO2 emissions by around 2030 and strive to achieve it as soon as possible, and by 2030, reduce CO2 per unit of GDP by 60-65% over the 2005 level, raise the share of non-fossil fuels in primary energy consumption to about 20% and increase forest stock by around 4.5 billion cubic meters over 2005.”

This requires strenuous efforts; China has to fulfil its commitments. No matter what this means in terms of implementation and enforcement, of public participation and enclosure or pushing the environmental impact assessment law into practice, all of these measure face the awkward situation that overlapping and confusing jurisdiction, leads to the lack of legal authority for halting pollution, they will remain ‘words on paper’ without possibilities for implementation.

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153 ‘Apec blue’ is refers to the rare blue sky in Beijing during APEC China 2014 due to emission reduction campaign directed by Chinese government


155 H.E. Xi Jinping 2015.
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8. Regulation of the PRC on the Disclosure of Government Information, promulgated by the State Council in April 2007 (came into effect on May 1, 2008).
10. The Constitution of the People’s Republic of China, adopted respectively at the First Session of the Seventh National People’s Congress (on April 12, 1988), and then the First Session of the Eighth National People’s Congress (on March 29, 1993) on the Second Session of the Ninth National People’s Congress (on March 15, 1999) and lastly on the Second Session of the Tenth National People’s Congress (on March 14, 2004).
11. The Law of the PRC on Region National Autonomy, adopted at the Second Session of the Sixth National People\ congress on May 31,1984 ,amended in accordance with the Decision


17. *The Decision of Strengthening Environmental Protection in the National Economy on the Adjustment Period.*

18. *The Notification from Ministry of Communications and other Departments about how to Deepen Reform on Port Management System Directly under the Central and Dual Leadershi.

**Internet Resource**


4. The International Maritime Dangerous Goods Code（IMDG Code）, international guideline to the safe transportation or shipment of dangerous goods or hazardous materials by water on vessel.


8. The official microblogging of Tianjin Municipal People’s Government information office.


11. The official microblogging of Tianjin Municipal People’s Government information office, 2015-8-27


14. Under the dome, 2015, Chai,jing, [https://www.youtube.com/watch?v=T6X2uw1QGQM](https://www.youtube.com/watch?v=T6X2uw1QGQM)