HUMAN RIGHTS AND THE RULE OF LAW IN CHINA

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Mr. Chairman and distinguished Members of the Commission, it is my pleasure to have the opportunity to discuss China's efforts in the realm of human rights, the rule of law and the environment and the prospects for U.S.-China cooperation on this critical issue.

Introduction

Over the past five to seven years, China's leaders have become increasingly concerned about the impact of the environment on the country's future. Twenty of the world's thirty most polluted cities are in China; over half of the country's population drinks contaminated water on a daily basis; and more than twenty-five percent of the land is severely degraded or desertified. As China's Minister of Environmental Protection Zhou Shengxian acknowledged in 2007, "Pollution problems have threatened public health and social stability and have become a bottleneck for sound socio-economic development."[1]

Much of China's environmental challenge stems from the very rapid and unfettered growth of the past thirty years. The "growth at all costs" model of development has exerted a profoundly negative impact on the country's air, water and land quality and further transformed China into a major global polluter. The country now ranks as the world's chief contributor to global climate change, ozone depletion, the illegal timber trade, and pollution in the Pacific.

Yet the inability of China's leaders to turn this devastating environmental situation around—and the environment is frequently mentioned as a "top" priority by President Hu Jintao and Premier Wen Jiabao—has as much to do with failings in governance as with economic interests. China has passed well over 100 environmental laws and hundreds of regulations. The challenge rests in effectively implementing these laws and regulations, a process that is seriously impeded by a lack of transparency, rule of law and official accountability.

Whether China's leaders are able to incorporate better governance practices into their system matters enormously not only for the health and welfare of the Chinese people but also for the rest of the world. If China cannot enforce its current environmental laws and regulations, there is little reason to believe that it will be able to respond effectively to a challenge such as global climate change.

[1] Jiangtao Shi, "Beijing gets flak for pollution of waterways," *South China Morning Post* (September 17, 2007).

The Nature of the Challenge

China's leaders are concerned about the country's environment above all because it is limiting opportunities for future economic growth, harming the health of the Chinese people, and has become one of the leading sources of social unrest throughout the country.

The economic challenges are most direct. Over the past several years, the Chinese media have reported on a number of environment-induced annual economic losses: desertification costs the Chinese economy about $8 billion, in addition to water pollution costs of $35.8 billion, air pollution costs of $27 billion and weather disaster and acid rain costs of $26.5 and $13.3 billion respectively.[2] All told, the Ministry of Environmental Protection estimates that environmental pollution and degradation cost the Chinese economy the equivalent of ten percent of GDP annually. Regionally, the impact is even more devastating. The prawn catch in the Bohai Sea, for example, has dropped by ninety percent over the past decade and a half as a result of pollution and overfishing. In Qinghai, over two thousand lakes and rivers have simply dried up over the past two decades, contributing to significant lost opportunities for industrial growth.

These economic costs are compounded by a set of mounting public health problems. In a survey of thirty cities and seventy-eight counties released in spring 2007, the Ministry of Health blamed worsening air and water pollution for dramatic increases in the incidence of cancer throughut the country: a nineteen percent rise in urban areas and a twenty-three percent rise in rural areas since 2005.[3] About 700 million people in China drink water that is contaminated with human or animal waste,[4] and according to the Ministry of Water Resources, 190 million drink water that is so contaminated that it is dangerous to their health.

Taken together, these economic and health problems are at the root of the rapidly rising public discontent and unrest over the state of the environment. According to Minister Zhou, in 2005, the number of environmental protests topped 50,000.[5] While some pollution-related protests are relatively small and peaceful, others become violent, even deadly, when demands for change are repeatedly ignored.

In August 2009, for example, several thousand villagers in Shaanxi Province stormed a lead and zinc smelting plant after hundreds of children living near the plant tested positive for excessive levels of lead in their blood.[6] Of these, 154 were so sick that they had to be admitted to the hospital.[7] The villagers had been complaining for three years about the

[2] "Cost of Pollution in China: Economic Estimates of Physical Damages," The World Bank and China State Environmental Protection Administration (February 2007).

[3] "Health Expert Blames Pollution for China's Cancer Rise," *Reuters* (May 16, 2007).

[4] "Toxic Rivers and Thirsty Cities," China Environment Forum, Woodrow Wilson International Center for Scholars (May 2007): www.wilsoncenter.org/index.cfm?.
fuseaction=topics.item&news_id=224022&topic_id=1421.

[5] "Wen sets out strategy to tackle environmental protection," *Xinhua News Agency* (April 23, 2006).

[6] "Hundreds storm smelter over lead poisoning," *Reuters* (August 17, 2009).

[7] Kelly Chan, "Lead-poisoned villagers in Shaanxi fear new location unsafe," *South China Morning Post* (August 17, 2009). Lead poisoning can damage the nervous and reproductive systems. It also can cause anemia, affect a child's learning ability, and in the worst cases, lead to coma and death.

plant, and although the local government has promised to relocate the affected families, villagers in the relocation sites have noted that their children are similarly afflicted with lead poisoning.[8]

Environmental protest has also been spurred by the Internet. In May 2009, in Shandong Province, a group of residents posted an online petition calling for an investigation of four cyclohexanone chemical plants. The petioners believed that the factories, which had been in operation since a year earlier, were polluting the air and water and contributing to an unusually high number of thyroid cancer cases. The county government initially ignored the petition, arguing that the factories were not allowed to drain wastewater until they met provincial standards and had passed official water quality tests. Over the next month, the petition circulated on web portals such as Baidu and Tianya, collecting an estimated 1,400 signatures. In an open letter published on Internet forums, one resident even called for a broader "uprising" that might not be successful but would "mark the start of a revolution against a crude regime" and even called for the killing of the Communist Party chief and county director. The author later claimed that more than 5,000 people had signed up for the protest. On June 29, 2009, Premier Wen Jiabao ordered the Shandong officials to investigate the claims and respond to the public.[9]

In addition, the Internet and other forms of telecommunication such as texting have facilitated mobilized protest in urban areas, a phenomenon of only the past two years. There have been significant protests—with up to 10,000 people—in major cities such as Xiamen, Zhangzhou and Chengdu over the planned siting of various large-scale chemical and petrochemical plants. Here, too, violence has occurred in some cases. Notably, in a few of these instances of urban protest, public opposition has been strong enough to lead to a reversal in a government decision. The significance of the urban, middle class protest is that it erupts not "after the fact" in response to a devastating environment-induced economic or public health crisis, but rather in advance of something likely to cause significant public health damage. In a small, but potentially significant, way, therefore, urban protestors have influenced Chinese government policy.

Reform in Environmental Governance

There are a number of reasons for China's worsening environmental situation and the related proliferating social and economic challenges: a continued priority on economic growth, the pricing of resources that doesn't support conservation or efficiency, a dearth of political and economic incentives to do the right thing and, most critically, a lack of transparency, official accountability and the rule of law. There is no reliable mechanism for uncovering and dealing with environmental wrongdoing.

To begin with, accurate environmental data are often difficult to obtain. Sometimes it is a matter of capacity. Local environmental officials may simply not have the manpower, transportation or funds to monitor pollution levels at all the sites for which they are responsible. In addition, local officials are often reluctant to provide information that reflects poorly on their leadership, and there is no institutionalized check on the statistics that are provided. One significant central government campaign to evaluate local officials on their environmental performance—the Green GDP campaign—failed in large measure because the Ministry of Environmental Protection could not access the necessary environmental data from a number of recalcitrant provincial leaders. In a few places, such as Jiangsu Province, there are experiments underway with interntational partners to scorecard factories and make the information available publicly. However, ensuring the transparency element of the process has apparently been quite difficult.

[8] Shi Jiangtao, "Order Restored after Factory Protest," *South China Morning Post* (August 18, 2009).

[9] Al Guo, "Internet petition catches the eye of Premier Wen; Pollution investigation fast-tracked," *South China Morning Post* (June 29, 2009).

Corruption is also a serious problem. Many local officials often ignore serious pollution problems out of self-interest. Sometimes they have a direct financial stake in factories or personal relationships with factory managers. In recent years, the media have uncovered cases in which local officials have put pressure on the courts, the press, or even hospitals to prevent pollution problems and disasters from coming to light. Moreover, local officials often divert environmental protection funds to other endeavors. A recent Ministry of Environmental Protection-supported study, for example, found that fully half of the environmental funds distributed from Beijing to local officials for environmental protection made its way to projects unrelated to the environment.

Recognizing the potential of local officials to subvert or ignore environmental laws and regulations, Beijing has opened the door to the media and non-governmental organizations (NGOs) to act as unofficial environmental watchdogs. China's first environmental NGO, Friends of Nature, was established in 1994, and it was devoted to environmental education and biodiversity protection. Fifteen years later, China has over 3,000 environmental NGOs that play a role in virtually every aspect of environmental protection. Above all, they help bring transparency to the environmental situation on the ground. These groups help expose polluting factories to the central government, launch internet campaigns to protest the proliferation of large-scale hydropower projects, sue for the rights of villagers poisoned by contaminated water or air, provide seed money to smaller, newer NGOS throughout the country, and go undercover to expose multinationals that ignore international environmental standards. The media are an important ally in this fight: educating the public, shaming polluters, uncovering environmental abuse and highlighting environmental protection successes.

Environmental NGOs are also at the forefront of advancing the still nascent rule of law in China's political system. In 1998, Wang Canfa, a professor of law at the China University of Politics and Law, established the Center for Legal Assistance to Pollution Victims (CLAPV). The center trains lawyers to engage in enforcing environmental laws, educates judges on environmental issues, provides free legal advice to pollution victims through a telephone hotline, and litigates cases involving environmental law. Between 2001 and 2007, the center trained 262 lawyers, 189 judges and 21 environmental enforcement officials in environmental law.[10]

In addition, Wang has been advising the Chinese government on the establishment of a system of specialized environmental courts. Beginning in late 2007, the Supreme People's Court established a network of courts that are responsible only for cases regarding environmental protection and the enforcement of environmental regulations. These environmental protection courts seek to address the weak capacity of judges to solve environmental disputes due to lack of expertise and experience, eliminate the challenge faced by plaintiffs in bringing environmental lawsuits, and strengthen the enforcement of judgements against defendants who are influential in local economic matters. Thus far, these courts have been established in three provinces: Guizhou, Jiangsu and Yunnan. The courts have already heard a number of cases: the Kunming Court in Yunnan Province heard twelve environmental law violation cases during the first half of 2009, while the Guiyang court in Guizhou accepted forty-five environmental cases (and ruled on thirty-seven of them) in its first six months.[11] These environmental courts also have the authority to enforce the judgments they issue. More environmental courts are expected to open throughout China as the success of established courts becomes determined. The biggest problem currently confronting the courts is that they do not have enough cases to consider.

Despite the important role that environmental NGOs and the media have come to play in China's environmental protection effort, many Chinese leaders remain wary of the intentions of these non-governmental actors. Above all,

[10] Lindon Ellis, "Giving the Courts Green Teeth," China Environment Forum, Woodrow Wilson International Center for Scholars (October 22, 2008): http://www.wilsoncenter.org/index.cfm?topic_id=1421&fuseaction=topics.event_summary&event_id=477342.
[11] Gao Jie, "Environmental Protection Courts: Incubator of Environmental Public Interest Litigation or Just A Decoration?" *GreenLaw* (October 5, 2008): http://www.greenlaw.org.cn/enblog/?p=4.

China's leaders fear the potential that the environment might become a lightning rod for a broader push for political reform. They thus have put in place a byzantine set of financial and political requirements to confine NGO activities within certain boundaries and to enable their close monitoring by authorities. Misjudging these boundaries can bring severe penalties. Wu Lihong worked for sixteen years to address the pollution in Tai Lake, gathering evidence that forced almost two hundred factories to close. In 2005, Beijing honored Wu as one of the country's top environmentalists, but in 2006, one of the local governments Wu had criticized, arrested and jailed him on dubious charges of blackmail and fraud. Yu Xiaogang, the 2006 winner of the Goldman Environmental Prize and 2009 winner of the Ramon Magsaysay Award, both for grassroots environmental activism, has been forbidden to travel abroad in retaliation for educating villagers about the potential downsides of a proposed dam relocation in Yunnan Province. A third environmental activist, Tan Kai, has been in jail since 2006. In 2005, Tan established the NGO Green Watch in his home province, Zhejiang, to monitor local officials' compliance with orders to shut down several polluting factories that had been the sites of serious protests.

Implications for the United States

For the United States, the capacity of China to meet its environmental challenges is only becoming more pressing. If China does not have transparency, accountability or the rule of law within its domestic environmental system, it cannot be relied upon to be a responsible partner to meet the challenge of a global issue such as climate change. It will not possess the capacity to enforce the regulations that will arise from domestic climate legislation nor the transparency to ensure accurate measurement of emissions and emissions reductions. Nor will China be able to devise and implement a system that will ensure that officials who attempt to subvert the legislation will be held accountable. This does not mean that the United States should not move forward to assist China in setting and meeting targets to reduce their greenhouse gas emissions. It does suggest, however, that building capacity within China's system of environmental governance should be a top priority for bilateral cooperation.

There are small-scale efforts already underway within the United States to help China develop such capacity. Over the past two years, the U.S. government has provided $5-$10 million in Development Assistance for programs and activities in the PRC related to democracy, rule of law and the environment.[12] With support from the U.S. government, for example, the American Bar Association has supported both Wang Canfa's Center for Legal Assistance to Pollution Victims as well as various universities to train public interest lawyers to specialize on the environment and provide expertise to the new environmental courts. Vermont Law School similarly engages partners such as SunYat-sen University to help improve China's environmental policies, systems and laws. Climate change is also garnering growing interest as an area of cooperation. The state of California is already pushing forward on several fronts, including enhancing transparency in energy use in Jiangsu Province and fostering interagency cooperation at the local level to address climate change.[13] Still, the majority of interest and attention in the United States and China is focused on the opportunity for technology cooperation and transfer. This technology will only be effective, however, if China has the appropriate political environment to support its use. To tackle an issue of the magnitude of climate change, will require far more of a concerted and coordinated international effort by the United States and its partners to bolster the rule of law, transparency and accountability within China.

[12] Thomas Lum, "U.S.-Funded Assistance Programs in China," Congressional Research Service (January 28, 2008).

[13] "Local-to-Local Energy Linkages: California and Alberta in China," Event Summary, China Environment Forum, Woodrow Wilson International Center for Scholars (May 20, 2008).