

Public Interest as Concept and Legal Practice in China

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Abstract

Public interest law as concept and practice emerged in the US in the early 20th century and was expanded in connection with the civil rights movement in the late 1950s and early 1960s. The concept has to a large degree been imported from the West where it has travelled from the US to other jurisdictions and been somewhat transformed along the way. Litigation, petitioning and advocacy activities in the name of the public interest have during the last decade been used by Chinese lawyers and activists in order to strengthen the protection of the rights of Chinese citizens. This article analyzes the version of public interest law developed in China, tailored to the distinguishing features of the social and political system there. The public interest label is used as it is less politically sensitive than terms like civil society or human rights protection.

Keywords: Public interest; China; Human rights; Public participation

Introduction

Public Interest Law (PIL) as concept and practice emerged in the US in the early 20th century and was expanded in connection with the civil rights movement in the late 1950s and early 1960s [1]. The term was coined by American legal scholars and reflected changes in the US legal system towards recognition of collective interests and the necessity to protect disadvantaged groups and individuals [2]. Originally it covered mainly the representation in court on behalf of underprivileged groups like the poor, Afro-Americans, women or children. The lawyer was thus the central initiating figure in the protection of public interest and defence in court was the central activity though other practices were also used, like advocacy, legal aid, clinical legal education, etc [3]. Later the idea spread and changed shape in meeting other legal and cultural traditions. In the early 1980s the term was adopted in India often under the name of Public Interest Litigation (PILI) caused by the special Indian development, where the practice was actually initiated by Supreme Court judges and did not include advocacy and lobbying for social change [4]. The judiciary was leading the process in this Indian version of the phenomenon. After the end of the Cold War the idea of public interest began to converge with two other global trends, i.e. human rights on the one hand and law and development on the other hand. In Central and Eastern Europe (CEE) former dissident circles and activists established civil society organizations, when more civil and political freedoms were granted and they found the term public interest law useful as a name for strategies to protect human rights and pursue a progressive agenda in developing new political structures. The institutional core of that region, the Helsinki Foundation for Human Rights established in 1989, was not especially geared towards litigation, so the expression came to include a broader range of activities in that local context [5]. Social lawyering, cause lawyering, impact litigation, social action law, strategic lawyering are all phrases used describing the 'movement', which gradually spread across the globe among advocates for a more fair and equal social order. The use of the term 'movement' points to the character of the activities as being driven by a mission with a higher goal than just solution to individual grievances and the involved professionals are attributed altruistic motives. The idea of law protecting the people was set up as a counterpart to the idea of law as a guardian of ruling elite's special interests.

The diffusion of these movements after the end of the Cold War was to a large degree orchestrated and financed by powerful US foundations followed by development assistance from a range of state donors in America, Europe, Canada, Australia, etc. Ford Foundation and the

Open Society Foundations¹ have invested heavily in public interest law programmes in Central and Eastern Europe since 1995 and Ford has been in China since 1988. UN agencies like UNDP and UNICEF also have funded programmes advocating PIL and related actions in the global South. Their role has been to support establishment of legal aid systems, to promote clinical legal education, arrange exchange of academics and activists, and build up research capacity in Africa, Latin America, Asia and countries in the former socialist bloc and they have been fairly successful, also in China as will appear from the following [3].

It can be useful to place PIL and PILI in the broader picture of law and rights terminology like civil society and public participation and in the whole cluster of legal services for the poor and marginalized and to draw demarcation lines between the concept/practice of public interest and other similar concepts or practices. First, the role of this kind of activities differs in different kinds of political systems. In a post-socialist and/or an authoritarian setting, where channels for direct political involvement are blocked, the use of PIL can be an avenue for participation in public affairs through civil society organizations [5,6]. In democratic systems there are more direct avenues for participation and civil society activities, so this aspect of PIL is not stressed in the Western context. Second, PIL is aimed at protecting the weak and for that purpose it can include legal aid services. Legal aid covers the provision of free or subsidized legal assistance by State or non-state legal service providers, primarily with the aim of solving individual grievances [7]. But not all cases where legal aid is provided can be defined as PIL cases. Some cases where the client receives legal aid can also be PIL cases and PIL lawyers are sometimes singled out as one type of legal aid lawyers [8]. In the same vein PIL is not synonymous with pro bono lawyering, as not all non-profit lawyering qualifies to

¹Before 2011 called the Open Society Institute, financed by George Soros.

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Received November 14, 2013; **Accepted** December 16, 2013; **Published** December 30, 2013

Citation: Thelle H (2013) Public Interest as Concept and Legal Practice in China. J Pol Sci Pub Aff 1: 109. doi:10.4172/2332-0761.1000109

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be deemed in the interest of the general public. Thirdly, PIL does not always concern protection of disadvantaged groups. Typical areas of public interest are related to consumer interests or environmental issues and problems with fake products or excessive pollution might as well harm rich as poor people. A specific harm to a public interest is also not necessarily the result of an unequal distribution of entitlements or especially harmful to poor people. One Chinese public interest law firm, for example, lobbied for prohibition of tobacco smoking in public places and filed a case of a minimal insurance fee added to train tickets. Neither of these two cases had a social perspective but both defended in a general manner public health and the right to be informed.

The concepts of public interest law and public interest litigation are not authoritatively defined anywhere and no organ or institution is endowed with the capacity to determine which organizations are public interest law organizations and which are not or which cases are defending public interest and which are not. In some jurisdictions, like Hong Kong and India, the court can determine that a legal dispute qualifies as PILI case and then special procedures apply. In other places, the label PILI case is not a legal category but just a name given by the involved lawyers or activists, with no implications as such for the court proceedings [7] and no single law anywhere bears the name of Public Interest Law.

As for definitions there are many - possessing variations and similarities. In a leading text on the topic from the mid-1980s, public interest law is defined as 'the use of litigation and public advocacy (i.e. lobbying by representation or publication) to advance the cause of minority or disadvantaged groups, and individuals, or the public interest' [2]. According to that understanding Public Interest Law is part of the struggle to use law to solve social problems arising out of an unequal distribution of opportunities and entitlements. A handbook from Columbia Law School on public interest for lawyers and activists states in all simplicity that the aim of public interest law is "to promote social change by applying and challenging existing laws and advocating changes in legislation". The key words are 'to promote social change' which is not the aim of legal activities in general [9]. Another source explains that PIL 'seeks to address issues that affect society as a whole or a specific social group rather than just one individual' [10]. In an Asian context we find the following definition of PILI activities: 'In general, public interested litigation...has been used to remedy two types of wrongs: (1) generalized grievances like pollution, where each member of society suffers from this wrong; and (2) specific grievances like the withholding of welfare benefits where only a segment of society directly suffers the wrong' [7]. And Pakistani judges and writers are reported to have in general considered PILI as a purpose-oriented idea describing the task of eradication of social evils through the medium of law [4].

We can see that practices like litigation, advocacy, lobbying; target groups like disadvantaged or minority groups; and the over-all objective of solving social problems by legal means are mentioned in all the quoted definitions. Content-wise an examination of relevant literature finds many references to consumer protection and environmental issues as topics often related to public interest law.

A summary of certain characteristics common for many definitions and practices is given below:

- PIL aims at promoting social change.
- PIL includes different activities like advocacy, lobbyism, social service provision, litigation, etc.
- PIL is most often related to constitutional rights, to socio-

economic rights, or to the promotion and protection of rights of vulnerable groups in society.

- PIL seeks both a remedy for the victim and a solution to the broader social or general problem highlighted in the case.
- PIL is about challenging public authorities or private enterprises.
- PIL can be initiated by the court itself or by a private person or a group, who is not directly a victim of the violation or an aggrieved party.

Not all of these characteristics will be found in the case of an authoritarian one-party regime like China². Some of these characteristics are applicable; others less so. Apart from the above mentioned criteria the Chinese case exhibits a couple of special features as follows [11]:

- A moderate and non-confrontational approach to Chinese government policies is used by PIL lawyers.
- Law suits are often initiated by lawyers themselves rather than by victims. In China lawyers often chooses to only represent themselves, not a client.
- Cases also deal with issues affecting all people, not just vulnerable groups, like the cases on insurance covered by train tickets or public phone fees.
- Cases have educational and advocacy purposes, winning or losing is in some respects less important than drawing attention to the issue raised in the case.

In the following the abbreviation PI will be used for public interest, PIL will be used for public interest law, PILI will be used for public interest litigation, and a special Chinese variety Public Interest Petitioning, is abbreviated PIP.

Chinese Terminology

The concept of public interest, gongyi (Charity), has gained more and more ground in China in recent decades. A search on the Chinese search engine Baidu explains gongyi as a concept relating to public welfare and interests³. It is used in different contexts and with different monikers attached to it: public interest advertising, public interest companies, public interest activities, public interest organizations, etc. Universities establish centres of public interest and a search on the internet reveals a public interest network, gongyi wang (Community Network), and a public interest newspaper, gongyi shibao (Philanthropy Times)⁴. Public interest organizations, gongyi zuzhi (Public interest organizations) are seen by some as a special kind of organizations, which can be distinguished from others, defined as '...NGOs working on social and environmental issues that extend beyond the narrow interests of the organization and its members' [12]. A Public Interest Donation Law was adopted in 1999 regulating donations to social organizations and non-profit institutions like public health or educational undertakings⁵. In all the different usages the term

²In the current scholarly literature 'authoritarian' is a common denominator of the Chinese system, but it should be noted that China has other political parties, which have an advisory role vis-a-vis the government.

³Gongyi relates to public welfare and interests. The term emerged as a new term after the May Fourth Movement in the meaning of common interests. Public interest organizations refer to non-governmental organizations, which do not have profit but a social cause as their main motive. "(My translation). Baidu Baike, accessed 15 October 2013.

⁴Rendered into English as "China Philanthropy Times".

⁵People's Republic of China Welfare Donation Law, in effect from 1 September 1999.

is broadly associated with welfare, charity activities, public or private donations, projects supporting vulnerable groups, or pro bono work of lawyers⁶. The expression has a strong flavour of doing good–helping people in need – and it can in that way be related to the classic idea elite responsibility towards the common people.

In contrast to the international discourse public interest law practices is often in China linked to the concept of participation or public participation. The activity is seen as a manifestation of participation by citizens in affairs of the state and also labelled a ‘movement’ by one of the leading figures, implying some kind of mass involvement [6]. This approach takes public participation in law and policy development as the point of departure, viewing PIL practices as a means whereby civil society actors can influence decision-making and social practice. The focus is thus on challenging state power and commercial interests on legal grounds and making an impact on unfair or unreasonable laws and regulations or business actions. The ‘movement’ is bottom-up, designed to defend rights and interests of the public. Law is used as a means to the political influence, which is blocked in the legislative and administrative channels, in the West used for advocacy. PIL view law as a ‘political resource’ [13]. But in practice PIL activities are not participatory in all aspects. They are in some settings representative in the way that they defend parts of the population which are unable to defend themselves. The final beneficiaries do not participate but are presented and defended by others. In one viewpoint public interests are simply defined as the interests of the weak [14], disregarding the fact that the interests defended under that category sometimes cover all kinds of people.

Summing up one can say that among Chinese scholars and activist’s public interest as a social concept is used for activities related to private initiatives aimed at protecting the public at large on a wide range of issues. As a legal category Public Interest Law (PIL), *gongyi fa* (Public Interest Law), involves a principle and a practice. As a principle PIL aims at transforming moral claims into legal rights and as such it provides a link between ethics and law; laws protecting public interests are good laws, laws violating public interests are bad laws [14]. The moral involved includes the basic values of modern societies like equality, freedom, harmony and justice [15]. In a more narrow sense as a legal practice PIL includes both litigation, *gongyi susong* (Public Interest Litigation), and non-litigation mechanisms like petitioning, *gongyi shangshu* (Charity letter); clinical legal education, *zhensuo jiaoyu* (Clinic Education); administrative reconsideration, *xingzheng fuyi* (Administrative reconsideration); arbitration, *zhongcai* (Arbitration); and advocacy (Public advocacy⁷). These activities are initiated from civil society; it is a bottom-up process which civil society organizations play an important role in organizing [11,6].

The above is a rough summary of the Chinese discourse as found in media and in the scholarly debate. Western scholars add perspective to the role of civil society by pointing to the fact that in China the distinction between private and public is different from the distinction in a Western context, as has been the case in other socialist countries [16]. Civil society activities, including charity, are to a high degree controlled and designed by the state and there is traditionally a thin demarcation line between public interests and state interests. For one thing social organizations are under a strict regulatory regime [17,18],

for another thing the legal system is not at all geared to an idea of public interest, as for example can be seen in a strong resistance against collective law suits. So, the discussion within China seems to stress the importance of civil society engagement related to public interest, while Western scholarship tend to be more cautious in general about the independent role of civil society organizations, which in the end are the vehicles leading to social change.

The 1990s–The ‘Rights Decade’

The concept and practice of PIL came-like the related ideas of legal aid and pro bono lawyering-into China from abroad from the early 1990s, notably from the US but also from Europe, Australia and Canada. The import was financially supported by foreign donors like the Ford Foundation, Ausaid, CIDA and several European development agencies and facilitated by Chinese academics. Several of the leading figures in the Chinese movement of rights defence and public interest had studied in the US and were influenced by the civil rights movement of the 1960s there. Academic writings by Chinese scholars mention US as the soil, where PIL was raised and besides they quote Western intellectual figures like Habermas and Hegel as inspiration for the development of PIL in China, with their creation of concepts like ‘public sphere’ and ‘civil. Many of the lawyers involved in research and practice from that time are still active in the field.

It can be argued that in China-like in the US in the 1960s-the emergence of the concept and the practice was caused by a growing need for protection of vulnerable groups. In the US increasing racial tension and social cleavages gave the impetus to vibrant movements for protection of ethnic minorities, women and children, the poor, homosexuals, etc. [1]. In China the very term *ruoshi qunti* (Vulnerable groups) (literally ‘weak groups’) was first used by Zhu Rongji in the Government Work report in 2002, but already from the early 1990s increasing inequality and social deprivation caused by the economic transformation led to establishment of civil society organizations and the emergence of a increasingly large group of activists defending rights in different areas [17]. At that time economic reforms were back on track after the dip caused by the crack-down on student demonstrators in central Beijing in mid-1989 and the continued withdrawal of the state as provider of social services opened up a new space for mobilization of private actors. Social organizations are often one of the main drivers in establishing a vision and a practice defending public interest and they began really to pop up on the Chinese scene from 1995, inspired and orchestrated by the UN International Women’s Conference in Beijing in that year. University centres focused on public interest law and legal aid were established around the same time, mostly in Beijing but also in the South of China and the growing concern with social problems and conflict resolution was reflected in scholarly literature. Academic writings on conflict resolution, social justice, human rights protection, and similar topics were published in great numbers and these areas gradually became a stable and integrated part of the public discourse.

Legal regulation of relevance for PIL was adopted addressing new institutional mechanisms, like the Legal Aid Regulations, which came in 1993. A Law on Protection of Consumer Rights and Interests were passed in the same year, and a Labour Law and Law on State Compensation came in 1994-95, thus providing a more solid basis to build on when public or collective interests were threatened. The Criminal Law and Criminal Procedure Law were revised at the same time improving protection of civil rights. As for civil society organizations three sets of regulations have controlled the field since 1988: Regulations on Registration and Management of Social Organizations; Regulations on Non-enterprise Work Units and Registration for Management

⁶A survey of the major public welfare (*gongyi*) events of 2010 shows mostly events related to charity and civil society organizing, except for one dealing with strikes at three Honda factories in South China (CDB 2010).

⁷The translation of the English word ‘advocacy’ into the Chinese ‘*changdao*’ has been called a somewhat uncomfortable fit as it connotes guidance by authorities, but the use of it as an appropriate rendering of the Western concept has become more and more common among Chinese NGOs over the past years [19].

of Foundations REFERENCER?. In short the system demanded that organizations in order to be duly registered had to be “adopted” by an existing institution or a company, which then was responsible for the actions of the organization. Therefore Chinese NGOs often have strange names unattached to their real mandate, like a women’s organization based in University of Technological Innovation. The regime made it difficult to become registered and surveys suggest that 80% of all NGOs in China are placed within a grey zone of un-registration [18]. Changes to the rules were made in 1998, but the overall regime persisted.

As for litigation, an important development in making PIL practices possible took place in 1996 when adoption of the Lawyers Law made lawyers less dependent on the government. Lawyers were no longer state employees; they could establish independent law firms and they were regulated by the Lawyers Association and no longer controlled directly by the Ministry of Justice [19,20]. The first PILI case in China is often dated to 1996, when a civil servant in the Fujian provincial government sued the department for public telephones for not complying with a regulation from the Ministry of Postal Services on charging half price during holidays. The case was called ‘the one yuan and twenty cents case’ after the price of using public phones and was widely discussed in the press [21]. From the mid-1990s onwards more cases involving public interest were fought by individuals, who reacted to violations of their rights by suing public authorities or companies. One area attracting attention was pollution and environmental degradation, which to a high degree affects citizens’ lives and welfare. As in other settings around the world environmental issues have attracted much attention among PIL advocates at the national level and the first Chinese environmental NGO saw the light of day in 1994 laying the foundation for a later strong environmental rights movement [22,23].

Based on all this, the 1990s has been called the ‘rights decade’ in China [21] underpinned by statistical evidence that people increasingly claim their rights and settle their conflicts in court instead of through mediation, which is the traditional dispute resolution channel. The number of administrative cases increased from approximately 13.000 in 1990 to around 85.000 in 2000 and the number of civil cases jumped from 2.4 million in 1990 to 4.7 million in 2000 while the number of mediated cases fell from 7.4 million in 1990 to 5 million in 2000 [8].

The 2000s–Consolidation and Politization

As mentioned above the term *ruoshi qunti* (Vulnerable groups) (literally ‘weak groups’) was first used by Zhu Rongji in the Government Work report in 2002, when more socially responsible policies were promised by the Hu Jintao/Wen Jiabao leadership. As civil society grew stronger and more confident the aim of PIL was more clearly formulated as being genuine Rule of Law and protection of human rights. By initiating cases and petitioning the legislative organs public interest lawyers would challenge the legality of existing laws and regulations and further enforcement of constitutional rights. After the 1990 decade of experimentation with public interest as a social norm and a legal category the movement became better organized from the mid-2000s and research were initiated to define and discuss the possibilities of changing policies through legal means. The first purely public interest law firm was established in 2003 as will be discussed below, and several books and articles were written by scholars/practitioners in the field. In one overview 2005 is mentioned as the year where serious reflections were beginning to be aired and public interest became the topic of numerous seminars and conferences, often with involvement of foreign donors [6]. The events gathered lawyers, academics and activists discussing cases and theories on the role of law and rights in bringing about social change. PIL as a concept was

consolidated in the public domain. A search of 738 newspapers showed that the term appeared in ten times as many articles in 2010 as in 2001. Even within government circles there were outspoken supporters of the idea [24].

There is still no legal basis as such for PILI in the Chinese system; only a PILI practice has been evolving over the past 15 years. This means that no-one can determine whether a specific case should be categorized as a PILI case or not. Many legal scholars call for establishment of a regular PILI system and hope to further this aim by engaging in PILI practice. But lacking clear guidelines lawyers have to conduct PILI cases on the basis of an interpretation of existing provisions. Now most often the Constitution, the Legislation Law, Regulations of Open Government Information, Administrative Procedure Law and Civil Procedure Law are used as the legal source when initiating a PILI case or applying for review of legislation or administrative acts. The State Council in 2005 promoted PILI in the area of environmental law and for the first time used the term in the ‘Decision of the State Council on Implementing Scientific Outlook on Development and Strengthening Environmental Protection’⁸. At the same time the Ministry of Environmental Protection established the official environmental GONGO—the All-China Environment Federation (ACEF)—with a special department for ‘Public Interest Activities and Programmes’ showing that the link between environmental protection and public interest activities is strong and can be considered politically safe.

In spite of the lack of a clear legal basis for PILI there were clear signals supporting PILI from the leadership during the 2000s [24], Bixin [25], then Vice-President of the Supreme People’s Court, in an article in People’s Court Daily from 2009, reports of the gradual emergence of what he calls a ‘quasi-PIL pattern’, where courts have relaxed the demand for direct involvement of the litigant in a case for litigation and where more cases involving public, and not only private, interests have been accepted by the courts. He advocates for opening the doors even wider for PIL and argues that such a system is necessary to further strengthen environmental protection, support the fight against embezzlement of state-owned property, guarantee consumers’ legal rights and interests, break market monopolies and regional blockades, and improving existing dispute settlement mechanisms. The reasoning seems to be that in these areas a PIL system can not only further the interests of the public but also contribute to social stability and thus further the interests of the state. Protection of vulnerable groups is not in focus in the article apart from the fact that there is an indirect connection between social stability and a reasonable living standard. Bixin [25] suggests a range of procedural measures to be introduced, for example to abolish restrictions on the qualifications of the plaintiff, so individuals or organizations who are not directly parties to a case can act as plaintiff when public interest is at stake; to establish a special prosecution process which is different from the ordinary process; and to perfect mechanisms to guarantee access to information. Some of this has since been realized, e.g. expanded standing and wider access to information.

The problem of locus standi was—and is—at the core of the efforts to expand the possibilities for protection rights and interests via the law. According to the Civil Procedure Law⁹ at that time the court could only accept a case if the plaintiff was directly harmed by the action of the

⁸The function of civil societies should be full exerted to encourage the reporting and disclosure of all types of environmental law-breaking activities so as to promote the lodging of lawsuit in environmental public interest’. In State Council Document, no. 39, December 2005, p. 15. http://english.mep.gov.cn/Policies_Regulations/policies/Frameworkp1/200712/t20071227_115531.htm Accessed 5 November 2013.

⁹The Civil Procedure Law was adopted in 1991 and amended in 2007 and 2012.

defendant, which makes it difficult for a PIL lawyer to file a case since he would have to identify a victim who was willing to sue powerful authorities or rich companies in court. This practice has gradually been altered since 2009, where ACEF was accepted as plaintiff in two environmental cases which were openly designated as public interest cases. Here two local courts expanded the scope of both the Civil Procedure Law and the Administrative Procedure Law by interpreting them to cover an organization, which was not directly affected by the defendant's action. The changed practice was codified in amendments to the Civil Procedure Law effective from August 2012, which will be discussed below.

A new practice here rendered into English as Public Interest Petitioning (PIP), *gongyi shangshu* (Charity letter), became an important vehicle for PI lawyers to try influencing legislation [26]. It is based on article 90 in the Law on Legislation from 2000, which stipulates that government organs, social organizations and citizens, who find that administrative or local regulations are not in conformity with the Constitution or other legislation, in writing can request a review by the Standing Committee of the National People's Congress to confirm that the regulation is constitutional. According to article 90, the Standing Committee shall receive and study the opinions and include them in further considerations on legislation. This measure has been taken up to further public interest on several occasions with greater or lesser success. With great success it was used in the famous Sun Zhigang case where a student was beaten to death in detention in Guangzhou in 2003. The death was widely reported and led to abolition of the so called Custody and Repatriation procedure under which Sun was detained. The abolition came about because legal scholars questioned the constitutionality of the procedure in a document addressed to the National People's Congress [26]. Often the effect of PIP is not so direct, but it is claimed by the involved parties that even though a request may not lead to that kind of immediate results, it can raise a debate in the leadership and among the public and in the longer run indirectly lead to policy changes. Often legislators do not even respond to the petitions, but the experience is that sometimes changes happen in the desired direction anyway [27].

An obvious battlefield for collective interests is labor law and practice. Labour arbitration and mediation was regulated in detail in Law on Mediation and Arbitration of Labor Disputes, effective from 1 May 2008. The Mediation and Arbitration Law is based on the Labor Law of 1995, making its provisions more clear [28]. The law stipulates three-stage process mediation in the enterprise, arbitration by labor administrative units and finally litigation in court. Enterprises shall set up mediation commissions and local governments shall set up arbitration committees at different levels where conflict resolution is carried out by participation of representatives for employees, for employers and for the local labor administrative organ. However, authorities have never linked labor disputes to public interest; on the contrary collective bargaining and litigation is opposed by the leadership at central as well as local level.

Still a mechanism defined as part of PIL practice by the involved lawyers is the system for administrative reconsideration. The Administrative Reconsideration Law (ARL), effective from 1 October 1999, allows citizens or organizations to apply for administrative reconsideration of an administrative act which in one way or another has infringed upon their rights and interests. It can for example be in the case of refusing to accept a fine or confiscation of property. Applications have typically to go to the next higher level in the same bureaucratic hierarchy, meaning that review of a decision taken by the city district police will go to the city police, also. [20]. The system has

the advantages that it is free and fast and the reconsideration bodies may consider both the legality and the appropriateness of a certain action, but it has the disadvantage of being internal in the sense that the bodies reviewing the act in question are part of the bureaucracy that made the decision in the first place [29]. But it is not referred to as one means used in cases, which are categorized as PILI cases.

Statistics on PIL activities are hard to compile. As the area is not a clearly delineated category of legal action, there will be no relevant entries in the China Law Yearbook on the number of PIL lawyers in China. Figures between 100 and 200 persons active in PIL activities have been mentioned and the success rate for court applications and petitions to the Standing Committee of the National People's Congress is very low—one source from 2006 estimates that 18% of cases brought before the courts are successful [30] while a more recent and much more negative estimate considers that only 1% is likely to have won¹⁰. There are naturally no statistics for validation of these estimates so they are only rough guesses. What is general knowledge is that firstly, many cases are turned down by the courts for reasons of inadmissibility or that the court is incompetent to accept the case. Secondly, if the cases reach the trial stage they are most often lost. A competent PIL lawyer, He Hairen, emphasizes in an interview that this is not necessarily a problem invalidating the effect [27], as mentioned above. It is seldom success in the actual case which is important to him and his colleagues, but the spreading of information about all the injustices the cases represent; and here, the Chinese press is a useful helper. It is in the long-term that he counts their successes and the initial objective is to generate public attention and debate.

A Case Study

Among the different activities experimenting on how PIL could be realized in the Chinese setting one organization stands out. The development of one law firm, specialized in PIL, will in the following be discussed to illustrate the different kinds of activities contained within the concept. The Dongfang Public Interest and Legal Aid Law Firm (DFLF) were established in 2003 with support from the Ford Foundation. Its aims and structure accord very well with the definition of a PIL organization, quoted above from the Columbia Law School Handbook, edited by Edwin Rekosh, who was actually also active in establishment of the Dongfang Law Firm¹¹. The opening ceremony took place on 25 August 2003 at the Law Institute of the Chinese Academy of Social Sciences in Beijing. The expressed aim of the activities nicely combines the different constitutive elements of PIL around the world: To serve society, defend public interest, and support the weak. The duty is to guarantee fundamental rights through access to justice based on equality. In the mission statement announced in the first newsletter of July 2003 the law firm tells us what it plans to do:

1. Provide representation in strategic litigation;
2. Provide consultancy on public interest issues;
3. Support and train lawyers and support development of public interest law firms and human rights organizations;
4. Support clinical legal education for students pursuing public interest careers; and

¹⁰Interview, He Hairen September 2012.

¹¹Rekosh is the founder and director of the Global Network for Public Interest Law, which is an international NGO that 'connects with local partners to develop the institutions essential to rights-respecting societies' http://www.law.columbia.edu/fac/Edwin_Rekosh, accessed 7 August 2012. He is an influential figure in the US based efforts to develop public interest law in post-communist countries like those in Eastern Europe, Russia as well as China.

5. Build a forum for discussing public interest issues and concerns

The law firm is hailed as constituting a new step forward for PIL as the first law firm to be specifically designed to do PIL and legal aid. As such it was perceived as an expression of a systematization of the field [6]. It was also special in the way that it was established under the Law Institute of the prestigious think-tank, the Chinese Academy of Social Sciences. However the undertaking is said to be independent and aims to be economically self-sustaining. The regulations on Legal Aid, passed on 16 July 2003, is printed in the first newsletter and hereby presented as the legal basis for the activities.

The firm soon began publishing a regular newsletter called 'Public Interest Litigation'. Three editions were published in July 2003, February and November 2004 respectively. The newsletters contained legal documents, topical articles-often with social aspects like migrant children's rights to education or poverty alleviation-and calls for support and information on cases from the public. During the same period a series of roundtables on public interest litigation were organized with Chinese lawyers and activists and participants from abroad.

In February 2004 a new arm was attached with the establishment of the Dongfang Public Interest Legal Clinic and 16 Ph.D. and Masters Students took the clinic course in the spring semester. The students were enrolled in the Law Institute of the Graduate School of the Chinese Academy of Social Sciences. The Dongfang Legal Clinic became a member of the legal clinic network in November 2004. The network consisted of more than 30 legal clinics throughout the country, established with financial support from the Ford Foundation. DFLF serves as the 'platform' for the legal clinic, which has the official name of "Base of Dongfang student public interest litigation practice". Serving as a platform meant that the professors connected to the law firm supervised the students in providing pro bono services to the public.

In the period 2006–2009 four books of research notes, case analyses and academic articles were published under the same name as the newsletter, edited by leading figures of the DFLF. The books were published by a well-known publishing house—China Prosecution Publishing House. They are not numbered in sequence like the newsletters, so the relation between the two forms of communication is a bit unclear. From the first issue the field of public interest petitioning was introduced alongside case lawyering as a main activity of the firm. Translated as 'compatibility review' in the publication, the Chinese term literally means 'public interest appeal' and it covers appeals to legislative organs for reconsideration of a law or regulation in light of specific circumstances, pointed out by the scholars from the law firm or from the Law Institute, what above is discussed as Administrative reconsideration. The practice has, as mentioned above, its legal basis in article 90 of the Legislation Law of July 2000, which permits citizens, public organizations, institutions and enterprises to submit an 'opinion letter' to the Standing Committee of the National People's Congress (SCNPC) if they find that administrative or local regulations contradict the Constitution or laws.

In 2007 a publication was released with the title 'Public Interest Litigation Newsletter' with general news items together with two collections of public interest petitions, vol. 1 and 2 of a quarterly. The first petition is dated August 2000 showing that the activities extends back to prior to the establishment of the law firm. Some of the petition letters printed refer to cases already discussed in the more academic publications from 2006–2009. Since 2009 individual scholars from the law firm have published academic books and cases have been brought

to court. But there have been no official publications coming out from the firm and DFLF has effectively been shot down for more than a year in the moment of writing.

During the 2000s several notable PILI courts cases were filed and public interest appeals were submitted by DFLF to the Standing Committee of the National People's Congress. A famous groundbreaking case concerns the right to education of migrant children, which was litigated in 2004. Even though the case was dismissed by the court it is believed to have had a huge impact. The introduction to the case in DFLF's newsletter says: 'Public schools for children of migrant workers have constituted a problem in Beijing for more than ten years. The schools are providing a much needed service, but they are illegal. Is it a legal or a structural problem that schools are run "illegally", teachers teach "illegally", pupils study "illegally"? Who is to blame?' In March 2004 the DFLF representing a local school sued the Fengtai district educational bureau for non-action in failing to respond to a request for registration by the school. The case was lost in two instances but it nevertheless created a big disturbance over the summer and autumn and influenced both public opinion and policy-makers. In the end, the school got its registration; delegates to the National People's Congress suggested amendments to the Compulsory Education Law; Prime Minister Wen Jiabao visited the school and pronounced his support; the Beijing local government organized a work meeting on the whole subject of education for migrant children and allocated 200.000 Yuan to individual students; TV and newspapers reported on the case from a rights angle, defining the treatment of migrant children as discrimination, violating these children's right to education.

A second issue of vital importance to human rights protection and especially to equal treatment is the household registration system, which is a discriminatory practice set up in the 1950s dividing the population in urban and rural citizens with different entitlements. The household registration system has been subject to revisions ever since the opening-up period began in 1980 and is now—as of early 2013 - officially scheduled for a reform of unknown content. In 2005 DFLF assisted a rural family in claiming compensation for the loss of their daughter. Three young girls were run down by a car in Chongqing and died. An investigation team was quickly established and the families of two of the girls received compensation of 200.000 Yuan. But when it turned out that the third girl, He Yuan, had a rural household registration the responsible part used a judicial interpretation saying that the size of compensation for loss of life shall be based on the average income of the population of the place of the household registration in the previous year. So the compensation for the 'urban' girls were calculated after the income level of the urban population in Chongqing, while the compensation for the 'rural' girl was calculated on the basis of the income level of the rural population, and as a result the family of the 'rural' girl only got 58.000 Yuan in compensation, although He Yuan had lived with her parents in Chongqing all her 14 years. During her upbringing her parents had paid exactly the same prices for all living expenses, be it housing, medicine, schooling, food etc., as the parents of the other two girls. There had never been any difference in the living conditions between her and her two friends, who also died in the accident. After DFLF took up the case the responsible part added 30.000 Yuan in 'humanitarian compensation' (Gongyi Susong, no. 3, 2008: 122-130).

A third systemic problem, believed to be directly violating the Constitution, is Re-Education Through Labour (RTL), an administrative detention regulation allowing the police to send people to labor camps for up to 4 years. To address this issue DFLF decided to use the method of a public interest appeal to the SCNPC. In 2008 DFLF submitted a

petition seeking constitutional review of the legality of the RTL system. The document begins by stating the legal basis for the existing system, which is a Government decision from 1957 and regulatory (sub-law) provisions from 1982. The system allows for deprivation of liberty for a discretionary period of time, sometimes up to several years, and is categorized as an administrative, not a criminal, punishment. The petition stated that the system is inconsistent with the Legislation Law, with the Administrative Punishment Law and with article 9 of the International Covenant on Civil and Political Rights. Three problems with the existing system were listed: 1. the system is officially vested in an administrative committee but in reality decisions are made and enforced by public security organs (i.e. the police); 2. The severity of the punishment is not proportional to the offence in question; 3. Many different types of conduct and target groups are dealt with under the same procedures, which leads to a lack of certainty and foreseeability and to inconsistent implementation. Four reforms were proposed. 1. Special courts shall be established where judges hear misdemeanour cases. 2. Target groups shall be strictly defined. 3. The period shall be reduced to a maximum of 6 months. 4. A special law addressing all procedures related to the system shall be adopted. The law firm did not get any immediate reaction. The Third Plenary Session of the 18th CPC Central Committee in October 2013 in fact abolished the system and since March it is reported that no more people are sentenced to RTL.

Post-2010

In 2011 the atmosphere regarding PIL was relatively positive; there was hope for a more substantial role for activities protecting public interest. In October 2011 a draft of revisions to the Civil Procedure Law was published by the National People's Congress, containing a provision allowing NGOs to act as plaintiff in cases on environmental protection or protection of consumer interests. As mentioned above, the revised law went into effect in August 2012 and its article 55 states that 'an authority or a relevant organization' may file a suit in these two kinds of cases, implying that they can do so even if they are not victims of the action. Article 55 has since on the one hand been praised as an improvement, but on the other hand been criticized for being not wide enough. It restricts the kinds of cases which can be covered and it does not allow citizens to initiate a case defending public interest [30].

This new provision among other things prompted the Public Interest Litigation Network (PILI net) to name the year 2011 the 'Year of Hope for Public Interest Litigation'¹². Together with another website the Network on Democracy and Rule of Law¹³ the PILI net arranged for selection of the ten most influential PILI cases in 2011. Twenty cases were nominated and put out for public vote between the 10 and the 19 of February 2012. On the last day the result was announced at a seminar arranged by the two internet sites at the premises of China Law Society. Of the 20 nominated cases nine was on protection of consumer interests, six on effects of pollution, two on discrimination and one on compensation for unidentified people killed in traffic accidents, on open government information and on harm to public reputation, respectively. There is no available information on how these cases have been selected and as there is no formal category of public interest cases, the selection must be based on discretion done by scholars and activists associated with the two websites. Of the selected ten cases four were on pollution, three on consumer interests, two on discrimination and one on disclosure of government information¹⁴. One pollution case is

interesting because the plaintiffs are two environmental NGOs—one from Beijing and one from Chongqing—plus a local city environmental bureau which three units together are suing a chemical industry in Yunnan. Unfortunately the result of the case is not recorded in the source¹⁵.

The same competition was arranged in 2012 by the same organizers. Of the ten biggest cases in 2012 three were on consumer interests and discrimination respectively, two on open government information, one on a health issue and one on environmental protection. One case on discrimination will be described here as it contains several of the mechanisms in play. A citizen of Shenxi - Mr. Li - applies for a job as a public servant in April 2010 and has to undergo the test for public servants. He gets a very high score but the medical examination reveals that he is a carrier of the chronic disease Hepatitis B. In August the same year he asks for administrative reconsideration, which is rejected. In March 2011 he appeals the decision, but the court announces that the case is not within its jurisdiction. In November 2012 he asks the procuratorate to raise the case again, but they did not answer. Meanwhile Mr Li has sued the hospital which was doing the medical check, but this case was also rejected. After appealing that decision, finally in March 2012 a mediation agreement is reached paying the plaintiff a compensation of 70.000 Yuan. Similar cases with the disease has been fought before, and the difficulties to reach a solution in that case conflicts with the fact that Ministry of Public Security already in 2011 had revised the rules for medical checks, so that it is no longer permissible to check for Hepatitis B. What we see here is that both litigation, administrative reconsideration and mediation has been in play and that compensation for infringement of an indisputable right takes two years and tireless efforts to obtain¹⁶.

Further hopes of strengthening the conditions for PILI were nurtured by developments around the revision of the Environmental Protection Law (EPL). As we have seen above environmental protection is a core area, where PILI is not only accepted but also encouraged. In August 2012 the first draft of EPL amendments was released for public comment and after consultations a second draft was released in June 2013, in which the pool of organization plaintiffs was narrowed down to the ACEF—the All-China Environment Federation [31]. After a new round of consultations a third draft was released by the end of October, in which ACEF was replaced with a broader, but still restricted, group of organizations. Plaintiffs can be 'organizations, which are lawfully registered with the Ministry of Civil Affairs, which for a period of more than five years in a row have exclusively been addressing environmental protection and which are national social organizations with a good reputation'. Even in this wording the threshold is deemed to be too high and an authoritative source claims that only around 10 CSOs in the whole of China will be eligible after these criteria and they will all have very close links to the government¹⁷. Media reports mention that a fourth revision may be forthcoming, but when this will happen is not known. In connection with the revision ACEF stated that it would establish a PIL firm in June, knitting the area even closer to government circles, but no firm have yet been established.

Concerning protection of consumer interests we can see a similar development. The Consumer Rights Protection Law was reviewed in the same session as the EPL and a new provision states that consumer associations at central and local level can raise a case in the court system. If this is adopted it would facilitate PILI activities. So changes in legislation benefitting PILI are under way at the same time as the government tries to keep control of the processes. A tug-of-war

¹²The network (中国公益诉讼网 www.pil.org.cn) was set up in 2005 managed by a leading lawyer in the field, Li Gang.

¹³www.mzyfz.com managed by China Law Society.

¹⁴www.pil.org.cn accessed 29 October 2013.

¹⁵<http://qing.blog.sina.cn/u/1701401324> accessed 30 October 2013.

¹⁶www.legaldaily.com.cn accessed 21 October 2013.

¹⁷<http://news.bjx.com.cn/html/20131030/468843.shtml> accessed 5 November 2013.

	International idea and practice	Chinese idea and practice
Formal concept	Closely linked to human rights	Closely linked to private charity
Kinds of activities	PIL includes different activities like litigation, legal aid, advocacy, clinical legal education.	PIL includes different activities like litigation, legal aid, advocacy, clinical legal education AND public interest petitioning.
Objective	PIL activities seek both a remedy for the victim and a solution to the broader social or general problem highlighted in the case.	
	PIL activities seek both a remedy for the victim and a solution to the broader social or general problem highlighted in the case AND are used as a political resource in the absence of effective channels for public participation.	
PILI standing	PIL can be initiated by the court itself or by a private person or a group, who is not directly a victim of the violation or an aggrieved party.	In China public interest law suits are often initiated by lawyers themselves rather than by victims.
Relation to the state	PIL is about challenging public authorities or private enterprises	PIL lawyers use a moderate and non-confrontational approach to Chinese government policies.
Substance	PIL is most often related to constitutional rights, to socio-economic rights, or to the promotion and protection of rights of vulnerable groups in society.	PIL is related to environmental issues and consumer interests, and thus to socio-economic rights protecting all citizens, not only rights of vulnerable groups.

Table 1: Differences and similarities with the general international understanding.

between leadership and civil society over space for PILI is taking place during these last two years.

Status Late 2013

Looking back at the definitions and practices of PIL at the international level stated in the beginning of this paper we can now identify a certain Chinese way of understanding and using the concept showing both differences and similarities with the general international understanding (Table 1).

Taking stock of the current situation concerning the prospects for development of and support for PIL activities, in China one can say that there are openings and closings at the same time—as so often in the Chinese reform process in general. A new leadership has entered the stage in 2012 and observers disagree on whether the legal field will be more or less strictly controlled during the coming 10 year period. In legislation important changes are in the pipe-line, and experience is earned through practice. A dedicated group of competent lawyers are active and determined to take up the challenges of rising inequality and rampant corruption. Awareness are raising on how political changes can be initiated by legal means. But the optimism from early 2011 have disappeared in light of serious restrictions on the room for manoeuvre of civil society organizations, which often are instrumental in identifying social problems and making use of possibilities in the legal system. The above mentioned openings in legislation can be interpreted as just as much aimed at controlling PIL activities as allowing them to take place. Establishment of a nation-wide network of offices for maintaining stability, *weiwenban* (Maintenance of stability), are watching organizations and individuals more closely and demands for registration and documentation have been sharpened, especially against units trying to address social problems. In parallel the official rhetoric is moving in a more confrontational direction. A recent leading article in the CCP mouthpiece, *Truth*, warns against Westernization which-veiled as constitutional democracy-aims at destroying the leadership of Chinese Communist Party [32]. In May universities were reportedly presented with a list of seven words teachers were not allowed to use. The seven subjects included universal values, civil society, citizen rights, judicial independence, freedom of the press, past mistakes of the communist party, and the privileged capitalist class. Public interest is not among the forbidden topics to teach but the result of the fight for space between the government and civil society in this field remains to be seen.

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