RAOUL WALLENBERG INSTITUTE
OF HUMAN RIGHTS AND HUMANITARIAN LAW

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中外对话 China Dialogue

# Environmental Law from Below, in China and Beyond

***A hybrid conference held in conjunction with Stockholm+50***
***Jointly organized by The Raoul Wallenberg Institute of Human Rights and Humanitarian Law and China Dialogue Trust***

**June 1, 2022**

## Welcome and introduction

The panellists and participants were welcomed to the event "Environmental Law from Below, in China and Beyond" on behalf of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law and China Dialogue Trust. During this event, the panellists and participants were invited to discuss what role the access to information, participation, and justice plays today, in China and beyond.

To introduce the event, the UN Conference on the Human Environment held in Stockholm in 1972 (1972 Conference) was described as a turning point for environmental protection and environmental governance. It paved the way for new cooperation and alliances, especially between the Global North and the Global South, and it spurred legal activism and increased recognition of the relevance of environmental quality for the enjoyment of basic human rights. Overall, and in particular, it recognised that there is a need for global cooperation to build joint ambition around the environment, which has since been increasingly recognised and emphasised in various settings and by various actors.

Given the event's particular focus on China, it was further remarked that environmental protection in China had its roots in the state's participation in the 1972 Conference. Following this, in 1973, Beijing hosted its first national conference on environmental protection and last year, in 2021, the right to a healthy environment was mentioned in China's Action Plan. While the worsening relationship between China and the West today cannot be expected to be resolved over the short and immediate term, it was emphasised that these tensions cannot be allowed to hold the environment hostage. With these opening words, the focus turned to the first of the four panel discussions.

## Panel discussion 1: Asserting the right to public participation in national and international environmental decision making

The first session explored how the right to public participation is asserted around the world, drawing upon insights and experiences of the panellists. In particular, the panel lifted three different elements that are necessary for the right to public participation in decision-making to be effective: *inclusiveness*, *meaningfulness*, and the *protection of human rights defenders* against violations and attacks.

As regards the notion of *inclusiveness*, the panel recognised the need for specialised effort to include different groups in society in the decision-making process, including vulnerable populations, women, and young people. Although some progress in the area of women's rights and gender-sensitivity has been made since the 1972 Conference, it was recognised that there is still a need to take the question

of gender equality one step further. Recognizing the agency of women and girls working at all levels - from international diplomacy and law to small-scale agriculture and challenging power relations that limit women and girls' abilities to be truly part of decision-making processes, will help us make the right to a healthy environment a reality for *all*.

Regarding the notion of *meaningfulness*, it was considered that too many opportunities for participation in consultation processes may end up counteracting as it is impossible for people to participate meaningfully in all those opportunities. Furthermore, the panellists discussed the need to ensure that people are not only invited to the table, but that their voices are actually heard in the decision-making. While states are starting to create spaces for people to participate, there is a gap between their participation and the inclusion of their ideas. Combatting this gap requires both the inclusion of people in the decision-making at an *early stage*, as well as the need to tackle the *power-imbalance* issue.

The panellists further reflected upon the *implementation* of the right to public participation, recognising that there is a gap between the regulations ensuring this right and the implementation of this right in practice. Some possible reasons for this gap lifted were deficiencies in the laws, the nature of the democratic context, and tensions between the culture and customary norms and the written rules of law. A potential solution raised was to focus more on the *interest* of public participation, i.e. on public participation as an interest as opposed to merely a legal right.

Last, the panel considered the *legislative development* in China since the 1972 Conference. For instance, the revised environmental protection law from 2014 recognises the right to public participation as a fundamental principle of law in China, which had previously only been recognised as a policy. The panellists also lifted some *illustrative cases* from the Supreme Court in China, where

it has promoted the right to public participation and has empowered non-governmental organisations (NGOs) to file litigations against pollution. Still, while important progress has indeed been achieved, it was noted that there is a need for more work to translate this right into practice. For this work, it was suggested that we need synergy between top-down and bottom-up approaches.

## Panel discussion 2: Access to environmental information and the role of media actors

During the second panel, the panellists discussed the access to environmental information and the role of media actors in this regard. In general, access to environmental information was recognised as essential both in itself that it empowers citizens to governance and constitutes a starting point to other rights, such as public participation and access to justice, and for achieving better decisions. It includes, *inter alia*, information about environmental quality, legislation, and policy.

The panellists discussed important *developments* on the access to information that has taken place in China in the past. It was noted that the acceleration of the spread of information is developing, that the Chinese Government is paying more attention to the protection of the environment, and that the media is increasingly covering this issue.

The panellists recognised several avenues that can empower citizens to have more and better access to environmental information, in particular the *media*, *hotlines* that makes it possible for individuals to

report on environmental issues, and the work of the Institute of Public and Environmental Affairs (*IPE*), which collects data and has established a database of environmental information.

As raised by panellists, the work of the IPE can lead to important progress and developments in environmental protection and the right to information. For instance, it allows individuals easy access to information, which can lead to 'micro-reporting' by individuals in social media and thus bring the development further.

When identifying and discussing some of the shortcomings and difficulties with the access to environmental information and the role of media actors, the panellists raised the need to address the knowledge and skills of journalists within *different layers of the media* in China.

For instance, there is a large group of gatekeepers to the public decisions in China, which was held to make it very frustrating and difficult for journalists to play a role in China. Overall, however, it was recognised that there is still more space for journalists in China to write about the environment, compared to human rights and gender issues.

Furthermore and last, the panellists discussed and recognised the relevance of *reliable* information in the promotion of access to information, both in China and across the world. It was noted that the data from the IPE is monitored and cannot be changed, whereas individuals should be able to rely on its information. Furthermore, it was argued that reliable data could be ensured by including different stakeholders from the public, academia, as well as other institutions, in different monitoring activities, so that the data is not only coming from the state and the government.

## Panel discussion 3: Rights-based litigation as enabler of environmental justice

The third panel addressed and explored the role of rights-based litigation as enabler of environmental justice, where the panellists shared their experiences on the matter. Overall, the use of courts and rights-based litigation was widely recognised among the panellists as an important tool in environmental governance and as an enabler of environmental justice.

Many elements were raised among the panellists that have an impact on rights-based litigation and that are necessary to reflect upon, such as the *normative elements* of the right to a clean and healthy environment, the *freedom of the judiciary*, and the *civil awareness* of the possibility of rights-based litigation. Other technical issues relevant to address and consider raised by the panellists were the questions of *legal standing* and the *costs* of litigation cases. Last, the *competence of judges* to deal with human rights-based litigation on basis of environmental law and human rights law was also discussed.

The panel shared numerous examples of *successful litigation cases*, many of which were from the Global South. It was noted that these cases illustrate how litigation is being used to enable environmental justice and to protect the right to a clean and healthy environment, albeit in different ways and by different groups. The panellists recognised that more and more communities are stepping up and want to shape the law, and that each successful case gives momentum to communities. Still, while successful litigation might be an important first step, it was also recognised that more work needs to be done to ensure their successful *enforcement of judgements*, in order to be relevant on the

practical scene and have a real impact on people's wellbeing in particular those people in vulnerable and marginalized situations.

Part of the discussion also included the possibility and role of holding *transnational companies* accountable. The question was raised as to whether and how such accountability could be ensured within the existing framework of law, where the existing United Nations conventions on human rights tend to focus on national jurisdictions and territories alone and are less successful in addressing human rights issues in the international order with respect to *extraterritorial obligations* for human rights.

It was asked whether a next generation of laws might be required. As a response to this question, it was noted that there might be ways to combat this issue without having to 'reinvent the wheel' and create a new generation of laws. Overall, however, the need for further consideration of this issue was recognised and emphasised. Regional courts such as the Interamerican Court of Human Rights, the Africa Court of Human and Peoples Rights as well as the European Court of Human Rights were also highlighted as spaces where environmental justice can be advanced.

**Panel discussion 4: International review mechanisms: Monitoring the implementations of commitments**

During the fourth and last panel, the possibility to tackle and overcome the compliance gap in practice was discussed. In this regard, the panellists drew attention to and discussed their experiences with

different treaty bodies' compliance mechanisms and committees, established under both multilateral environmental treaties and human rights treaties.

Within the area of environmental multilateral treaties, the panel described and discussed the establishment and operation of the Paris Agreement Implementation and Compliance Mechanism as well as the compliance committee under the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), both of which are currently being established. The importance and relevance of these compliance mechanisms was discussed, and it was recognised that, albeit some differences, they will have the possibility to provide systemic reports and respond to the requests of the state parties on specific aspects of the agreements. Most importantly, however, it was recognised that they are established for the purpose of *supporting* the parties to the agreements in their implementation of their obligations. The panellists also discussed the mechanisms established under the Convention on Biological Diversity (CBD), and the difficulties of the parties to the agreement to meet both their procedural and substantive obligations for various reasons including lacking capacities.

Within human rights law, the panel discussed and reflected upon a recent landmark decision of the Committee on the Rights of the Child (CRC) in 2021, where the CRC considered a petition filed by 16 children from 12 countries against Argentina, Brazil, France, Germany, and Turkey. It was recognised by the panellists that one of the challenges and issues within human rights law is to prove the causational link between the causes of harm and the experienced effects, in particular in cases of environmental transboundary harm. Nevertheless, in this ruling, the Committee recognised that the states concerned exercised jurisdiction over those children, thus recognising a *sufficient causal link* between the individuals and the harm. Although the CRC deemed the communication inadmissible for reason of non-exhaustion of legal remedies, it was recognised that the case is important since it illustrates the relevance of environmental law for informing the scope of human rights obligations.

Overall, the discussion turned to the *relationship between environmental law and human rights law*. Participants pointed out that while environmental law and human rights law were developed in relative isolation, they seem to be increasingly interconnected and they can indeed learn from each other. For instance, it was noted that while international environmental law contains very limited enforceable duties, it can be strengthened when it is applied within the scope of international human right law.

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