

SPRING  
2019

# U.S.-ASIA PARTNERSHIPS

NEWSLETTER

VL  
VERMONT  
LAW SCHOOL

## FROM THE DIRECTOR



It was a busy fall for the U.S.-Asia Partnerships for Environmental Law (PEL). As an educational program, we are thrilled to have been able to facilitate multiple trainings in environmental law both in the United States and across Asia.

In August and September, we led a month of intensive training for eight Chinese environmental mission scholars, providing them with the foundational knowledge of environmental law and legal advocacy tools. Now they are working on various projects to put to practice what they had learned over the summer.

During this practical training period, they will also take an on-line course, starting in March, which PEL Faculty Advisor **Jack Tuholske** has developed and will teach with assistance from Professor **Yanmei Lin**.

Also in August, we organized a two-week training for Chinese judges in Massachusetts and Vermont. The training focused on judicial remedies for environmental harms. The summer course, *Environmental Governance in the Developing World*, taught by Professor Lin and PEL Assistant Director **William (BJ) Schulte**, completed successfully with 14 out of the 24 students, who took the course, going on the study trip that BJ led to Southeast Asia. See one student's account of the trip in this issue (page 6).

In October, we welcomed a visiting delegation from the School of Law at Yunnan University in Southwest China; finally, in November and December, we organized and ran a series of workshops in Myanmar to bring together local civil society organizations and Environmental Conservation Departments to learn about the country's Environmental Impact Assessment System and to discuss ways to cooperate to strengthen said system.

Our mission at PEL is to strengthen environmental governance and rule of law in Asia by fostering learning and experience sharing across continents. These trainings have been great learning opportunities for not only students and mission scholars, but also ourselves. We have been able to witness first-hand the challenges environmental advocates face overseas, and learn with them what is needed to inspire growth and change in the environmental law field.

We are looking forward to continuing our work in Asia and here in Vermont. In the next semester, we will be recruiting the second cohort of Chinese students for our environmental mission scholars program. BJ Schulte is back to Myanmar to organize and launch a set of capacity building activities for civil society leaders on environmental advocacy and develop dialogues between them and government officials to improve and strengthen the environmental impact assessment system in Myanmar. PEL Fellow Professor **Tracy Bach** will also be in Myanmar in April and May working on a UN environment capacity building project to assist the country's implementation of the Paris Agreement. Also, our MELP Fellow turned Research Officer, **Sheng Sun**, is launching a research laboratory under the Environmental Law Center. Look out for more details and interesting news from Sheng's Lab as it takes shape in future issues.

In the meantime, we hope you enjoy this newsletter highlighting our recent program work.

Sincerely,  
**Siu Tip Lam**

## BUILDING THE CAPACITY OF MYANMAR'S CLIMATE CHANGE NEGOTIATORS

~ Tracy Bach

In the fifth year of our service learning partnership, the VLS COP Observer Delegation worked with the Myanmar State Party Delegation at COP24. The focus of the negotiations in Katowice, Poland was on completing the guidelines needed to implement the Paris Agreement. The UNFCCC Parties adopted the Agreement at COP21 in 2015. It was ratified quickly—faster than anticipated, legally entering into force just before the Parties gathered for COP22 in 2016. But practically, the Agreement was designed to be implemented in 2020 as the Kyoto Protocol's second commitment period sunsets. Given that its treaty terms include plenty of “constructive ambiguity,” more specific guidelines needed to be hashed out and COP24 was the deadline.

Myanmar's top climate change priority is adaptation. Although its greenhouse gas emissions

are rising as it industrializes, Myanmar's vast tropical forests sink more GHGs than it produces. As a least developed country—one of the 47 poorest countries in the world, according to UN indicators of health, social, and economic welfare—Myanmar struggles to respond to climate change's impacts. The top three are changing rainfall patterns and increasing drought in its interior, rising sea levels and concomitant flooding along its long coastline, and extreme weather events like Cyclone Nargis, which killed 138,000 of people and affected 2.4 million others. At COP24, the VLS Observer Delegation helped Myanmar to understand the specifics of the adaptation implementation guidelines under negotiation and how they did or didn't meet the country's adaptation needs. Our briefing memo provided before COP24 began helped Myanmar to understand and engage at the negotiation

*Continued on page 2 >*



The family photo of the VLS COP24 Observer Delegation second-week team with the Myanmar State Party Delegation after a briefing session. Photo credit: Tracy Bach.

## BUILDING THE CAPACITY OF MYANMAR'S CLIMATE CHANGE NEGOTIATORS

< Continued from page 1

sessions. Likewise our contemporaneous notes of these sessions and regular oral briefings throughout the two weeks of COP24 helped the Myanmar delegates keep up with the 24/7 meetings. The VLS delegation covered four additional issues at COP24 that Myanmar prioritizes: the Paris Agreement guidelines on nationally determined contributions (NDCs) and transparency, and the latest developments on loss and damage and agriculture and forestry issues.

As a result of teaching this VLS course and leading the service learning project, I have become an advisor to the Myanmar delegation. This relationship has led to me conducting workshops supported by the UN Development Programme (UNDP) and UN Environment (UNEP) in 2017 and 2018, as well as one supported by the International Union for the Conservation of Nature (IUCN) and the Asia Development Bank (ADB). The former have continued to focus on building Myanmar's capacity to engage at the climate change negotiations and to streamline this international law and policy into their domestic climate change practices. The latter reached deeper into the environmental rule of law pipeline, to the law professors currently teaching the next generation of environmental law leaders in Myanmar. This work complements my teaching and helps bring contemporary practice of international climate change law into the classroom.



A family photo of the 28 professors from Myanmar's fourteen law faculties who attended the week-long "teach the teacher" environmental law course in Yangon in March 2018. Photo credit: ADB



Laurie Beyranevand welcomes the visiting delegation from the School of Law at Yunnan University.

## DELEGATION FROM YUNNAN UNIVERSITY IN SOUTHWEST CHINA VISITS VLS

In October, PEL welcomed a visiting delegation from the School of Law at Yunnan University in Southwest China, known for its academic prowess in ecology, Southeast Asian regional studies and ethnic minority law.

The delegation, which included Vice Dean of the School of Law, **Shen Shouwen**, as well as professors **Chen Zhiping**, **Liu Min** and **Zhang Qing**, met with VLS Associate Dean for Academic Affairs, **Laurie Beyranevand**, to discuss furthering cooperation between the two universities. During the meeting, VLS and Yunnan explored opportunities for faculty and student exchange, joint degree and research programs, as well as collaboration on clinical education.

VLS Dean **Tom McHenry** signed a Memorandum of Understanding with Yunnan University in November, 2017.

The delegation later visited VLS' Environmental Law Clinic and discussed the potential for the establishment of a similar clinic at Yunnan University. They also engaged directly with VLS students during a VLS course on international environmental law, discussing the relationship between environment and trade. Several VLS students also expressed interest in visiting Yunnan University in the future.

We are looking forward to deepening our collaboration with this prestigious institution!



# SINCE IT OPENED UP TO THE WORLD IN 2011 AFTER DECADES OF ISOLATION,

Myanmar has tried to keep up with the pace of rapid development that has potential substantial environmental and social impacts by enacting environmental laws and regulations to ensure sustainable development. However, most of these laws and regulations are still relatively new and their implementation has been delayed; the capacity within the Ministry of Natural Resources and Environmental Conservation to implement and enforce the laws and regulations is still limited. Moreover, many local communities and Civil Society Organizations (CSOs) remain unaware of the content of the laws and the procedural and substantive rights that they provide for the Myanmar people. This past fall, PEL launched activities to help address some of those issues. These activities demonstrate a need for further dialogue between, on the one hand, the Environmental Conservation Departments on the Union level as well as in the States and Regions, which departments are responsible for overseeing the environmental impact assessment of development projects, and, on the other hand, CSOs in the States and Region. Thus, beginning next semester, PEL will develop a number of activities to facilitate this dialogue. PEL will also develop training activities for CSO leaders to build their capacity to work with the government to advocate and participate in Myanmar's environmental governance.



## MYANMAR WORKSHOPS ON ENVIRONMENTAL IMPACT ASSESSMENT FOR CIVIL SOCIETY ORGANIZATIONS AND LOCAL ENVIRONMENTAL CONSERVATION DEPARTMENTS

In November and December, PEL Assistant Director **William (BJ) Schulte**, together with the Myanmar Centre for Responsible Business and other local civil society organizations (CSOs) such as Green Justice Institute, Good Governance Support Association, Mong Pan Youth Association, and the Eden Network, organized and ran a series of four one-day workshops in Mandalay (Mandalay Region), Monywa (Sagaing Region), Taunggyi (Shan State), and Loikaw (Kayah State).

These workshops were made possible by the generous support of the Heinrich Boell Foundation. Each workshop included 30 to 35 people representing local communities and organizations, as well as the Ministry of Natural Resources and Environmental Conservation's Environmental Conservation Department (ECD), bringing them together to learn about developments in Myanmar's Environmental Impact Assessment system, and discuss ways to cooperate to strengthen the system. PEL and its partner organizations put together these workshops in order to provide a unique opportunity for local organizations and advocates to meet face-to-face with ECD officials from both the Union level and state and region levels to communicate their challenges and concerns regarding the EIA system, and other environmental issues that they face. For example, local CSO representatives raised issues including the poor implementation of public participation processes by third party EIA Consultants, the lack of access to adequate information about project proposals, confusion about the roles

of various government agencies involved in the project approval process, and difficulties associated with post-implementation project monitoring and enforcement. Most local organization representatives reported that it was the first time they had the opportunity to participate in such meetings; the ECD representatives very happy to be able to interact directly with the people being impacted by Myanmar's rapid development. For its part, the ECD also shared with the workshop participants the progress they have made with

regard to implementing the 2015 EIA Procedure, as well as the challenges. These include human resource and technological capacity constraints, the limited experience of EIA Consultants in Myanmar and the low quality of most EIA documents that they review, and the limited facilities available to ECD (ie, database and documentation systems). PEL looks forward to continuing to work with these organizations, and with the ECD, to strengthen Myanmar's Environmental Impact Assessment system.



William (BJ) Schulte leads a clinic in Myanmar. Photo credit: Aye Mon Thu.

## MYANMAR ENVIRONMENTAL IMPACT ASSESSMENT TRAINING AND CAPACITY BUILDING FOR LOCAL ENVIRONMENTAL CONSERVATION DEPARTMENTS

In December, **William (BJ) Schulte** organized and ran a series of Environmental Impact Assessment Training and Capacity Building Clinics for the local Environmental Conservation Departments in Mandalay, Sagaing and Taunggyi. These clinics were made possible through the generous support of the Heinrich Boell Foundation. PEL arranged for **William Ward**, an environmental attorney with 27 years of experience working with the United States Environmental Protection Agency, to come to Myanmar to assist with the training clinics. These clinics built upon PEL's prior support to the Union-level ECD by providing newly-hired staff at the local offices of Myanmar's Environmental Conservation Department with an introduction to Myanmar's Environmental Impact Assessment procedure and its legal framework, as well as techniques for reviewing EIA-related documents and assessing

their compliance with the law. Mr. Ward's extensive experience as a government regulator proved extremely valuable, as he was able to share information about the challenges that the U.S. faced in the early years of implementing its own EIA law, and the various measures that have been applied over the years to improve the system. The local ECDs reflected on their own challenges, strategizing ways to address them in the future. These included the low quality of the EIA Reports that they receive for review, the need for new ECD staff to be trained in technical issues, and the limited capacity that ECD has for monitoring and enforcing projects' compliance with their requirements for managing environmental impacts. PEL looks forward to continuing to work with ECD to address these challenges.



Environmental Attorney William Ward leads a clinic in Myanmar.  
Photo credit: BJ Schulte

## VLS INVITED TO THE SECOND ANNUAL FORUM ON ENVIRONMENTAL RULE OF LAW AND THE BELT ROAD INITIATIVE STRENGTHENING LEGAL FRAMEWORKS AND COOPERATION IN ASEAN AND CHINA

PEL Assistant Director **William (BJ) Schulte** was invited to serve as a moderator at the "Second Annual Forum on Environmental Rule of Law and the Belt and Road Initiative: Strengthening Legal Frameworks and Cooperation in ASEAN and China," jointly organized by UN Environment, the Heinrich Boell Foundation, and the China University of Political Science and Law, in Bangkok on November 21st and 22nd. There, a number of distinguished speakers representing government, academia, and NGOs, discussed

how China's experience in developing environmental rule of law could help strengthen environmental governance in the ASEAN region, as well as how interested parties from China and the region could strengthen cooperation in order to ensure that environmental safeguards are not overlooked in the implementation of China's ambitious Belt and Road Initiative. Some of the participants from China stated that although China had developed very rapidly over the last several decades, this development came at a very

high environmental cost. To address this, China has taken many steps that can serve as an example for China and ASEAN states, including strengthening the accountability of government agencies through administrative supervision mechanisms, introducing environmental public interest litigation, strengthening the capacity of its judicial system to address environmental disputes, and adopting new laws to address specific issues, such as China's Law on the Prevention and Control of Soil Pollution. The Forum participants also discussed measures that are intended to guide and regulate overseas investors, including China's Environmental Guidelines for Overseas Investments and other mechanisms adopted by institutions such as the World Bank, the Asian Development Bank, and the Asian Infrastructure Investment Bank. Most participants agreed that the most effective way to regulate the environmental impacts of foreign investments, including those made under the aegis of the Belt and Road Initiative, was to strengthen the environmental governance systems of the host countries. To that end, the Forum concluded that one potentially valuable way to move forward would be to use the Forum as a basis for forming a group of experts that could cooperate in order to organize trainings, conduct research, and propose solutions for strengthening the legal frameworks for managing the environmental and social impacts of the Belt and Road Initiative in the ASEAN region.





Kevin Jones introduces the basics of U.S. environmental and energy law. Photo credit Xiaoyu Zhang

## PROFESSOR KEVIN JONES HELPS TO DEVELOP ENERGY PROJECTS IN CHINA

In December, Professor **Kevin Jones** of the Energy Clinic was invited to give a series of lectures in China. The first was at the Research Institute of Environmental Law (RIEL) at Wuhan University Law School, one of the best environmental law programs in China. There, he introduced the basics of U.S. environmental and energy law, and U.S. policies for powering the green economy.

At Tsinghua University School of Law, Professor Jones met with two of China's leading environmental scholars, Professor Lu Zhongmei, the head of China's Environmental and Resources Law Society, and the Director of the Energy, Resources and Environmental Law Research Institute, Professor Wang Mingyuan. Both are often commissioned to conduct research and drafting work for legislative projects. They found Professor Jones's presentation to Tsinghua University, U.S. Policy for Powering the Green Economy: Lagging

Federal Policy, Leading State Policy and Emerging Corporate Excellence, very useful to their work with legislators and policy makers.

Lastly, Professor Jones was the first foreign expert invited to attend the Case Discussion Forum sponsored by the Judicial Case Academy of the Supreme People's Court (SPC) at the National Judges College in Beijing. Professor Jones joined Chinese environmental law experts, and more than thirty judges from the SPC and provincial high courts of China. There, he delivered a well-received presentation on federal and state climate litigation in the United States. Wenjung Huang and Wenling Jiang, the President and Vice President of the National Judges College, expressed much interest in collaborating with Vermont Law School in the future.



Professor Kevin Jones gives a presentation at Tsinghua University, on Dec. 12, 2018, about U.S. Policy for Powering the Green Economy. Photo credit: Haoling Tang.

## VLS WELCOMES VISITING SCHOLAR WEIYU (VINCENT) WU

U.S.-Asia PEL welcomes visiting scholar **Weiyu (Vincent) Wu** to VLS. Vincent is a Ph.D. candidate at Fudan University Law School in Shanghai, and a research assistant at the Center for Environmental, Natural Resources & Energy Law at Fudan. Over the next 12 months at VLS, Vincent will be researching biodiversity legislation and policy, conducting a comparative study on eco-environmental damage between China and the U.S., and studying the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction.

VLS receives Exchange Visitor Program sponsor status from the Department of State.



Vincent is hard at work on his dissertation.

Upholding VLS's motto, "Law for the Community and the World", VLS actively pursues a diverse student and faculty body because we believe that different experiences enrich the collective pursuit of knowledge. To enrich the collective pursuit of knowledge, VLS brings together global scholars to conduct research that will assist the advancement of mutual solutions to address social and legal concerns and problems world-wide. To facilitate this pursuit, VLS applied for and received designation from the Department of State (DOS) as a sponsor of the DOS Exchange Visitor Program (J-1 visa program). The objective of the Exchange Visitor Program is to increase mutual understanding between the people of the United States and the people of other countries through educational and cultural exchanges.

Scholar Weiyu Wu from Fudan University Law School comes to VLS under this Exchange Visitor Program.

To learn more, visit:

[vermontlaw.edu/admissions/international-applicants/j-1-exchange-visitor-program](http://vermontlaw.edu/admissions/international-applicants/j-1-exchange-visitor-program).

## ENVIRONMENTAL GOVERNANCE IN SOUTHEAST ASIA

During my first-year at law school, I opted to become a dual-degree student, focusing not only on my juris doctor, but also on a MELP degree. This, however, was not my original plan when I first came to VLS, as I already had a master's degree in political science under my belt. What I really wanted to do was study abroad during the summer of 2018. Unfortunately, my financial situation did not allow for me to realize that plan, so I decided to get a second master's degree that would let me take advantage of VLS's unique summer programing. When signing up for summer classes, one class in particular, Environmental Governance in the Developing World, caught my eye. Not only did this class provide me an opportunity to learn about a part of the world I had never considered studying before, but it also offered an optional field study trip to Southeast Asia.

Environmental Governance in the Developing World was a real eye opener. Throughout the eight-week course, we discussed various issues facing both Southeast Asia and China, including the Belt and Road Initiative, Environmental Impact Assessments in Southeast Asia, regional cooperation within the Mekong River region, and environmental governance within China. Another large component of the class is a final paper on a topic of your own choosing. This class is a valuable experience, testing the skills you develop throughout your first year in law school. Writing my final paper helped me develop my research abilities outside of Westlaw and Lexis, test my outlining capabilities, and become comfortable with footnotes and Bluebook citations. In addition, writing this paper inspired my note topic for the Vermont Journal of Environmental Law.

When it comes to the optional two-week field study trip in Southeast Asia, I cannot stress how valuable the opportunity is. This year, the trip began in Phnom Penh, Cambodia and ended in Yangon, Myanmar. While in Cambodia, we first met with the Vishnu Law Group and attended presentations on their work on behalf of indigenous communities in the Mondulkiri and



While in the Dak Dam community, we received a tour of the area via logging tractors.

Ratanakiri provinces who are being impacted by economic land concessions and land grabs. We learned that one of the biggest challenges local communities face is in obtaining community-based land title for their lands.

After meeting with Vishnu, we then departed for the Mondulkiri Province where we visited with Phnong ethnic villagers in the Dak Dam commune to hear from them about their struggle with Mega First Corporation. While in Mondulkiri, we had the opportunity to stay with local families for a night and participate in an Indigenous People's Day celebration involving music, dancing, and a communal meal. Afterwards, we made the trip to the Ratanakiri province where Vishnu Law Group was representing about a local community that had also been the victim of land-grabbing by a local businessman. All in all, we spent a good portion of our time in rural areas of Cambodia learning about some of the various issues facing indigenous peoples.

After Cambodia, we traveled to Yangon, Myanmar where we had the opportunity to meet with the Rule of Law Centres in Myanmar, the Myanmar Center for Responsible Business, the Thilawa Special Economic Zone, and Earth Rights International—all of which talked about legal rights at the community level and environmental issues faced by rural communities. This trip was an invaluable opportunity to not only see environmental governance in action, but also to engage directly with local peoples about the issues they are facing. I would recommend this opportunity to anyone, and if I could, I would go back in a heartbeat.

~ William Northrop JD/MELP'20, and Master of Arts in Political Science, 2017



Finishing off a quick lunch with a refreshing coconut while traveling through Cambodia's Mondulkiri Province.

## WELCOME TO OUR ENVIRONMENTAL MISSION SCHOLARS!

The Environmental Mission Scholars Program recruits junior lawyers or recent law graduates with demonstrated passion for and commitment to environmental causes and who show potential to become environmental legal advocates and stewards. Through the program, they are given opportunities to participate in a series of networking/support workshops with scholars and practitioners from China to learn about their experiences, the challenges they face and strategies they have developed to effectively participate in environmental governance processes through the utilization of public interest litigation.

A cultural industry management and philanthropy major at Beijing Normal University, **Jiayu Deng** strives to contribute to the environmental protection of China. She is currently the head of the Department of Environmental Law and Affairs in Fujian Green Home, an environmental NGO in Fuzhou, Fujian Province, doing environmental public interest litigation.

**Yini He**, of Henan University, hopes to promote the legal protection of biodiversity in China through environmental public interest litigation and policy advocacy.

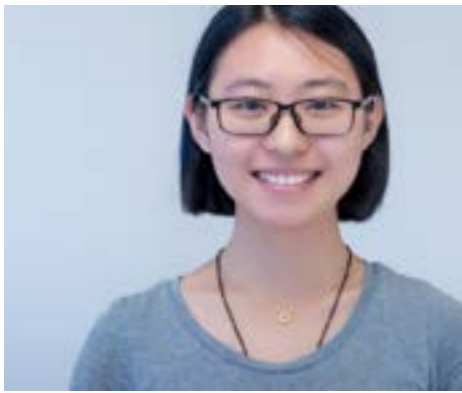
Yini He has previously worked on cases to help protect China's deepest water storage type freshwater lakes fuxian lake wetland, the green peacock 's last and largest habitat in China, the tropical rain forest in Xishuangbanna, and the middle and lower reaches of the Lancang river's fish migratory channels.

From Hainan, China, **Wenfang Liang** chose to become an Environmental Mission Scholar because she has a desire to use the power of the law to help people and the environment, eventually becoming a part of Chinese environmental practice. She is currently working with Friends of Nature practicing legal project management and following the cases of environment public interest litigation.

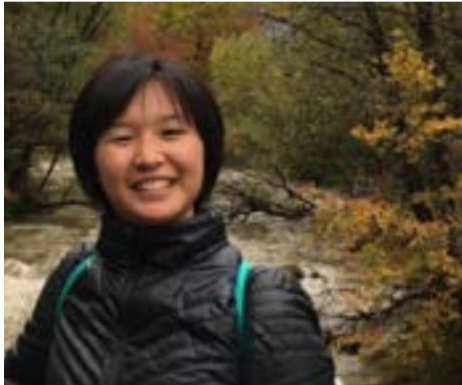
**Yina Liu's** mission is to solve air, water and soil pollution problems throughout China by using environmental public interest litigation. Currently, she is working with Friends of Nature, as an environmental public interest lawyer, suing polluters and providing legal training for environmental protection lawyers.

**Dongyu Sun**, a graduate of Peking University of Transnational Law, became a mission scholar to affect public policymaking on social and environmental issues throughout China. Being an environmental mission scholar has allowed him to engage in international environmental issues, master the necessary research and contribute to environmental protection.

Currently a lawyer for the Environmental Law Clinic of the Institute of Environmental Law of Wuhan University, **Weixiaozi Yu** is a graduate



Jiayu Deng.



Yini He.



Wenfang Liang strives to "learn environmental laws and be an environmental attorney (to) promote harmonious and friendly commun(it)ies."



Yina Liu.

of Shandong Sports University. Previously, Xiaozhi has practiced with Friends of Nature, participated in various environmental protection missions and field research, and has been involved with the project management of Xiangyang Green Home, a local environmental NGO aiming to protect Han River Watershed. Xiuxiu is from Zhejiang Province, "a coastal city with mountains at the back, diligent people all around."

At Duke Kunshan University, **Xiuxiu Zhang** researches environmental public interest litigation and latest developments in China. Currently at her dream career, Xiuxiu does much environmental law work, providing legal support to NGOs in East China, participating in environmental education and advocacy, and brings public interest lawsuits against polluters. She hopes to, through her research and practice, become the best environmental attorney in China.

“THE ENVIRONMENTAL MISSION SCHOLAR PROGRAM IS A REALLY GREAT OPPORTUNITY TO BE INVOLVED IN PRACTICAL ENVIRONMENTAL CASES AND LEARN FROM EXPERIENCED ENVIRONMENTAL LAWYERS, SCHOLARS, AND ENVIRONMENTAL PROTECTION ORGANIZATIONS.”  
—Xinxin Wang

A graduate of Ocean University of China with a master's in Environmental Law, and an LLM student at Vermont Law School, **Xinxin Wang** has been a practicing attorney for a number of years.

She has practiced law in Beijing Yingke (Kunming) Law Firm as a commercial lawyer and has worked as an attorney in many environmental civil and criminal cases. She was also a consultant for Yunnan Environmental Planning Institute, and co-drafted the "Implementation Regulations of Yunnan Province for Environmental Protection."

If you would like to learn more about our Environmental Mission Scholars, visit our website!

[vermontlaw.edu/academics/centers-and-programs/environmental-law-center/people/mission-scholars-china](http://vermontlaw.edu/academics/centers-and-programs/environmental-law-center/people/mission-scholars-china)



Dongyu has previously helped with advising U.S. companies on environmental issues.



Weixiaozi Yu.



Xiuxiu Zhang.



Xinxin Wang.

## TRAINING OF ENVIRONMENTAL MISSION SCHOLARS BEGINS IN EARNEST

After the launch of our Environmental Mission Scholars (EMS) Program in April 2018, the U.S.-Asia Partnerships for Environmental Law (PEL) recruited students in China and began an intensive, month-long training program in August 2018. The EMS Program aims to build the capacity of emerging environmental advocates and civil society leaders in China to use legal methods to promote environmental protection goals. PEL undertakes this program in partnership with the Research Institute of Environmental Law at Wuhan University, the Environmental Research Center at Duke Kunshan University, and a leading Chinese environmental non-governmental organization (NGO), Friends of Nature (FON). The month-long intensive EMS training program is comprised of four courses: Ecology in Practice; Ecological Governance and Law; Environmental Law Practice and Skills; and Communication, Advocacy and Leadership. The courses were taught in Chinese, and took place in Kunming City, Yunnan Province. Professor **Gong Cheng**, deputy director of the Institute of Environment and Resources Protection for Minority Areas at Minzu University of China, taught the course Ecology in Practice. Professor **Xiang Liu** from the Environmental Engineering College of Hebei Province in China, also an experienced environmental lawyer, who has brought many cases, including tort and environmental public interest litigation (EPIL), taught the Environmental Law Practice and Skills course. Our very own Professor **Yanmei Lin**, co-taught the course Ecological Governance and Law in China, with attorney Feng Ge, the director of the Law and Policy Department at FON. Finally, General Director of FON, **Mr. Boju Zhang**, taught the course Communication, Advocacy and Leadership in China.



Environmental mission scholars conduct a field visit to Dianchi Lake. Photo credit: Xiaoji.

### ECOLOGY IN PRACTICE

The first course, Ecology in Practice, introduced the mission scholars to key ecological concepts, principles and applications, and taught them to identify human impacts on ecological systems. The course included field visits to Dianchi Lake and Fuxian Lake in Yunnan Province, where the scholars got to make personal observation of the pollution and development problems in these lakes. As part of the exercise, they also conducted site investigation to gather information relating to an environmental public interest case. In addition, each

of the mission scholars selected one ecological scientific paper to present, explaining how they would apply the knowledge they acquired from the course to analyze the environmental problems and the potential solutions that can ensure sustainability of the social-ecological system.

The mission scholars were emphatic that this course was particularly useful in equipping them with a holistic and systemic understanding of the relationship between social and ecological systems.

### ENVIRONMENTAL LAW PRACTICE AND SKILLS IN CHINA

The second week of intensive training was on Environmental Law Practice and Skills in China. We were fortunate in being able to recruit experienced litigator, Professor **Xiang Liu** from the Environmental Engineering College of Hebei Province, who is also the director of the Litigation Department of the Center for Legal Assistance to Pollution Victims (CLAPV) and has represented pollution victims in seeking compensation and pioneering many of the environmental public interest litigation (EPIL) cases that were brought after NGOs were permitted to file EPIL. He led the scholars in hands-on exercises that included writing environmental civil case memos, drafting complaints and briefs for an EPIL case, analyzing environmental cases, observing a trial and identifying the key techniques used in cross-examination, and developing key points for settlement negotiation.

Moreover, the training serendipitously occurred

at around the time an important EPIL case was scheduled for trial. Professor Liu used this case to develop an exercise to simulate a trial where the mission scholars tried the case as litigants. The scholars then attended and observed the real trial and could compare their mock trial experience in light of the performance of the trial in the real courtroom. The EPIL case involved a hydropower dam development, which the plaintiffs argue would harm the habitat of the green peacock, an endangered species in China, and other invaluable biodiversity resources in the area.



Mr. Bin Lv's guest lecture on community advocacy. Photo credit: Boju Zhang

## ECOLOGICAL GOVERNANCE AND LAW IN CHINA

The third course, Ecological Governance and Law in China, focused on China's governance framework and the key legal and operational tools to control pollution and manage the sustainability of natural resources. To demonstrate the application of the tools, Professors Lin and Ge used the development around Fuxian Lake as a case study. Fuxian Lake, the third largest lake in Yunnan Province and the third deepest freshwater lake in China, has long been known for its pristine water. However, development around the lake in the past decade threatens the health of the lake. The mission scholars reviewed the water pollution control plan and the five-year development plan for the lake and analyze these plans from the perspective of environmental protection and discussed the different legal and operational tools for engagement in the next cycle of planning and decision-making to ensure the health of the lake.

## COMMUNICATION, ADVOCACY AND LEADERSHIP IN CHINA

The final course, Communication, Advocacy and Leadership in China, aimed to enhance the mission scholars' understanding of social, cultural, historical and political context for civil society groups to engage in China's policy development, and to hone their communication and leadership skills. The instructor, General Director of FON, **Mr. Boju Zhang**, also introduced to the mission scholars the various policy advocacy strategies currently employed by civil society groups in China, including policy research, agenda setting, public comments on legislation, environmental public interest litigation, grassroots organizing, public messaging, and attending public hearings.

Professor Zhang arranged four guest lectures from leaders in the environmental field to emphasize the successes and challenges in CSO-led policy advocacy campaigns: the director of Green Watershed, **Dr. Xiaogang Yu**; **Dr. Dequan Lu**,



former research director for Oxfam HK; former program officer for TNC, **Dr. Hao Zhuang**; **Mr. Bin Lv**, the director of Xiangcunzhiyan, an organization empowering grassroots ethnic minority communities to document their cultural diversity practices. The over-arching aim of the lectures was to help the mission scholars gain an understanding of the limitations and challenges facing environmental CSOs operating in China, preparing them to be both realistic and creative in navigating the advocacy landscape.

## PEL TRAINS A CHINESE DELEGATION

In 2015, China amended its Environmental Protection Law to permit certain non-governmental organizations (NGOs) to sue those, who "cause environmental pollution, ecological damage and public interest harm." Since then and as NGOs make use of this legal tool, Chinese courts are confronted with many legal issues they have not encountered before and on which they have found no guidance. To guide the development of environmental public interest litigation (EPIL) as these cases have come to be called, China's Supreme People Court (SPC) established an Environment and Resources Division to conduct research and develop guiding policies. This new division is also charged with the responsibility of developing training programs for judges from all across China on adjudication of environmental cases.

The U.S.-Asia Partnerships for Environmental Law (PEL) at Vermont Law School (VLS) was tapped to develop some of these training programs for Chinese judges. Following our successful training of five Chinese judges, who spent two months at VLS in 2017, PEL led an 11-day training seminar for a 10-person delegation selected by the SPC in August 2018.

Supported by the Asian Development Bank and a leading international environmental NGO, ClientEarth, the 11-day training seminar, Judicial Remedies for Environmental Harms, took place in Massachusetts and Vermont. This seminar provided the judges not only with an overview of U.S. environmental law and an understanding of the different causes of action and remedies available under these laws, but also an in-depth examination of ecological damage assess-

ment and how courts in the U.S. determine the appropriate remedies. Through the seminar, PEL also sought to foster dynamic thinking on the comparative strengths and weaknesses of U.S. and Chinese judicial systems in addressing remedies for environmental harm. PEL developed a curriculum and recruited distinguished environmental law professors, environmental lawyers, including government and private litigators, and expert consultants to deliver and hold a series of presentations and discussions. The delegation consisted of five judges and an official from the SPC and four judges from provincial high courts, who are responsible for adjudicating environmental cases or developing guiding policies for the high courts.

The first two days of the training seminar took place in Boston, Mass., where the judges were able to engage with representatives from Region 1 of the United States Environmental Protection Agency, the United States Department of the Interior (USDO), the National Park Service, the Massachusetts Appeals Court, and with Professor Zygmunt Plater, a prominent environmental professor at Boston College Law School. Through meetings and presentations, the judges gained an overview of the U.S. legal system and an understanding of the work of federal agencies that are responsible for protecting the environment and seeking compensation for damages to natural resources, as well as the work of a state judiciary.

*Continued on page 10 >*



The group poses in the Massachusetts Appeals Court courtroom. Front, L to R: Judge Baoying Xiao, Chief Judge Xuelin Zheng, Judge Meigui Lin. Back, L to R: Dimitri Deoer (ClientEarth), Judge Ye Wang, Jinmei Liu (ClientEarth), Judge Ling Xiao, Judge Xunrong Huang, Judge Haifeng Wang, Chief Justice Mark Green, Associate Justice James Milkey, Qi Chang, Judge Defang Xu, Judge Zheyuan Feng, Wanlin Wang and Mengxing Liu (ClientEarth), Siu Tip Lam (VLS).

*Photo credit: Mass. Appeals Court law clerk.*

“THE TRAINING HAS BEEN A SUCCESS...WE HAVE DEVELOPED FRIENDSHIP WITH ALL THE PRESENTERS, ESPECIALLY THE VLS PROFESSORS, WHICH WILL FORM A FOUNDATION FOR FURTHER COLLABORATION.”

—Judge Xuelin Zheng and judicial colleagues.

< Continued from page 9

The next nine days of the training took place in Vermont and began with VLS Professors **Jack Tuholske** and **John Echeverria** reinforcing what had been presented in Massachusetts, providing a history of U.S. environmental and natural resources law, and engaging the judges in a comparative analysis of the development of environmental laws in China and the U.S. Professor Tuholske provided a primer on the types of judicial remedy available under the major federal environmental statutes, which prefaced the more in-depth examination of judicial remedies scheduled later in the training. He also reviewed the role of science and experts in environmental cases and how courts in the U.S. evaluate scientific evidence.

The judges were especially interested in learning about the U.S. Comprehensive Environmental Response, Compensation, Liability Act (CERCLA) and the cleanup, restoration, and compensation remedies provided under the act. Many of the legal issues that arise in EPIL cases in China focus on the assessment of the damage to the environment, determination of the appropriate clean up and restoration remedies, and assessment of natural resource damages. Thus, after presentation on CERCLA by VLS Professor **Mark Latham**, PEL arranged for a site visit to the Elizabeth Mine, a designated Superfund site located in Strafford, Vt., that has been undergoing response actions since the mid-2000's. There the delegation was able to directly observe the ongoing response activities on a Superfund site, and gain a better understanding of the extensive response actions needed to clean up a site. The judges also received presentations from USDOJ attorney Mark Barash and an environmental economics expert on how natural resource damage claims are brought and assessed in the courts in the U.S. **David Mears**, previously the director of VLS's Environmental Law Center and who now is the Executive Director of Audubon Vermont, **Jill Witkowski Heaps**, the then director of VLS's Environmental

and Natural Resources Law Clinic (ENRLC), and Judge **Michael Hogan**, who recently retired from the Superior Court in New Jersey, rounded out the training with detailed discussions of other various remedies that courts can issue to address environmental problems.

The judges' delegation also visited the Conservation Law Foundation (CLF), to learn about the strategic approaches of citizen suits to advance environmental goals, and visited the Environmental Division of Vermont's Superior Court, the first, and one of two, environmental courts in the U.S. **Laura Murphy**, former associate director of VLS's ENRLC and now an Assistant Attorney General for the Environmental Protection Division of Vermont's Attorney General's Office, helped to organize a meeting with her colleagues, where the delegation learned about the roles and functions of prosecutors in U.S. environmental protection.

The delegation led by Judge **Xueling Zheng**, the first Chief Judge of the Environment and Resources Division of the SPC, observed that the U.S.' environmental governance system is very comprehensive and developed, including four key elements: detailed environmental laws, comprehensive enforcement system through administrative agencies, judiciary system for implementation of the laws, and broad public participation among an active civil society with keen awareness of the issues. The training has piqued the interest of the individual judges to develop further collaboration to compare the environmental protection systems of the two countries. "The training has been a success," summarized Judge Zheng. A judge further observed, and seconded by several other judges, "we have developed friendship with all the presenters, especially the VLS professors, which will form a foundation for further collaboration."

We are looking forward to deepening our relationship with the judges, and doing more trainings and comparative studies in the future.



Chief Judge Xuelin Zheng shares a laugh with VLS Dean Thomas McHenry. Photo credit: D. DeBoer.



VLS Professors Jack Tuholske and John Echeverria lead the discussion. Photo credit: Gianna Petito.



Chief Judge Xuelin Zheng exchanges gifts with Chief Justice Mark Green of the Massachusetts Appeals Court. Photo credit D. DeBoer.



Judge Meigui Lin exchanges gifts with the Deputy Attorney General Josh Diamond of the Vermont Attorney General's Office. Photo credit: Siu Tip Lam

# PEL

# SNAPSHOTS

## NEWS FROM PEL

Former MELP Fellow **Douglas Whitehead** has now transitioned to the role of PEL Research/Development Officer. Doug has worked on environmental law and governance projects in China for nearly 10 years, including with Chinese NGO the Global Environmental Institute, the German development agency GIZ, the EU-China Environmental Governance Programme and ClientEarth. He has managed projects on training Chinese judges and prosecutors in environmental law, public interest litigation, emissions trading schemes and environmental impacts of Chinese overseas investments. Congratulations on your new role, Doug—we are so happy to continue working alongside you.

In December, we welcomed our new Program Coordinator, **Claire Andrews**. Formerly a teacher in Vermont, Claire has worked a wide-range of jobs—chef, activities coordinator, and personal assistant to artist Bunny Harvey, Professor Emerita of Art at Wellesley College. She is a 2014 graduate of the University of Alaska Southeast, with international experience coming from her many years living abroad in Scotland and traveling Europe. You will find her outside skiing, swimming or hiking when she isn't working.

We are especially pleased to be working with **Aye Mon Thu**, the program officer of our Myanmar Environmental Governance program based in Myanmar. Aye Mon is a certified lawyer from Union Supreme Court and has experience working as a public interest lawyer in environmental harm cases in the Myanmar mining sector.

At the end of December 2018, we said goodbye to our Assistant Director **Xiaoyu Zhang**, who left to join ClientEarth's China Program. Xiaoyu Zhang first joined PEL in 2015 as an LLM fellow and then stayed on as Assistant Director after she completed her LLM program in 2017. We were sad to see her go but hope to continue working with her in her new capacity at ClientEarth.

**Gianna Petito**, our former program coordinator extraordinaire, left PEL to join the Winooski Natural Resources Conservation District as district manager in September 2018. Gianna, who holds a master's degree in Conservation Ecology and Environmental Planning from the University of Michigan School of Natural Resources and Environment, was eager to use her science background to spearhead programs that foster effective resource management in Vermont.

Greg Tisher, our former grants manager, and his partner Lizzie, former LLM Fellow at the ENRLC, moved back to Chicago in September 2018 to be closer to their families. Greg was able to lend support and spend time with his ailing mother, who passed away in October 2018. Our hearts go out to Greg and his family.

PEL's Associate Director Yanmei Lin delivered a lecture to graduate students and faculty members from Duke Kunshan University's International Master Program in Environmental Policy (IMEP Program).



#### U.S.-ASIA PARTNERSHIPS FOR ENVIRONMENTAL LAW

Vermont Law School  
164 Chelsea Street | PO Box 96  
South Royalton, VT 05068 USA

802-831-1342 | [asia@vermontlaw.edu](mailto:asia@vermontlaw.edu)  
[vermontlaw.edu/us-asia](http://vermontlaw.edu/us-asia)



# SPRING 2019 U.S.-ASIA PARTNERSHIPS NEWSLETTER

