

## **International Institute of Law and the Environment (IIDMA)**

### **Center for Legal Assistance to Pollution Victims (CLAPV)**

#### **Report on 2016 EU-China NGO Twinning Program**

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The overall purpose of the exchange program was to understand how environmental public interest litigation (EPIL) works in the European Union (EU) and China and to what extent it constitutes a successful tool for environmental protection. By examining the similarities, differences, strengths and weaknesses of each EPIL system, each organization would have a clearer understanding of such systems. This would then serve as a basis for identifying best practices to improve environmental outcomes through the operation of law. Also, this project will serve as the basis to create a network to discuss environmental issues and to set combined priorities especially in the light of the ratification of both China and the EU of the Paris Agreement on Climate Change.

### **Olaya Carlota Ruiz-Bautista and Alba Iranzo Dosdad, IIDMA, Madrid, Spain**

Alba Iranzo Dosdad visited CLAPV from 2 August until 15 August 2016. Carlota Ruiz-Bautista visited CLAPV from 16 August until 31 August 2016.

#### ***Objectives***

Based on the overall purpose of the exchange program, we had two main objectives when we went to China.

Firstly, to identify the similarities and differences between EPIL systems in China and in the EU. This would allow us to carry out a comparative analysis between the regime and effectiveness of both EPIL systems with regards to access to environmental information as a precondition to public litigation cases, public participation in environmental decision making and access to justice in environmental matters (the three main pillars of the Aarhus Convention, adopted in 1998, to which the EU is a Party of). Thus, we would be able to prepare a paper with recommendations for the improvement of both EPIL systems.

For this, the following steps would have to be carried out:

- Understand the content and implications of the 2015 Environmental Protection Law of China and how it relates to the EU and Spanish legislation based on the Aarhus Convention.

- Understand the role of NGOs and EPIL in the protection of the environment.
- Get acquainted with some specific EPIL cases filed by CLAPV or other NGOs in China and the extent to which the 2015 Environmental Protection Law of China has improved the role of NGOs in environmental protection in China.

Secondly, our idea was to draft a system of communications between both organizations which would allow us to share EPIL cases which could be useful for the daily work of both organizations, to discuss common issues and to possibly set combined priorities in the light of the Paris Agreement, which was ratified by China and the EU in September 2016.

### ***Challenges***

After carrying out our research, we were able to find relevant differences between both EPIL systems which will serve as a basis for our future joint working plans with CLAPV as well as with other NGOs working on EPIL in China. The main differences between both EPIL systems relate to:

- NGOs' standing requirements on access to justice.
- The costs of access to justice on environmental matters.
- Who is the defendant in an EPIL case.
- The existence of courts specialized in environmental matters.
- How access to information and public participation in environmental matters are regulated.

The comparative research not only allowed us to encounter a lot of similarities in both EPIL systems but also many differences from which both systems could learn from. It was also very surprising for us to see the great amount of cases which have been filed by NGOs before courts since the approval of the 2015 Environmental Protection Law and some of the ways NGOs find to overcome the high costs of access to justice e.g. crowdfunding schemes.

One of the big challenges for us, which we actually found surprising at first, was the language factor. Before going, we understood that all of the work would be carried out in Chinese and we would need the help of our twinner to understand it, but we had the impression that more people would be able to understand or speak English. Instead, we found that this was not true. Therefore, we relied a lot on our twinner, who had to provide us with the translations of all materials in English and had to translate the content of the sessions we went to, as well as the speeches of the people whom we met with. Therefore, thanks to the help of our twinner, the main language barrier could be resolved, and we were able to understand the main aspects of how EPIL works in China as well as get acquainted with some of the cases other NGOs, particularly Friends of Nature (FON), had filed.

### ***Activities***

#### **Stay at CLAPV office**

During our stay at CLAPV office we were able to see and experience how a Chinese environmental NGO works. Even though we did not get the chance to explore in-depth the cases that CLAPV was involved in, we got the chance to understand the content and implications of EPIL in China.

Especially, the 2015 Environmental Protection Law in China has greatly benefited NGOs in, as they now have the right to sue polluters directly. Therefore we studied and got familiarized with the content and extent of the following main instruments which regulate EPIL in China:

- Environmental Protection Law of the People's Republic of China (2014 Revision).
- Interpretation of the Supreme People's Court on Several Issues concerning the Application of the Law in the Conduct of Environmental Civil Public Interest Litigations (2015).
- Measures for Public Participation in Environmental Protection (2015).
- Measures for Disclosure of Environmental Information (for Trial Implementation-2007).
- Regulation of the People's Republic of China in the Disclosure of Government Information (2007).
- Interim Regulation for Enterprise Information Disclosure (2014).
- Civil Procedure Law of the People's Republic of China (2012 Amendment).
- Tort Law of the People's Republic of China (2009).
- Interpretation of the Supreme People's Court of Several Issues on the Application of Law in the Trial of Disputes over Liability for Environmental Torts (2015).

#### **Visit to other relevant NGOs and other activities**

During our stay in China we had the chance to meet with other NGOs to be able to fully understand how EPIL works. In particular, we had the chance to meet with lawyers from the **China Biodiversity Conservation and Green Development Fund (CBCGDF)** and with the Director of the Department of Law and Policy Advocacy of **FON** which were able to provide us with more in-depth information about EPIL in China and presented us with some examples of the cases they had filed and their outcomes. Thus, we were able to have a more practical insight of the implications of the 2015 Environmental Protection Law with regards to the previous situation. We also had the chance to meet with **Greenpeace** officials which gave us very valuable insight on pollution prevention laws and policies in China as well as their implementation.

Apart from visiting NGOs, we had the chance to attend a session entitled "**The Assessment Report of the Environmental Protection Law of China**", where environmental law experts provided their views on how the Environmental Protection Law of China had been implemented since it had entered into force. There, we had the opportunity to meet CLAPV's founder Mr. Wang Canfa, a highly renowned expert on environmental law both in China and internationally. Although the session was held in Chinese, our twinner provided all the notes of the meeting in English for us to understand what had been said.

Finally, as part of our exchange, we held a conference entitled "**Challenges and countermeasures for environmental protection organizations in instituting Environmental Public Interest Litigation (EPIL) from the perspective of environmental law**" at the China University of Political Science and Law (CUPL) which was organized by Professor Yu Wenxuan, Professor and Director at the Institute of Environmental and Resources Law of CUPL. There we carried out a presentation on this topic from the EU perspective, while our twinner provided a presentation from the Chinese perspective. Several

people from other NGOs as well as academics and students from the University participated in the session.

### **Workshop in China**

As part of the twinning programme we participated in one workshop in Changsha. The workshop consisted of three days of intense discussions and a half day field trip with the NGO Green Hunan. We had the chance to learn about different topics related to Chinese NGO work from experts on the field as well as the experiences from other twinning pairs on their topics of expertise: sustainable living, sustainable communities, education and pollution and climate change and litigation. Finally, we had the opportunity to meet Dr. Rajendra K. Pachauri, the former Intergovernmental Panel on Climate Change (IPCC) president and Nobel prize winner, who spoke to us about climate change and the role of the IPCC.

### ***Outcome and Impact***

As professionals in the field of environmental law, the EU-China Twinning Programme 2016 has been a very enriching experience to get to know how the legal system on EPIL works in China, and what are the main challenges for achieving an effective implementation of the law. As it could be expected, EPIL in China and the EU work under different legal proceedings, where NGOs are not granted with the same opportunities to challenge acts or omissions causing environmental damage. Our main focus when deciding to approach this topic of research was to analyze the main challenges which NGOs, such as IIDMA and CLAPV, face nowadays when seeking access to justice in environmental matters from a public interest perspective.

In order to find out solid answers, we started by studying the most relevant legal instruments in China and at the EU-Spanish levels, where significant differences and challenges came out. In fact, the meetings organized with several environmental organizations in China such as FON or CBCGDF have been particularly useful, where professionals in law provided us detailed advice through the explanation of EPIL cases raised by said organizations before Chinese Environmental Courts. A surprising fact is that, since the approval of the 2015 Environmental Protection Law in China around 42 EPIL cases have been already filed in Courts in less than 2 years.

The main results of our legal research can be summarized as follows: First, legal requirements on standing before Courts for NGOs in China are more restrictive than in Europe; for instance, while Chinese NGOs are required to be legally registered and especially engaged in environmental protection for the public interest for 5 consecutive years, in the EU it is enough to have existed for more than 2 years. Second, another limitation for Chinese NGOs relates to the high costs on access to justice, where only 30 out of 700 NGOs have the economic solvency to bring a case before Courts. In the case of the EU, the law allows NGOs in some Member States the possibility to file a lawsuit without having to pay any costs. Third, also interesting is the fact that EPIL cases in China are generally pursued to directly sue private companies causing an environmental damage (air or water pollution cases), while in Spain the law mainly allows us to file a lawsuit against the Public

Administration regarding negligent acts or omissions regarding environmental matters. Spanish NGOs are only allowed to sue private companies by means of an indirect legal mechanism which requires seeking the Public Administration to initiate an environmental liability procedure against the company, or through the criminal procedure if the activity constitutes an environmental crime.

The above-mentioned are just some of the main findings of our exchange experience in China. We believe that both participating organizations benefited a lot thanks to the exchange programme by:

- Broadening our horizons and getting to know about the effectiveness and limitations of such different legal systems between EU and China;
- Giving us a chance to understand what the role of NGOs in China is and the legal remedies to seek access to justice on environmental protection for the public interest, and
- Developing cooperation links between CLAPV and IIDMA, as well as with other environmental organizations present during the exchange, to create awareness on the importance of EPIL for the effective protection of the environment.

### ***Future Plans and Sustainability of the Partnership***

After completing the exchange programme, our main target is to build up a long-term and fruitful cooperation relationship between IIDMA and CLAPV. Despite the different contexts and legal systems in China and Europe, we believe that NGOs are key players in the protection of the environment where the correct use of a powerful instrument such as “law” is decisive. Given that pollution has become a transboundary problem, IIDMA and CLAPV have found enough reasons to cooperate towards a common goal. In order to develop a follow-up project, IIDMA and CLAPV are interested in elaborating a comparative study, on the basis of our research findings, carrying out a more in-depth analysis regarding up to which extent both EPIL systems constitute an effective tool for environmental protection. The key point is to demonstrate how EPIL systems in the EU and China can benefit from each other, and provide recommendations for environmental stakeholders to make the implementation of environmental law more effective through Public Interest Litigation.

In addition, bearing in mind the kind of projects and topics of interest for both organizations, this follow-up project would also provide a space to create a network aimed to discuss common issues, international challenges as well as to set combined priorities, especially in the light of the ratification of both China and the EU of the Paris Agreement. The role of IIDMA and CLAPV is to ensure that environmental law effectively responds to the needs of society in order to ensure the public's right to live in a healthy environment. Therefore, through the dissemination of our comparative analysis report and the creation of the EU-China legal network we will have a wider field of action to promote social justice and environmental protection through law.

Links of media coverage of our work:

[http://m.weibo.cn/2644396074/4007739770899323?uicode=10000002&moduleID=feed&mid=4007739770899323&luicode=10000011&status\\_id=4007739770899323&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4007739770899323](http://m.weibo.cn/2644396074/4007739770899323?uicode=10000002&moduleID=feed&mid=4007739770899323&luicode=10000011&status_id=4007739770899323&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4007739770899323)

## **ZENG Yaping, Center for Legal Assistance to Pollution Victims (CLAPV), Beijing, China**

From 2<sup>nd</sup> October 2016 to 11<sup>th</sup> November 2016, Madrid, Spain.

### ***Objectives***

The objectives and expectations from CLAPV's side were to:

- Understand the circumstances of operation of environmental laws in Spain and in the EU;
- Study how the EPIL System works in EU under such circumstances;
- Analyze the differences of EPIL systems in the EU and China;
- Learn from IIDMA and other NGOs in the EU about their experience in protecting the environment.
- Find the challenges and weaknesses in our work and try to find solutions;
- Improve our capacity to handle environmental public interest litigation cases.

### ***Challenges***

When I came to work in Europe, the first and biggest challenge for me was the language barrier. I wanted to know the circumstances of operation of environmental laws not only from the perspective of lawyers but also from ordinary citizens. A pity was I stayed in a family which doesn't speak English so I was unable to ask them about their opinions on their environmental rights protection and their national environmental laws. In addition, at IIDMA I could not integrate into the daily work and deeply understand how they work because some of their work was in Spanish, so I had to rely on my twinnings' translation. However, my twinnings, provided me materials in English and other useful information resources. They also translated some important documents for me to help overcome the language barriers, and they always asked me how much I could understand all the materials and tried to find more relevant materials for me to research according to my questions and feedbacks. Thus, I could understand more about the content of the Aarhus convention and its implementation in different Member states.

To help get a better understanding of the EPIL system in the whole of the EU, my twinnings contacted some other NGOs which they cooperate with in different countries for me to visit. In order to overcome the language barrier my twinnings kindly informed the NGOs about this. Therefore, the meetings were held in English and with people which have profound experience in working with the Aarhus Convention both in the EU and the national level. Thus, I could get to know their practical experience regarding EPIL and also the challenges their NGOs are actually facing with regards to the implementation of the Aarhus Convention. Nevertheless, due to language barrier, we had to limit our research scope to some extent. For example when I visited ClientEarth and they shared some

typical EPIL cases with me, they told me there are nine ongoing cases raised by ClientEarth in Germany on air pollution, but they don't have the English version of the materials yet.

## **Activities**

### **Stay at IIDMA's office**

I stayed at IIDMA from 2 October 2016 to 23 October 2016. My twinnings Carlota and Alba provided me with some important materials and documents related to EPIL in the EU to help me understand how EPIL works, such as the Aarhus Convention, the implementation guide of the Aarhus Convention, relevant EU Directives related to access to information and access to public participation in environmental matters, and other documents to better understand the implementation and compliance of the Aarhus Convention in EU Law. Carlota also shared some relevant websites where I could find more information on the Aarhus Convention and how it works in the EU. Thanks to the work carried out both at IIDMA and CLAPV, my twinnings and I have been able to understand several differences of the EPIL system in EU and China. We will do further research on these findings about how can we, as NGOs, fully utilize and improve the implementation of current laws.

I also got to know how IIDMA works on environmental issues. The way they work on EPIL cases is different from CLAPV as the Aarhus Convention emphasizes more on the obligations of environmental authorities whereas in China, the Environmental Protection Law grants NGOs the right to file cases directly against polluters.

### **Visit to other relevant NGOs and other activities**

After having developed a clearer understanding of the Aarhus Convention, I visited some other NGOs which are working on Aarhus-related issues in Europe such as ClientEarth, EEB (the European Environmental Bureau), FNE (France Nature Environnement) and UFU (the Independent Institute for Environmental Issues), and went to some projects sites that these NGOs recommended me to visit to better understand the practical experience of environmental protection and litigation.

I visited ClientEarth on 24 October 2016 and met with Ugo Taddei, a lawyer at ClientEarth, who works on EPIL projects in the EU. ClientEarth works to protect the environment through advocacy, litigation and science. We had a short meeting at Client Earth's office in Brussels, and exchanged ideas about how EPIL works both in the EU and in China. Mr. Taddei introduced a general view of EPIL in the EU and introduced different situations regarding different countries. We also further discussed several important issues like how do they get the case resources, if the access to justice is free of charge in Belgium, who does ClientEarth file lawsuits against, and how many NGOs there are now that meet the standing requirements to file an EPIL case, among others. So far ClientEarth has filed many EPIL cases in the EU. Thus, we analyzed two typical cases: the first case is from the Court of Justice of the European Union (CJEU) (case C-404/13) in 2013, the second one is an order from the UK Supreme Court of April 2015 that orders the UK government to submit new air quality plans to the European Commission. Through these cases and analysis we were able to understand the role

that NGOs play in EPIL and how they use law as a tool – whether influencing decision-makers or in court.

In addition, I visited EEB on 26 October 2016 and had a meeting with Mr. Jeremy Wates, Secretary General of EEB, who has served for more than a decade as Secretary to the Aarhus Convention with the Geneva-based United Nations Economic Commission for Europe (UNECE) prior to joining the EEB. EEB is Europe's largest federation of environmental citizens' organizations, and Mr. Wates has been working on the Aarhus Convention from the early 1990s, so he explained us about how he led the campaign by an NGO coalition (the European ECO Forum) to persuade governments to start work on a treaty on environmental democracy and then coordinated the input from civil society organizations into the official negotiations over the text of what was to become the Aarhus Convention. He also introduced the different Directives there are at EU level about access to information and public participation in environmental matters. Nevertheless, there is no Directive which regulates access to justice in environmental matters, and this is one of the projects that EEB is now promoting, which will help improve the implementation of the Aarhus Convention. Through the visit to EEB, I learned the history of the Aarhus Convention, the world's most far-reaching international treaty on environmental matters. And also learned that developing and protecting environmental policies are also important to protect environmental rights besides litigation, since policies have significant influence on law system and litigation as well. Therefore, we must take them into account when dealing with environmental matters.

To further understand how European NGOs work on the implementation of the Aarhus Convention, I visited UFU, a scientific institute with a strong profile in the fields of environmental education, public participation, climate protection and environmental law focusing on application-oriented research. There are 28 people in the departments of climate protection & environmental education, environmental law & public participation, resource management & environmental communication as well as the "UFU workshop". Mrs. Franziska Sperfeld, lawyer in the Department of Environmental Law and Public Participation introduced several projects they work on, such as the internet platforms of environmental information and implementation of the Aarhus Convention. These platforms help the public gain a better and more convenient access to environmental information. In addition, what impressed us was that they also proposed to the local government that the environmental rights of children should especially be emphasized in decision making. UFU also engages in education to raise the environmental awareness of children, which are considered as one of the most important parts of environmental protection.

### **Workshop in Europe**

We were lucky to attend the wonderful workshop in Berlin because we have gotten the chance to show other organizations and twinning partners about the research we had been carrying out as well as the outcomes of that research. We also got the chance to learn more about the projects from the other twinning pairs and their fields of work as well as by invited speakers. Prior to the Berlin workshop, we participated in a presentation workshop carried out by a group of professionals from the University of Hamburg which helped us to improve our presentation skills. We learned a lot and applied the knowledge that we acquired to our final presentation in the Berlin workshop. These skills



that we learned were very useful not only for our presentation during the workshop session but also useful for our future work.

### ***Outcome and Impact***

Thanks to the exchange program, I have been able to get to know how environmental law operates in in the EU, and how EPIL systems work across Member States under different contexts. I also learned much practical experience about how European NGOs deal with EPIL cases, which can be very useful after I get back to China, given I can introduce all the advanced experience to CLAPV and improve our capacity as an environmental protection organization.

The most significant outcome in our research project was to find out some important differences and challenges in EPIL systems between EU and China. Although previously summarized by my twinnings from IIDMA, I would like to emphasize some points. Firstly, the standing requirements for NGOs on access to justice are highly different. In China, NGOs are required to be specially engaged in environmental protection for the public interest for 5 consecutive years or more without any recorded violations of law, while in the EU standing requirements differ among countries. For example, in Spain and in Brussels one of the requirements for NGOs is to have been established for more than just 2 years actively pursuing to promote environmental protection. Secondly, the charge system regarding court fees also differs. China follows the principle named “costs follow the event”, where filing an EPIL case is too costly for NGOs. Surprisingly, the first EPIL case brought to Courts after the approval of the 2015 Environmental Protection Law in China cost RMB 197,497 (EU 27,090), required to pay a wide range of fees involved in the proceeding such as: assessment fees, attorney's and expert fees, and other sort of expenses.

For most environmental organizations, the costs on access to justice are more than what they can afford. However, in Europe, given that the EU is a party of the Aarhus Convention, NGOs are legally allowed to apply for legal aid or measures exempting them to pay litigation costs.

Thirdly, the EU and China follow different legal procedures regarding EPIL cases. In Europe, concerned parties always seek access to justice by administrative or judicial review procedures (some countries require a preliminary review procedure before an administrative authority or exhaustion of administrative review procedures prior to recourse to judicial review procedures). In Spain NGOs generally have to initiate administrative procedures against the defendant unless they are considered to commit a crime which follows a criminal procedure. By contrast, Chinese NGOs are not allowed to file EPIL cases under administrative procedures, but do under civil procedures to request compensation or restoration.

### ***Future Plans and Sustainability of the Partnership***

I feel very lucky to be part of the Stiftung Asienhaus EU-China NGOs Twinning Programme and get to know other involved NGOs and twinnings. We all have the same aspirations and objectives which can benefit from a long-term cooperation. According to our findings, CLAPV and IIDMA plan to elaborate a further comparative analysis report to understand how different EPIL systems could

learn from each other, to make EPIL a more effective tool to protect the environment. We hope this follow-up project can provide new legal proposals allowing us to develop further expertise and give useful advice, even solutions, for a more effective and efficient establishment of EPIL Systems in China and Europe. Some improvements of environmental legislation and its implementation could also be carried out effectively, following the goals of every professional in the environmental law field, and society in general.

As to improve our capacity regarding EPIL, IIDMA and CLAPV can share experience and EPIL cases through email and video conference, but also through the creation of an online platform to continuously maintain close communication after the exchange. We will share information about EPIL cases and discuss the most trending environmental affairs. Thanks I have met during the exchange programme other NGOs like ClientEarth and EEB, they might also cooperate with us. Via that platform, lawyers, scholars and specialists from environmental NGOS can be also invited to share experience about solving environmental problems.. As a result, we are also planning to create a network integrated by a group of experts from both organizations, where proposals for the improvement and better implementation of environmental law can come up, following our goal to promote social justice and environmental protection in Europe and China.

Links of media coverage of our work:

[http://m.weibo.cn/2644396074/4030490744224319?uicode=10000002&moduleID=feed&mid=4030490744224319&luicode=10000011&status\\_id=4030490744224319&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4030490744224319](http://m.weibo.cn/2644396074/4030490744224319?uicode=10000002&moduleID=feed&mid=4030490744224319&luicode=10000011&status_id=4030490744224319&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4030490744224319)

[http://m.weibo.cn/2644396074/4034882416524265?uicode=10000002&moduleID=feed&mid=4034882416524265&luicode=10000011&status\\_id=4034882416524265&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4034882416524265](http://m.weibo.cn/2644396074/4034882416524265?uicode=10000002&moduleID=feed&mid=4034882416524265&luicode=10000011&status_id=4034882416524265&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4034882416524265)

[http://m.weibo.cn/2644396074/4039648420619762?uicode=10000002&moduleID=feed&mid=4039648420619762&luicode=10000011&status\\_id=4039648420619762&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4039648420619762](http://m.weibo.cn/2644396074/4039648420619762?uicode=10000002&moduleID=feed&mid=4039648420619762&luicode=10000011&status_id=4039648420619762&lfid=2302592042504263&source=page&lcardid=2302592042504263 - 4039648420619762)