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Research Reports

**Public Interest Litigation in China:
A New Force for Social Justice**

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Introduction

PUBLIC interest litigation (PIL) is relatively new to China but has grown rapidly over the last decade to become a significant and increasingly influential form of legal action. PIL, as distinct from ordinary litigation involving two or more parties, seeks to address issues that affect society as a whole or a specific social group rather than just one individual. For example, a case brought by a local resident against a factory for polluting the water supply is clearly in the public interest as well as the private interest of the litigant.

PIL can be a powerful agent for social change, as during the American Civil Rights movement of the 1950s and 60s when it was instrumental in challenging and eroding institutionalized racial discrimination. Very often, PIL cases are brought with the help of a third party such as a civil rights or environmental group, but generally the actual plaintiff must be someone with a direct interest in the case, for example someone who has been the victim of racial or sexual discrimination. However, this standard has been challenged recently in several countries, most noticeably India in the 1980s when the Supreme Court allowed individuals and groups with no direct interest in a case to take legal action in the public interest.

Most public interest litigation is directed at alleged administrative and governmental misconduct or nonfeasance (the failure of a public body to perform its legal duty). However, socially irresponsible businesses have also been the target of PIL lawsuits, particularly in pollution and labour rights cases. PIL is most common in countries with a strong tradition of judicial independence such as the United States and India, and is generally less likely to emerge in political systems where the interests of the ruling party supersede judicial independence, and where public confidence in the rule of law is relatively low. However, the rapid pace of social and economic change in China over the last two decades has led to a significant increase in the use of PIL, especially by China's emerging *weiquan* (civil rights) movement, which sees it as means of promoting social change and defending the legal and constitutional rights of ordinary citizens.

The social background to the rise of PIL in China

Heightened social injustice

Prior to the economic reforms initiated by Deng Xiaoping in the early 1980s, economic and social activity in China was tightly controlled by the central government. Personal interests were subordinated to political interests and the majority of social conflicts were resolved through state intervention. Taking legal action to challenge government policy was inconceivable. In the early 1980s however the government began to privatize state-owned enterprises and introduce market forces into the economy. These reforms kick-started the economy and created a new class of entrepreneurs. Yet, they also increased social polarization and widened the gap between rich and poor. Moreover the state gradually withdrew from its commitments to social welfare, especially where those commitments represented an obstruction to economic development, and disadvantaged groups such as redundant workers were left to fend for themselves. Social conflict and

unrest inevitably increased, as seen in the forced evictions of ordinary citizens by big land developers, often in collusion with local government officials and even the police, as well as in widespread violations of labour rights and consumer rights. The discrepancy in urban and rural living standards led to a massive rural to urban migration and the creation of a huge floating population in the cities. These migrant workers and their children lacked welfare benefits, medical care and educational opportunities in their host cities, and became the most marginalized social class subjected to widespread discrimination and exploitation. For other ordinary citizens, inflation, high unemployment rates and low wages made their lives increasingly difficult. And many citizens started to use PIL as a means of resolving these difficulties.

The emergence of the middle class and legal professionals

China's economic reforms also led to the growth of a middle class, many of whom became increasingly aware not only of the social injustice in their midst but of ways and means to tackle that injustice. Many of these middle class professionals set up non-governmental organizations (NGOs) to aid disadvantaged groups, such as migrant workers, victims of domestic violence and the disabled. Subtle changes also occurred within the legal profession. A new generation of well-trained, independently minded legal professionals started replacing the older generation, many of whom had limited legal expertise and generally accepted close supervision by the Communist Party. These new legal professionals were more willing to defend the integrity of their profession and challenge government institutions when necessary. Moreover the legal framework in China changed in order to keep pace with social and economic change. China signed up to a wide range of international treaties and agreements such as the *International Covenant on Economic, Social and Cultural Rights*, and implemented laws such as the *Administrative Litigation Law* in 1990 and the *Law on the Protection of Consumer Rights and Interests* in 1993, which facilitated the emergence of PIL. Although there are still many flaws in the Chinese legal system, these changes at least provided for the possibility of a successful challenge to violations of the public interest through legal action.

Ineffectiveness of the *Xinfang* system to redress grievances

Since the establishment of the PRC in 1949, the "Petition (*Xinfang*) system" has been just about the only method by which ordinary Chinese citizens could seek redress for their grievances. Put very simply, aggrieved parties send petition letters or visit the *xinfang* office of a higher level of the administrative government in order to seek compensation, an apology or to correct mistakes made by a lower level of the administration. However, the *xinfang* system is now widely regarded as over-burdened, unresponsive, overly complex and ineffective. Although millions of ordinary citizens still seek redress through the *xinfang* system each year (18.6 million in 2004 alone), a recent survey showed that only three in ten thousand petitions result in some form of resolution. The *xinfang* office has its roots in the traditional top-down system of government where ordinary citizens rely on higher levels of government to alleviate their suffering. However this system is increasingly incompatible with China's diverse and rapidly changing society and in recent years new mechanisms such as PIL have emerged to deal with new social problems.

The concept of PIL in China

Although there is no universally accepted definition of PIL, one commonly used definition in English speaking societies is: “Cases where there is a public benefit to be served through judicial resolution of issues presented, and in which there is a public interest in promoting access to justice.” Given that PIL is a new form of litigation in China, no specific constitutional or procedural basis for PIL currently exists in Chinese law, and opinion within China as to what exactly PIL is varies considerably. However we can identify five schools of thought, outlined below.

1. *Economic public interest*: This school restricts PIL to cases concerned with the economic public interest, cases that claim the actions of an individual or group have damaged the interest of the public in material terms. This school seeks to use PIL as a means of better regulating the conflicts between different economic interest groups.
2. *Administrative litigation*: This school notes that since most PIL targets the misconduct or nonfeasance of government institutions, if cases brought in the public interest do not involve the misconduct or inaction of the government they should be regarded as civil cases, not PIL.
3. *Public interest, not private interest*. This school argues that PIL should include both civil and administrative litigation. It refers to cases where “a specific branch of the government or an individual, empowered by the law, brings another party, who has endangered the interests of the public... to the attention of the court.” This is currently the most commonly accepted view in China.
4. *Social action*: This school argues that PIL is not only a legal action, but also a social action with the ambition to expose social injustice and to reform society. Therefore, more resources and support should be given to the under-privileged social groups to pursue social justice through PIL.
5. *Any case to protect public interest* This view adopts the widest interpretation suggesting that any legal action designed to protect the interest of the state or the public should be regarded as PIL.

The main categories of PIL in China

The first PIL case in China was the widely reported “one dollar and twenty cents case” in 1996 in which Qiu Jiandong sued the Post and Telecommunications Office of Xinluo district, Longyan city, Fujian for failing to implement discounts for holiday and night-time telephone calls. Invoking Section 49 of the *Law on the Protection of Consumer Rights and Interests*, Qiu asked that the Post and Telecommunications Office apologize, implement the discount immediately and compensate him 1.20 yuan for the over-charge on his bill. Qiu withdrew his suit when the Post and Telecommunications Office agreed to change its tariff.

After this case, more and more people started to sue the government or big companies for infringement of the public interest. For example, in October 1998, a farmer from Hunan

named Ge Rui sued the Zhengzhou railway station for illegally charging 30 cents for using the toilets in the train station. Based on regulations issued in 1993 by the Ministry of Finance and the State Development Planning Commission ordering a cancellation of all unnecessary charges, Ge demanded that the Zhangzhou railway station apologize and refund the charges. Ge lost the case in the first trial but won on appeal. As a result of this case, many railway stations abolished similar charges. However, in 2001 Ge discovered that the Zhengzhou railway station was again charging passengers for using the toilets. He asked the Zhengzhou Municipal Price Bureau to act and when it refused he sued it for nonfeasance. Eventually, the Henan Development and Planning Commission intervened, ordered the Price Bureau to carry out its duty and fined the railway station 1,740,000 yuan, the total amount obtained by the station from its illegal toilet charges.

PIL has developed rapidly over the last ten years, with many cases brought with the help of third party facilitators, such as the organizations listed at the end of this study. We can group the PIL cases that have been brought in China thus far into the five following categories. Because of the scarcity of published material on PIL cases, the reasons for the court's judgment in individual cases are not always clear:

1. Litigation to defend constitutional rights, usually against discrimination and the right to education.

Discrimination against non-civil servants - Wang Yong et al. vs. Culiangwang Hongguang Restaurant.

In May 2005, Wang Yong, Li Hongcui and Chen Qingsong, from the Law School of Sichuan University, brought a lawsuit against Culiangwang Hongguang Restaurant in Chengdu for discrimination on the basis of customers' social status. The restaurant had claimed in its advertisement that it would charge "18 yuan for ordinary customers and 16 yuan for civil servants". The three students lost the case in the first instance but the appeal court partly reversed the initial decision. The appeal court claimed that while the advertisement was not in violation of law, it hurt the feelings of ordinary customers, so it should be withdrawn.

Discrimination against place of origin - Li Dongzhao and Ren Chengyu vs. Longgang Office of the Shenzhen Public Security Bureau

On 15 April 2005, Li Dongzhao and Ren Chengyu, two lawyers from Henan province, filed a lawsuit against the Longgang Office of the Shenzhen Public Security Bureau on the grounds that the Bureau had displayed a slogan undermining the reputation of people from Henan - "Firmly Crack down on Blackmail Gangs from Henan Province". The Longgang Office of the Shenzhen Public Security Bureau held a press conference to apologize even before the trial opened.

The Right to Education – Jiang Yan and others vs. Ministry of Education

In August 2001, three national college entrance examinees, Jiang Yan, Luan Qian and Zhang Tianzhu, filed a lawsuit with the Supreme People's Court claiming the Ministry of Education's national quota system whereby examinees with the same

exam results in different regions have unequal access to colleges and universities violated the equal right to education. The Supreme People's Court rejected the suit.

Zou Yinglai vs. Beijing Education Committee

In June 2005, Zou Yinglai, a 6 year old boy, accused the Beijing Education Committee of depriving him of his right to education. He claimed that the Education Committee had asked him to pay a 991 yuan tuition fee so that he could be admitted to the school, but according to the Compulsory Education Law, he should enjoy the right to education free of charge. However, the Xicheng District Court dismissed the case on the grounds that the issue was not within its jurisdiction.

Xu Jianguo vs. the Public Security Bureau

In May 2006, Xu Jianguo was stopped by three police officers as he walked out of Macheng Railway Station in Hubei province. The police officers demanded to see Xu's ID card. Xu refused, demanded to see the officers' identity cards and asked them to provide him with their reasons for stopping him. The policemen refused and took Xu to the police station. Xu Jianguo argued that the officers' action was illegal, and filed a suit in the people's court. Although the plaintiff eventually withdrew his case, at least attention was drawn to the arbitrary nature of police power in China.

2. Labour rights litigation, usually related to workplace discrimination or health and safety issues, and directed against businesses as well as government agencies. China Labour Bulletin, in our capacity as a third party facilitator, is currently handling over 130 labour rights litigation cases across China.

Discrimination against Hepatitis B carriers - Zhang Xianzhu vs. Wuhu Bureau of Human Resources

In November 2003, Zhang Xianzhu brought a lawsuit against the Wuhu Bureau of Human Resources, claiming that, as someone living with the Hepatitis B virus, he was discriminated against at the recruitment examination for civil servants. Zhang won the lawsuit in the first instance. In May 2005, Chang Lu brought a case against the Hunan Tax Bureau in the People's Court of Yuhua District for discrimination against applicants carrying the Hepatitis B virus. Chang lost the case in the first instance. CLB is currently involved in seven Hepatitis B discrimination cases against companies owned or supplying to major corporations such as Coca Cola, Hewlett-Packard, Foxconn and Nokia. In all these cases employees were fired or job applicants refused because of their Hepatitis B status.

Discrimination on the basis of height - Jiang Tao vs. Chengdu Branch of the People's Bank of China

In December 2001, Jiang Tao from the Sichuan University Law School, brought a lawsuit against the Chengdu Branch of the People's Bank of China, which had refused to employ him on the grounds that his height was below the recruitment criterion of 165cm. The court refused to accept the case.

Work-related injury compensation – Wang Fubin vs. Dadukou District Labour and Social Security Bureau

In June 2004, Wang Zhongyou, a worker at Chongqing Qiutian Gear Co Ltd, died after falling off his bicycle on his way to work. Even though under Chinese law, work related insurance covers workers' journeys to and from work, the local labour bureau refused to pay compensation to Wang's family because it said Wang was not hit by another vehicle and therefore under the *Regulations on Work-Related Injury Insurance* was not entitled to compensation. On 30 August, Wang's father brought an administrative lawsuit challenging the decision of the labour bureau and the court instructed the bureau to review Wang's case.

Work-related illness compensation – Xu Yundong vs. Perfect Gem and Pearl Manufacturing Co. Huizhou, Guangdong

In March 2005, Xu Yundong and three other former workers at the Perfect Gem and Pearl Factory suffering from silicosis caused by breathing silica dust whilst polishing gemstones, sought compensation from the factory owners. CLB hired a lawyer to hold direct negotiations with management and Xu was offered 330,000 yuan in compensation, which he rejected. With the help of CLB, Xu pressed his case in the courts and was eventually awarded 420,000 yuan in compensation. Several other workers have filed law suits against gem factories in southern China, winning compensation and helping to bring the appallingly hazardous working conditions of these factories to the attention of the public, particularly in Hong Kong where many of the gemstone companies were based.

3. Public litigation concerning consumers' rights, usually related to the right to information or the issue of unreasonable charges.

Qiao Zhanxiang vs. the Ministry of Railways

In April 2001, Qiao Zhanxiang sued the Ministry of Railways for raising ticket prices during the Spring Festival without the approval of the State Council or any public consultation. Qiao lost the case both in the first and second instance. However, since the lawsuit the Ministry of Railways has begun to hold public hearings on ticket pricing.

Huang Jinrong vs. Beijing Railway Bureau

On 28 September 2005, Dr. Huang Jinrong filed a lawsuit in the Beijing Railway Transportation Court against the Beijing Railway Bureau for the violation of consumers' right to information. He charged that the Beijing Railway Bureau imposed an insurance fee on passengers without notifying them in advance. At the same time, he submitted a request to the Chinese Insurance Regulatory Commission for an administrative review of the legality of the insurance fee. Case outcome unknown.

4. Litigation concerning environmental protection, usually filed by ordinary citizens with the help of third party facilitators as cases of administrative nonfeasance.

Qingdao Citizens vs. Qingdao Planning Bureau

On 20 December 2000, three hundred Qingdao citizens brought a lawsuit against the Qingdao Planning Bureau. The plaintiffs claimed that the defendant, who approved the construction of a residential compound north of a public square, infringed their right to the enjoyment of the landscape. The citizens lost the suit in the first instance – final outcome unknown.

Chen Faqing vs. the Environmental Protection Bureau of Yuhang District in Hangzhou

In June 2002, Chen Faqing brought a lawsuit against the Environmental Protection Bureau of Yuhang District in Hangzhou, Zhejiang Province. Chen accused the defendant of failing to punish companies that violated environmental protection regulations. The court dismissed the application.

Chen Faqing vs. Zhejiang Provincial Government and Zhejiang Planning Bureau

In December 2003, Chen Faqing brought a lawsuit in Hangzhou Second Intermediate People's Court against the Zhejiang provincial government and the Zhejiang Environmental Protection Bureau for their negligence in pollution control. The court rejected the application on the grounds that the plaintiff did not have a direct interest in the case and had thus failed to establish sufficient standing to sue.

5. Litigation concerning state-owned property, mostly filed by local procuratorates to stem the appropriation of public assets. A few cases have been filed by individual citizens.

The procuratorate of Nanyang City, Fangchen County, Henan vs. the Industry and Commerce Office (ICO) of Dushu town, Fangchen county.

In May 1997, the procuratorate of Nanyang City discovered that the ICO of Fangchen county sold a factory for about 40,000 yuan lower than the market price. Although, no criminal misconduct was alleged, the procuratorate pressed the case in the public interest. Since 1997, local procuratorates in Henan have initiated more than 500 public interest cases and recovered about 270 million yuan. Other local procuratorates in Shanxi, Fujian, Shandong, Guizhou and Jiangsu have filed similar suits.

Wang Rizhong vs the Hangzhou Tax Bureau

In 1994, Wang Rizhong, a worker at an engineering company in Hangzhou claimed that his company had evaded nearly three million yuan in taxes. Wang brought this claim to the attention of the tax bureau but was persecuted as a whistle blower. In May 1998, Wang brought an administrative suit against the Hangzhou Tax Bureau on the grounds of administrative inaction and asked the court to order the Bureau to perform its duties, compensate his loss and reward him for reporting tax evasion. His case was not supported by the court on the grounds that the plaintiff did not possess

the legal right to initiate a legal action because it was not his responsibility to report tax evasion by his company.

The Impact and Prospects for PIL in China

Although PIL has become increasingly common in China over the last decade, as we have seen the outcome in most cases still goes against the plaintiff. There are currently five major obstacles to pursuing PIL in China.

1. According to Article 108 of the *Civil Procedure Law*, the plaintiff needs to have a direct interest in order to bring a case to the attention of the court. This standard was introduced in order to preempt abuse of the legal system; however many plaintiffs seeking to bring PIL cases cannot demonstrate a direct interest, and have their cases rejected by the court as a result.
2. Under administrative law in China, the court has no jurisdiction over an “abstract administrative act,” such as laws and regulations enacted by the government. In other words the court can only assess whether the law has been properly implemented or not. The court cannot question the legal basis of the law, far less strike down a law or regulation as unconstitutional. In practice this has prevented many PIL cases from being accepted by the court, or resulted in the plaintiffs losing their cases.
3. As an innovative legal approach, PIL currently has no specific constitutional or procedural basis in China. Many plaintiffs have lost because they were not able to find the legal grounds to support it.
4. Because PIL is a relatively new form of litigation, and conceptually different from traditional civil cases between two private parties, many lower-level courts lack the capability or expertise to handle PIL cases. This deters many lower-level courts from accepting PIL cases.
5. Although a few prominent lawyers will take on PIL cases for no fee in order to boost their reputation and standing in society, many lawyers are reluctant to take on these cases because the plaintiff is not seeking significant financial compensation and as such it will be difficult for the lawyers to cover their costs. Moreover, many lawyers consider PIL cases to be too politically sensitive, and will not take them on for fear of being branded by the authorities as a “trouble-maker.”

Many legal experts and legislators have called for reforms that would provide the legal groundwork for PIL within the existing system, such as 1) relaxing the criteria to initiate a civil lawsuit by abolishing the direct interest requirement; 2) extending the scope of cases to be admitted to include the consideration of “abstract administrative action;” and 3) widening the definition of public interest.

Many legal professionals taking on PIL cases firmly believe that the effectiveness of PIL in protecting the public interest should not be judged only by the legal outcome of these cases. Very often, simply bringing cases to court arouses public concern and enhances awareness of civil rights. Even when a PIL case goes against the plaintiff, the defendant will often review their existing policies to in order to avoid future legal action, or simply to show good will.

Prominent PIL organizations in China

During the past decade there has been a significant increase in the number of civil groups, law firms and NGOs specializing in PIL. The following is a brief introduction to some of the better known organizations.

The Centre for the Protection of the Rights of Disadvantaged Citizens, Wuhan University (CPRDC)

Founded in 1992, CPRDC was the first NGO in China to provide legal services for public interest lawsuits. It has six divisions handling the interest of different social groups: i) women, ii) youth and children, iii) people with disabilities, iv) senior citizens, v) labour issues and vi) administrative litigation. In 2006 it accepted 44 new cases and completed 55.

The Centre for Women's Law Studies & Legal Services of Beijing University

Established in December 1995, this organization focuses on women's rights, public interest legal aid and NGO development. It is staffed by law professors, graduate students from Beijing University and other institutes of higher education. Over the past ten years, it has dealt with nearly 50,000 inquiries from all over China in the form of phone calls, letters, visits, emails etc. These inquiries were related to such areas as marriage and family, personal rights, property rights, labour rights, criminal law and administrative law etc.

Research and Service Centre for Environmental Resources Law, China University of Political Science & Law; also called 'The Centre for Legal Assistance to Pollution Victims'(CLAPV)

Founded in 1998, CLAPV is a NGO mainly staffed by professors and researchers in the field of environmental protection. It operates a telephone hotline and provides free legal representation for pollution victims.

Beijing Juvenile Legal Aid and Research Centre

Founded in 1999, this centre is the first public interest organization specializing in research and legal aid for juveniles.

Research Centre for Women's Development and Rights, Northwestern Polytechnic University.

Founded in 2000 in Xian, this feminist organization specializes in women's labour rights. It is staffed by academics, lawyers, trade unionists and social workers.

Constitutional and Civil Rights Centre, Qinghua University

This group is a non-profit organization jointly founded in 2003 by academics from the Constitutional and Human Rights Commission at Qinghua University, and the Beijing Lawyers Association. In 2003 it won China's first administrative lawsuit on Hepatitis B discrimination (*see above: Zhang Xianzhu vs. the Personnel Bureau in Wuhu City*). This centre also handles discrimination cases based on appearance, disability, age, ethnicity and gender.

Dongfang Public Interest and Legal Aid Law Firm

Founded by scholars from the Institute of Law at the Chinese Academy of Social Science, this group's objectives are to enhance the rule of law, and to promote public interest and social justice. It is the first non-profit law firm with "public interest" in its title in China, and takes on cases related to discrimination, press freedom, property rights and the rights of the accused.

This report was compiled by CLB's lawyers and researchers using mainland news reports, website materials and other publications from the Centre for Legal Assistance to Pollution Victims, the Centre for the Protection of the Rights of Disadvantaged Citizens, the Centre for Women's Law Studies & Legal Services of Beijing University, and the Dongfang Public Interest and Legal Aid Law Firm.

For more information on China's *Xin角度* system see: Gao Wuping. "*Xin角度 zhidu cunzai de helixing yanjiu*" (The rationale of the existence of the xin角度 system). Available in the *Falu Lunwen Ziliao Ku. (Database of Law articles)*. <http://www.law-lib.com/lw/lw_view.asp?no=4831>.

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