

WINTER
2018

ASIA PARTNERSHIPS NEWSLETTER



FROM THE DIRECTOR

The U.S.-Asia Partnerships for Environmental Law (PEL) spent 2017 celebrating 10 successful years in operation and it's not hard to see why. We have continued to provide critical trainings in environmental law and adjudication for Chinese students, lawyers, prosecutors, and judges and now boast strong relationships with top

institutes, including the Supreme People's Court (SPC) and the National Prosecutors College (pages 2 & 3).

As an example, in early 2017 PEL organized a two-month intensive environmental law training for a delegation of five SPC judges. The training increased their adjudication capacity, laying a foundation to improve China's broader environmental judiciary system. We also, along with University of Vermont, partnered with Fudan University to launch a multi-day watershed conference in Burlington, VT, bringing together 19 Chinese participants to review the U.S. legal approach to watershed management and ecological damage restoration, using Lake Champlain as an example to explore the regulatory and policy approaches that address nutrient pollution in the lake.

With the institutionalization of China's Belt and Road initiative, it's all too clear that China will play a major role in rapid regional development, outsourcing not only investments but also environmental values. How China regulates its pollution and natural resource management will have a profound impact not only on China but the rest of Southeast Asia. Within this context, we have expanded our Southeast Asia work to projects in both Myanmar and Cambodia where we continue to grow our partnership network to provide high quality training in environmental impact assessments (page 3).

Looking towards the future, we are about to launch our Environmental Mission Scholars Fellowship for Chinese law professionals, which combines an intensive one-month training course in environmental law and ecology with placement of the fellows in an internship for several months where the fellows will receive hands-on experience in applying what they have learned. We are excited for what the next ten years will bring.

Sincerely,
Siu Tip Lam, Director

PROGRESS ON CHINA'S CIVIL ENVIRONMENTAL PUBLIC INTEREST LITIGATION (EPIL) SYSTEM

Since the new Environmental Protection Law came into effect in 2015, China has seen rapid growth of EPIL. As of January 2017, a total of 196 EPIL cases have been accepted by the courts, of which 122 were initiated by NGOs and 74 by local procuratorates. Just over half of the NGO-led EPIL cases have concluded. In most of these 64 pioneer cases, NGOs secured either court orders or settlement agreements requiring polluters to stop pollution or ecological destruction, conduct remediation, and/or pay damages. These cases reflect a changing landscape in China's environmental legal advocacy.

A great example is the Nanling National Nature Reserve case. In 2011, a group of concerned citizens discovered that two tourism developers had begun construct-

ing a large road through the heart of the Reserve. Although the Guangdong Provincial Forestry Bureau's administrative issued a stop-work order, the two developers resumed road construction in 2016 at which point two NGOs, supported by PEL partner the Center for Legal Assistance to Pollution Victims (CLAPV), took up EPIL. They filed a case with the Qingyuan Intermediate Court and by February 2017, the parties had reached a settlement. The developers have since ceased construction, removed all construction waste, and released a call for bids to implement the restoration projects required within the settlement agreement. This case is a great victory that shows EPIL can be an empowering tool for resolving environmental problems.

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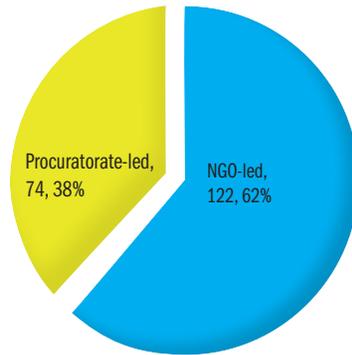
This illegally constructed road in Nanling National Nature Reserve will be restored according to the settlement agreement. Photo credit: HiNature

EPIL PROGRESS

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Despite the progress made, challenges remain. In particular, only a handful of NGOs are actively pursuing EPIL cases with others citing a lack of legal capacity or other resources to engage. In response to these needs, PEL engaged in various research projects to identify potential solutions and provide comparative perspectives. Professor **Jack Tuholske** worked with **Judge Sun Qian** from the Environment and Resource Tribunal of the Supreme People's Court to analyze EPIL system development in China and produced an article, "Explorations of and Reflections on China's System of Environmental Public Interest Litigation" (Environmental Law Reporter, 47 ELR 10497 2017). Assistant Director **William Schulte** worked with Research Associate **Al King** to pro-

Number of EPIL cases accepted for consideration by the Courts since 2015.



vide an overview of U.S. experiences with environmental damages assessment and different models for mitigation, including the innovative "supplemental environmental projects" concept. Associate Director **Yanmei Lin** completed research for the 2016 Annual EPIL Observation Report, coordinated by Friends of Nature, summarizing the practices of U.S. citizen suits' settlements and applicable lessons for Chinese NGOs in settling EPIL cases. Lin also conducted comparative research on the practices of China's EPIL and various U.S. environmental cases. The article "U.S.-China Comparative Study on Environmental Public Interest Litigation Practices," which will be published by China's Journal on Social Governance, indicates that EPIL in China can not only learn from U.S. citizen suits but from other types of environmental cases as well.

FOSTERING PARTNERSHIPS

This year PEL staff proactively connected with educational institutions across China and signed agreements with 7 additional programs meaning we now manage relationships with 16 partnering educational institutions. Our agreements offer top level students from these schools a tuition-reduction scholarship to VLS, provide for faculty exchange, and facilitate joint research projects.



VLS Dean Tom McHenry shares a laugh with NPC President Huang He while signing our implementation agreement.

PEL excels at linking experienced professionals and academics in the U.S. and China to facilitate collaborative work and generate scholarship on environmental policy issues in Asia. We have hosted numerous institutional delegations and exchanges through these agreements. This past fall we welcomed three more partner delegations; from the National Prosecutors College (NPC), Minzu University, and Yunnan University. During their visits, President HUANG of the NPC delivered a public talk on the Chinese Procuratorate system, Dean XIA from Minzu helped us outline a joint work plan for collaboration, and the South Royalton Legal Clinic welcomed the Yunnan delegation with a tour of the facility and training on the design and delivery of clinical education. Clearly partnership presence on campus enriches our programming and we look forward to nurturing these relationships and welcoming future partners, scholars, and students to Vermont.

RECRUITING STUDENTS

This past October 2017 we visited many of our partners across China to recruit VLS students. PEL Assistant Director **Xiaoyu Zhang** accompanied VP for Enrollment Management, Marketing and Communications, **John Miller**, and Professor **Jack Tuholske** as they ran a whirlwind tour of 11 universities in 4 cities. We were excited to pilot this recruitment model in which Jack and John delivered joint lectures that covered substantive topics like the U.S. Clean Water Act as well as procedural application requirements for students interested in VLS. John, Jack and Xiaoyu also met with VLS alumni in Beijing, Shanghai and Guangzhou and it was great to see them doing well.



Professor Tuholske delivering a presentation at one of our partner institutions.

WORKING AT THE HIGHEST LEVELS REFLECTIONS FROM FACULTY ADVISOR JACK TUHOLSKE

In November 2017, I was one of five international experts who spent 3 full days conducting a training coordinated by ClientEarth for over 120 judges in China. The training was held at the National Judges College, an impressive campus with many state-of-the-art classrooms, dorms, and eating facilities for hundreds of judges. I made the mistake on the first day of following a herd of judges carrying the same souvenir tote bag. I took the podium for a 2.5-hour lecture---in the wrong classroom! I assumed that our training was the only game in town, but it turns out there were multiple training events occurring on the campus. A frantic search was undertaken by PEL Assistant Director Xiaoyu Zhang and the other experts to locate the missing speaker (me) while ClientEarth covered the podium until I could be rescued.

The training was intense and focused. My lecture focused on the development of citizen suits in U.S. environmental



Professor Tuholkske speaking at the National Judges Training on Environmental Adjudication.

law, and a case study to illustrate the role of judges in adjudicating citizen suits from my own legal experience. The other experts included attorneys from EPA and Dept. of the Interior, as well as former VLS Environmental and Natural Resources Clinic Director Doug Ruley, who is now General Counsel for

ClientEarth. What impressed all of us was the Q & A that followed. For all speakers the moderator had to cut off the questions as we ran out of time. The judges asked pointed, pertinent questions showing that they understood the material, and wanted to know more.

Seeing so many environmental judges, all deeply interested in figuring out technical, procedural and legal aspects of environmental law made it obvious to me that China is committed to using its court system to address pollution. While courts are not a panacea, they have a key role in our efforts to combat pollution. PEL has a long history of working with judges in China and in the past two years I have been fortunate to be part of that effort. These experiences have deepened my understanding of the Chinese legal system and my respect for the effort that the Chinese government is putting forth to address its serious air, water and soil pollution problems.

NEW INTERNATIONAL EXPERIENCE FOR VLS STUDENTS

This summer, Assistant Director **William Schulte** guided nine students on a two-week field study trip to Cambodia and Vietnam. The trip was designed as an addendum to our new summer course, Environmental Governance in the Developing World, and it provided students with an opportunity to observe firsthand some of the challenges to implementing strong environmental governance in Southeast Asia. It included a visit to Vietnam National University School of Law, observation of a village community collaborative planning process, and a forest hike through some of the most remote and biodiverse habitat of Cambodia. PEL is happy to report that one VLS student, Thomas Lopiano MELP'17, is now working with Vishnu Law Firm in Cambodia, a result of connections made over this excursion.



VLS students take a boat tour of Trang An, a UNESCO World Heritage site in Vietnam.



VLS students observe a collaborative resources management meeting in a local Cambodian village.

UPDATES FROM MYANMAR

It's been a busy year for the Myanmar Environmental Governance Program. We continue to work with the Environmental Conservation Department (ECD) on several initiatives. In early 2017 we supported ECD to develop a draft Guideline on Public Participation in Myanmar's Environmental Impact Assessment (EIA) process, which involved convening a Technical Working Group and hosting a series of public consultation events to gain feedback. In addition, with the support of the Heinrich Boll Foundation and the World Wide Fund for Nature (WWF) we've run a series of EIA Clinical Training workshops for ECD staff, as well as for EIA consultants and civil society organizations. This year we joined WWF to assist the ECD in establishing an Environmental Management Fund. The Fund, which is authorized under Myanmar's 2012 Environmental Conservation Law, will be held and operated by the ECD to implement various environmental protection initiatives across Myanmar.

TOWARDS TIMBER LEGALITY

Because of its dependency on raw timber supply from countries at high risk for illegal logging practices, China has become increasingly aware not only of the environmental implications of illegal logging and associated trade, but likewise of the reputational risks associated with its global timber footprint.

While voluntary-based sustainable timber certification, as a popular policy instrument, has succeeded in raising environmental awareness in China and supply countries, it has generally failed in actually reducing illegal logging and associated trade.

PEL Associate Director Yanmei Lin, and PEL Fellow Sheng Sun MELP'17 have worked with both Chinese and international stakeholders and policymakers to address this issue. With support from The Nature Conservancy, under the Responsible Asia Forestry and Trade (RAFT) partnership, Sheng and Yanmei combined article and legal research with interviews with key Chinese forestry officials to produce an analytical working paper. The detailed



Associate Director Lin and MELP Fellow Sun present at the World Resources Institute Forest Legality Week Washington Conference.

report addresses current Chinese timber trade policies and their interaction with illegal logging practices in source regions and assesses the feasibility of different regulatory options to incentivize and enforce the trade of only legally sourced timber in Chinese markets.

This October 2017, PEL was invited to present this research at the first

“Washington Forest Legality Week,” hosted by World Resources Institute. Mr. Charles Barber, the Director of the Forest Legality Initiative at WRI, said “we are definitely interested in talking about next steps with the VLS work. It is a solid foundation to build follow-ups on, both intellectually and politically.”

WHAT IS BAYANIHAN?

What is Bayanihan? That's what VLS student Valerie Fajardo JD/MELP'18 asked to an audience in the PEL office on a brisk November afternoon. Thankfully, Val knew the answer. During our inaugural

Tea Time with PEL event, Val presented on the Filipino concept of Bayanihan - roughly translated as community togetherness and cooperative reciprocity - and explored how it could apply to disaster relief and

promoting an environmental ethos in Filipino communities. After the presentation, Val led a discussion with the audience on whether this concept exists in other cultures, and how it's used. The engaging conversation covered an expansive array of ideas from climate resiliency on the Tibetan plateau to the manipulation of patriotism in American politics. The following month VLS student Brian Nguyen JD'20 explored citizen engagement of Asian Americans within the context of current racial tensions in the U.S. and how increased politicism of immigrant communities might impact extended families back in Asia. PEL is thrilled to witness the early success of these Tea Time events which aim to increase our engagement with the VLS student body while simultaneously promoting a broader dialogue on Asian Environmental Governance challenges. Topics are based on presenter interests and any member of the VLS community is encouraged to lead. Complementing these Tea Times, PEL restructured our research associate position to allow for student-led research on environmental governance issues. We hope that taken together, these activities and opportunities will allow for mutual learning, expanding the center's scholarship on environmental governance issues broadly while promoting research and professional training in our VLS student body.



VLS student Valerie Fajardo JD/MELP '18 presents at our first Tea Time with PEL.

NEW MEMBERS OF THE PEL TEAM

Doug Whitehead joined PEL in August as a **Master of Environmental Law and Policy (MELP) Fellow '20**. Prior to



joining PEL, he lived in Beijing working on multiple environmental law and governance projects. He assisted NGO ClientEarth in launch-

ing their new China program. While at the German development firm GIZ, he designed and managed a capacity building program in environmental law and adjudication for judges in Western China, the curriculum for which was published in China's People's Court Press. Prior to that, he worked at the Beijing-based NGO Global Environmental Institute on the environmental impacts of Chinese overseas enterprises in Southeast Asia. He earned a BA at the University of Washington in 2005, and an MPhil at the Hong Kong University of Science and Technology in 2007. He also spent a year at the Inter-University

Program for Chinese language studies at Tsinghua University in Beijing. As Doug explains, "I have a strong passion for environmental law and policy and Vermont Law School is a leader in this field nationwide and even worldwide so I am thrilled to be studying here and working with PEL at the forefront of rapid changes to environmental governance in China and elsewhere in Asia." Doug will serve as a Fellow with us for two years as he completes his Master's degree.

Greg Tisher joined PEL in May, as **Grants Manager**. He handles the financial and



budget management for the various grants, including preparing expense reports and budget reports and working with the Business Office to ensure compliance with financial requirements of funders. Greg was previously the Director of the South Royalton Library, where he was responsible for all library

operations, programs, and fundraising activities. Prior to that, he was the Executive Director of a downtown revitalization non-profit organization in Oberlin, Ohio.

Gianna Petito joined PEL in May. As **Program Coordinator** she is responsible

for handling all the administrative duties, including organizing and coordinating activities and conferences within PEL, assisting with grant applications and



reporting, developing and implementing a communication strategy for PEL, overseeing student research, and providing support to international visitors. Gianna graduated from American University with a B.A. in Psychology with a minor in Biology, and then received her M.S. degree in Environmental Policy and Planning and Conservation Ecology from the University of Michigan.





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