

**USAID  
US-China Partnership for Environmental Law**

**Environmental Law Clinics In China Project**

**Workshop Follow-Up Report<sup>1</sup> (For Public Release)**

For the December 9, 2009 Workshop in Beijing  
and December 12, 2009 Workshop in Guangzhou

By

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**I. Introduction**

The purpose of this report is to describe two workshops that took place in December 2009 sponsored by USAID's United States-China Partnership for Environmental Law (Partnership) and organized by Vermont Law School, the China University of Political Science and Law (for Beijing workshop), and the Sun Yat-sen University School of Law (for Guangzhou workshop). Both workshops involved exploration of the role that environmental law clinics can play in China's system of legal education, and in advancing the use of law for the protection of China's environment and natural resources. The workshops were timely as the law school faculty who participated are actively interested in establishing new clinics or growing existing ones and are examining appropriate models.

While the United States legal education system does not rely upon any one model for environmental law clinics, the number of environmental law clinics is significant and there are a number of relatively mature and successful models for Chinese law schools to explore. Vermont Law School was able to draw from its experience with and knowledge of those clinics to share ideas and suggestions with the workshop participants.

In Guangzhou, the workshop participants included attorneys from Guangdong Province's private environmental bar association, as well as traditional legal educators. This led to an interesting dialogue around the ways in which local attorneys and Sun Yat-Sen University's environmental law clinic could collaborate.

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Vermont Law School believes that the establishment of additional legal clinics would increase the number of law students who are trained as effective environmental law advocates and problem-solvers. In addition, the clinics themselves will be in a position to solve or contribute to solving environmental problems in China working with governmental, non-profit and business sectors. Depending on the model chosen, environmental law clinics may help provide representation to communities impacted by pollution, which would, but for the representation by the clinics, be without a voice or the tools to address the cause of the pollution.

## II. Summary

### A. Beijing Workshop December 9, 2009

This workshop involved a discussion of the benefits and challenges associated with establishing and running environmental law clinics for faculty from the China University of Political Science and Law (CUPL), Renmin University, and Beijing Normal University. The faculty participants included clinical teachers from a range of subject matter clinics (environmental, criminal, agricultural), as well as environmental law scholars. In addition, participants included a public interest environmental attorney and law students.

The participants agreed that, while China has enacted or reformed many environmental laws in recent years, their implementation and enforcement remains inconsistent and inadequate. With that agreement as context, the discussion revolved around how to address the lack of training opportunities to learn the practice (as opposed to theory) of environmental law, especially in law schools, as a means of enhancing enforcement of environmental laws. One of the outcomes of the discussion was a new commitment by Renmin University Law School to explore the creation of an environmental law clinic. The Partnership participants also gained important knowledge about some of the constraints facing Chinese law schools in their efforts to develop or expand environmental law clinics.

### B. Guangzhou Workshop December 12, 2009

The Guangzhou workshop included discussion about the challenges and benefits of environmental law clinics and also included discussion regarding possible collaboration between environmental law clinics and private environmental attorneys in Guangdong Province. Participants included law faculty and students from Sun Yat-Sen University (SYSU) and members of the Guangdong Lawyer's Association.

Guangdong's Pearl River Delta is the core of China's manufacturing industry sector and suffers from severe environmental pollution. In spite of this, as all

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participants at the workshop agreed, the practice of environmental law in Guangdong lags behind the rest of China. During the course of the workshop, a potential framework for advancing environmental law emerged: further expansion of SYSU’s existing law clinics to handle more environmental cases; attorneys volunteering their time to help supervise students in the clinics; and referral of cases to the clinics if clients cannot afford to pay private attorneys.

The discussion at SYSU also covered both the benefits and challenges associated with running a clinical program in which the students handle environmental cases on behalf of pollution victims. While no firm decisions were made, the participants shared information that will assist SYSU in developing a stronger experiential training program for students seeking to practice environmental law.

### III. Beijing Workshop Details and Discussion

1. Date: December 9, 2009 from 1:00 pm to 4:00 pm followed by dinner.
2. Location: China University of Political Science and Law, Beijing
3. Attendees (not including law students):

CUPL:	Professors Wang Canfa, Mao Yan, Liu Xiaobing, Hou Jiaru, Yuan Gang and Graduate Student Xu Ting
Renmin: Beijing Normal:	Professor Zhu Xiao Professor Mao Lixin (Criminal law clinic)
Vermont Law School:	Professors Siu Tip Lam, Tseming Yang, David Mears, and China Program Fellow Adam Moser
Natural Resources Defense Council:	Gao Jie, Steven Lianelli (Intern)

#### A. Introductory Remarks

Professor Wang: Professor Wang Canfa of CUPL gave an overview of the clinics at CUPL. CUPL currently has five clinics and they serve approximately 500 students. The environmental law clinic (known as the Center for Legal Assistance to Pollution Victims or CLAPV) was the first of these clinics.

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CLAPV attorneys and graduate level students appear in court on behalf of pollution victims. The law students handle the simpler cases and assist with document management and research. CLAPV also provides a hotline service to pollution victims, staffed by undergraduate law students. In addition to training law students, CLAPV also provides training for judges and environmental attorneys.

Challenges Professor Wang described for the CUPL clinics are that they do not give much teaching credit to the clinic faculty who have to carry a heavy teaching load. The promotional opportunities for clinical faculty are limited due to the fact that clinical faculty have little time to do research and scholarship.

Funding is another challenge that CLAPV and the other clinics face. The law school, CUPL, provides funding to the clinics, approximately 700 yuan per student. The clinics are also able to raise funds from other sources.

Professor Wang noted the benefits of law clinics include providing students the opportunity to appear in real cases on behalf of real clients. This provides an intensive learning process in which the students get significant oversight from professors and also work with and learn from each other. Another benefit of CLAPV is that it provides free legal aid and helps to raise public awareness so that citizens can participate in government decisions more effectively. Professor Wang sees CLAPV as a bridge between the public and government. He noted that most legal clinics in China are in the policy and research category and that few are engaged in litigation.

Professor Mears: Professor Mears provided an overview of the goals of environmental clinics in the U.S., including teaching, environmental protection, representation of underrepresented groups and enhancing the work of non-governmental organizations. Teaching goals include giving students: an appreciation of obligations to clients; practical skills such as speaking and writing; an understanding judicial process; and sensitivity to the ethical and moral dimensions of practicing law. Environmental goals include protecting public health, preventing or responding to pollution and threats of pollution, and preserving natural resources.

Professor Mears then covered how U.S. environmental law clinics operate, both litigation-oriented and policy and research clinics. The discussion included a description of the types of work that students do in a litigation clinic, such as appearing in court, writing briefs, meeting with clients, participating in negotiations and gathering information through formal and informal research and legal processes. Professor Mears emphasized the learning process and the importance of giving students a significant role and having responsibility for representing real clients in real cases. His presentation also highlighted the importance of selecting cases that are the most likely to provide a good learning experience for students

while balancing that need against the concurrent need to ensure that the cases and projects selected have strategic importance in terms of advancing the environmental protection goals of the clinic and clients. Finally, the challenge of providing students with timely and helpful feedback and the related challenge of evaluating and assessing students in a competitive law school grading environment was discussed.

To conclude, Professor Mears summarized the challenges facing environmental law clinics. These include a lack of resources as necessary to retain the help of experts, to pay for the costs of litigation, and to properly staff what is essentially a law practice in a law school. He also described the challenges that some clinics have had with responding to political pressure.

Initially, Professor Mears did not spend much time discussing the issues associated with clinical faculty status and pay. But this was an important issue for the Chinese law faculty and was substantially covered during the roundtable discussion. In sum, Professor Mears noted that clinical law teacher status remains an important issue in the U.S. and that significant advances have taken place over the past decade, such that clinical faculty at most American law schools, while not always equivalent to tenured doctrinal faculty, are generally given long-term contracts and increasingly have opportunities to advance within the legal academy.

## B. Roundtable Discussion

VLS presented four questions to the participants. Due to the challenges of translation, most of the participants offered observations regarding some or all of the questions at one time with some limited back and forth during their presentations.

The questions were as follows:

Question One: What are the benefits of environmental law clinics in China?

- For law students?
- For public health and environmental protection?
- For empowerment of underrepresented communities?
- For supporting the work of environmental NGO's?

Question Two: What are the challenges of running environmental law clinics in China?

- Resources
- Political concerns
- Student supervision and evaluation

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Question Three: What are the differences between China and the United States that would affect the way in which you would run an environmental law clinic in China?

- the legal system
- legal education system
- system of government

Question Four: What would be the most important elements of a successful environmental law clinic in China? What level of students (undergraduate vs. graduate)?

- What type of clinic (litigation vs. policy/research)?
- What kind of academic credit for the students?
- What role for the students?
- What background, training, qualifications for clinical law faculty?
- What resources are available to start new environmental law clinics?
  - law school faculty and administration support
  - funding
  - experts
- What relationship with the local, regional and national governments?

## C. Responses

Mao Lixin of Beijing Normal's criminal law clinic noted the difficulty of giving clinical faculty enough time to run their clinics. He also noted that his law school provides only limited academic credit to students participating in the clinic. One of the main benefits observed by Professor Mao is that students gain a better understanding of how the justice system works and the importance of representing vulnerable groups – this strengthens the students' sense of social responsibility. His clinic has cooperated with private law firms which often refer cases to his clinic.

Yuan Gang, who runs CUPL's rural and agricultural law clinic, noted that there remains considerable debate within Chinese law schools about the value of clinics. He believes that there is consensus that clinics are an effective way to deliver legal education but, despite this, clinics are still not part of China's mainstream legal education system. Professor Yuan has hope that this will change now that the Ministry of Education is placing more emphasis on the importance of providing a practical education. He advocated for standardizing the manner in which clinical education is provided, along with a system for assessing clinical law teachers and more stable funding. In addition, Professor Yuan stated his opinion that clinical teachers need to be able to work full-time in their clinics and that clinic faculty should get credit for practical teaching as part of the promotion process. Finally, Professor Yuan noted that only 113 out of 640 total law schools in China are members of the China Committee of Clinical Legal Education.

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Liu Xiaobing of CUPL noted the importance of having specialized clinical teachers who know how to run law school clinics. He described the advantage that students who have been enrolled in clinics have when applying for jobs. Professor Liu expressed an interest in being able to learn from his colleagues who are also engaged in clinical teaching.

Zhu Xiao of Renmin said that his university has a number of clinics and wants to expand clinical offerings by establishing an environmental law clinic. Professor Zhu says that Renmin has overcome the issues with providing faculty with sufficient time to teach in clinics and provides up to five credits to students participating in clinics. Clinics have to provide a ratio of one faculty to ten students at Renmin. The biggest challenge for Renmin is that there is a lack of law teachers with the right experience to teach an environmental law clinic.

## D. Outcomes of the Workshop

In the discussion, several needs were identified and ideas for future work for Chinese law schools suggested including the following:

- Training for clinical teachers – many law faculty have limited experience with clinical teaching. There is a need for training and for some system for qualifying faculty as clinical teachers.
- The Ministry of Education is a major driver of law school priorities and set standards for performance. The clearest way to establish more environmental law clinics would be to persuade the government of the need through a study or report.
- Need to establish standards defining what constitutes a successful clinic.
- One standard that should be considered is a requirement that law schools hire full-time faculty who have practical experience

## IV. **Guangzhou Workshop Details and Discussion**

1. Date: December 12, 2009 from 9:00 am to 12:30 pm followed by lunch.
2. Location: Sun Yat-Sen University, Guangzhou
3. Attendees (not including law students):

SYSU:

Professors Li Zhiping, Jiao Bo, Gu Dejin, Liang Danni, Deng Minzhen

Maoming College:

Professor Ma Bo



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South China Agricultural University:	Professors Wang Quandian, Gao Min
Guangdong Administrative College:	Professor Cheng Yu Yana
Guangdong University of Technology:	Professors Liu Chang Xing, Zhong Hua, Wang Zican
Env. Law Professional Committee:	Liu Guolin, Wang Tengfeng, Zhao Bihua, Wang Long, Guan Fan, Liu Jiren, Wu Janqin, Liu Jiang, Li Daojun, Xie Pengchun, Lu Hongsheng, Zhang Chi, Zhang Zhaohua, Li Yongxiang
Vermont Law School:	Professors Tseming Yang and David Mears

## A. Introductory Remarks

Professor Li: China currently has only four or five environmental law clinics at the present time. SYSU has the first environmental law clinic and is considering expanding. Currently, the environmental law clinic at SYSU is offered for six to ten students with two clinical teachers. The purpose of the SYSU clinic is to educate law students about environmental pollution and to instill a sense of responsibility for addressing society’s problems. The clinic currently focuses on environmental policy projects and the students are engaged in research and writing. Examples of clinic projects include a study of household appliance waste disposal, investigation of waste treatment by Guangzhou factories, survey of public attitudes towards and participation in environmental protection, and researching possible amendments to laws relating to drinking water and emissions trading.

New cases that the clinic is considering expanding into include support for pollution victims in negotiations, supporting the courts with handling the procedures associated with litigation, and working with non-governmental organizations. In addition, Professor Li would like to have more interaction with traditional legal scholars. She hopes to engage more law faculty in discussions about the best means for providing legal education.

Professor Li noted an interest in working with the Guangdong environmental law committee to determine the needs of private environmental law practitioners.

Professor Mears: Professor Mears provided a set of introductory remarks similar to those presented at the Beijing workshop, but expanded primarily on the different kinds of environmental law practices including: (1) compliance assistance to assist companies seeking to abide by environmental laws, (2) transactional work

such as assisting businesses with leases, contracts or purchases that have environmental consequences (e.g. purchasing contaminated property), and (3) litigation, generally oriented to either plaintiffs or defendants work. Professors Yang and Mears noted that, **in order for a robust environmental law bar to flourish, which would benefit both business and the public**, a society needs attorneys to bring cases as well as defend them.

Liu Guolin: Although there are 20,000 lawyers in Guangdong Province, there is only a small fraction engaged in the practice of environmental law. This is troubling since the pollution in this province is significant. He noted that the town where he grew up is heavily polluted now and it is painful for him to return there. Mr. Liu noted that the practice of environmental law in China is not as profitable as in the United States. He thinks this may be one reason that most lawyers in the province are indifferent to environmental law. He is interested in collaborating with SYSU as he thinks the law school is in a good position to be a lead organization in promoting environmental law. Most importantly, Mr. Liu believes that the government must take action to promote the importance of environmental law. He suggested that United States and European scholars might have some success in influencing the government in this regard.

## b. Roundtable Discussion

The same four questions were presented as in Beijing with the modification that the questions also covered questions relating to the role of private lawyers in assisting with clinical education as consultants, and the barriers to the development of successful environmental law practices generally.

The Guangdong lawyers went around the room and discussed the nature of their practices. Most described a non-litigation practice and working with clients with regard to infrastructure such as wastewater treatment and preventive measures to minimize pollution and health and safety problems. There was a general sense that litigation is a poor option and they were interested in working with engineers and scientists to find solutions to environmental problems. Some felt that there was a need for public interest litigation but most felt that there were not enough viable cases and that the outcome of any such cases was too uncertain to be worth pursuing. A general consensus emerged that an environmental law practice would only really develop if the government supported a requirement that businesses obtain assistance from lawyers, or if the government began more aggressively enforcing environmental laws. One of the private attorneys noted that, while he saw the need to publicize his services, he was concerned that doing so would put his law practice at risk.

Gao Min of the South China Agricultural University noted the need for a professional organization within the law school community. He has been

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disappointed in court rulings and sees a need for non-litigation options, with environmental clinics serving as legal advisors or consultants. He agreed with the private attorneys that you need support from the government to be successful in litigation. Professor Gao suggested that the clinic and the profession should be more involved in the promotion of legislation to reform environmental law.

Professor Li noted that the lack of familiarity with environmental law may be one reason that environmental law is not practiced by more lawyers in Guangdong Province. She noted that only a few students take environmental law though the number is starting to grow. Professor Li sees the beginnings of a boom in environmental law though she does not think the existing laws are adequate to deal with the growing environmental crisis.

Liu Guolin noted his hope that the environmental law clinic at SYSU would join as a member of the environmental law committee of the Guangdong Bar Association. He would like to see the law school collaborate, rather than compete, with the private bar.

VLS Professor Tseming Yang noted that the participation of the SYSU environmental law clinic in cases in Guangdong will ultimately increase opportunities for private environmental lawyers and will also help the environment.

This led to a back and forth in which participants discussed whether private lawyers or law students in clinics are better equipped to handle litigation in complex environmental cases. Professor Li noted that, for the most part, law professors are not practicing lawyers and do not know as much about litigation as private lawyers. She asked whether non-litigation projects might be more appropriate for students.

There was a related discussion about the importance of case selection. Professor Li indicated the need for the cases handled by students to be relatively simple and focused on protecting the public interest. She reiterated her goal that the clinic experience be considered an important means of cultivating a sense of social responsibility in students.

Another topic discussed related to the status of law school clinical teachers. One impediment to the development of Chinese environmental law clinics is that, in general, clinical law faculty are not recognized as law teachers in the same manner that conventional law teachers are and frequently must hold down an additional law job on top of clinical teaching. This hurdle must be overcome in order to attract high quality attorneys into these positions.

Several participants noted their interest in having access to training in environmental law provided by SYSU.

## B. Outcomes of the Workshop

- The participants agreed that they would like to make this kind of conference a regular event.
- Topics for future discussions could include substantive presentations by experts in both litigation and non-litigation work in environmental law.
- Professor Li and the other environmental law faculty present indicated an interest in getting referrals from the private attorneys. They also asked the private lawyers to consider providing assistance as legal consultants and as part-time clinical teachers.
- The private attorneys expressed an interest in having SYSU provide more trainings for the private bar in environmental law.

## V. **Evaluation**

Chinese law schools have not made the move to establish environmental law clinics at the same rate and scale as in the United States. One purpose of the workshops was to answer the question of whether the lack of Chinese environmental law clinics is due to fundamental differences between China and the United States, either in legal education, or in the legal system, that make environmental law clinics inherently less desirable. Correspondingly, if these differences are not impediments to the establishment of effective environmental law clinics, then are there other differences or obstacles that could be overcome given the proper resources and information.

While more work needs to be done to answer these questions, it is clear that all participants in the workshops believed that the establishment of environmental law clinics in China is important for many if not all of the reasons that American law schools have done so. There can be no question that there are fundamental differences between the Chinese and American legal systems that require consideration in how environmental law clinics in China will operate. These differences do not, however, present any reason not to establish environmental law clinics. In fact, some of these differences, such as the lack of environmental enforcement, suggest an even greater need for an investment in environmental law clinics in China.

The differences between the American and Chinese systems of legal education may pose a more substantial challenge to establishing successful environmental law clinics. The participants noted the lack of funding, resistance from traditional law faculty, and difficulty incorporating a program of clinical education into the existing law school program of studies. It is clear that greater recognition and professional opportunities for clinical faculty within their law schools is an impediment that must be overcome in order to help environmental law

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clinics attract and keep talented environmental attorneys and clinical teachers. The participants also noted some challenge in recruiting law students to participate, particularly at SYSU.

These differences and the associated challenges are not, however, that dissimilar to the challenges faced by the American law schools thirty years ago when poverty law clinics first began to be established back in the late 1960's and 1970's. For example, in the early days, American law clinics faced the resistance of doctrinal faculty and law school administrators who feared that the clinics would detract from the important teaching associated with legal theory and policy. Similarly, American law schools were not always as open as they are now to hiring experienced law practitioners as law faculty.

Many of these challenges were largely overcome by the time the clinical movement in the United States began to embrace the concept of specialized environmental law clinics. Also, the United States legal academy continues to be engaged in a robust discussion about the appropriate role of experiential learning, including the use of law clinics. So while the establishment of environmental law clinics in China will require overcoming institutional resistance, there is precedent and experience in the United States that suggests that it is possible to do so.

A deeper challenge may be that the Chinese government has not firmly embraced the role of environmental attorneys in enforcing environmental laws. This is one of the primary goals of the Partnership and it can be hoped that success in promoting stronger environmental enforcement and the role of lawyers will have the ancillary effect of increasing the success of environmental law clinics in China.