

**FACULTY OF LAW  
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**ENVIRONMENTAL CRIMINAL LAW  
OF  
PEOPLE'S REPUBLIC OF CHINA**

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**RESEARCH REPORT**

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# INTRODUCTION

## *Context and Purpose of Study*

Environmental criminal law is one of the most dynamic areas of criminal law and policy. Thailand, in this respect, is lagging behind most countries in the world which begin to use criminal law actively to punish people, and sometimes companies for causing substantial harm to the environment. Environmental crime has many forms. It is generally accepted to single out two major types of environmental crime: pollution and crimes against biodiversity. The developing countries present a particular concern. First of all, they possess a greater biological diversity than the developed countries. Secondly, the most polluting industries have already moved to the developing countries, making the issue of finding the most efficient ways to protect the environment of great importance.

China is the leading developing country in this respect with the fastest growing GDP and the fast rates of the environmental degradation. Many experts noted that in China, the interests of the environment and its protection are sacrificed to the economic development.<sup>1</sup> Two thirds of three hundred biggest cities in China had a quality of air below the standards of the WHO.<sup>2</sup> Some reports indicate that almost half a million people in China died prematurely in 2006 because of environmental

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<sup>1</sup> Lee Ch. "Pollute first, Control Later" No More: Combating Environmental degradation in China Through an Approach based in Public Interest Litigation and public Participation' in *17 Pac. Rim L. & Pol'y J.* - June, 2008 – P. 795

<sup>2</sup> Thieffry P. 'La Protection de l'Environnement en Chine: un Cadre Juridique Ambitieux a la Mesure d'Enjeux Considerables?' in: *R.J.E.* 4/2006, 401-423. – P.402. Available on line: [http://www.thieffry.com/articles/rje\\_chine.pdf](http://www.thieffry.com/articles/rje_chine.pdf) Accessed on 16.08.2010.

pollution.<sup>3</sup> The situation in China is of great interest for academics and the decision makers in Thailand. There is already significant concern about the environmental impact of the Chinese industrial projects on Mae Kong River. Further, many products, including food products are imported to Thailand from China. The facts of gross pollution in China raises concern about the safety of the variety of products manufactured in China. Moreover, environmental pollution and biological degradation can affect neighbouring countries in many other direct ways (such as transboundary pollution) and more often indirect ways (such as rapid decline of biodiversity in Mae Kong River in Thailand).

Providing efficient mechanism of environmental protection by means of criminal law can be considered as an essential part of international law obligation not to harm other countries as well as an increasingly important tool to protect the human right to a clean environment. Examining Chinese environmental criminal law is a vital element in assessing the whole system of environmental protection of people within China as well as outside, providing that such assessment is coupled with the examination of the efficiency of the law enforcement mechanism. Environmental criminal law is only one element of this system.

Thus, the significance of the study of Chinese environmental criminal law comes from the fact that criminal law is increasingly becoming a tool of ensuring environmental safety of people within and outside the country. From a Thai point of view, the processes of criminalization of environmental offences in China can also be of interest when developing a model for Thai criminal law. In this respect, the researcher has several goals in conducting the present study.

The goals of the research project are following:

First, to obtain the knowledge of Chinese environmental criminal law in order to facilitate the development of assessment of the whole system of Chinese law in ensuring environmental safety of people within and outside China.

Second, the knowledge obtained during this research will be published to facilitate international awareness of the processes taking place in China.

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<sup>3</sup> “China: Massensterben durch Umweltverschmutzung” in: *Welt* 05.07.07| Available on line: [http://www.welt.de/wissenschaft/article1000319/Massensterben\\_durch\\_Umweltverschmutzung.html](http://www.welt.de/wissenschaft/article1000319/Massensterben_durch_Umweltverschmutzung.html)  
Accessed on 31.08.2010

Third, the knowledge obtained during this research can be offered to governmental officials interested in conducting a reform of environmental criminal law.

Fourth, the results of this research will be used in teaching various courses in the Law School, including international environmental law, human rights law, and criminology.

### *Research Questions*

The main question of the present research is based on the well attested facts of massive environmental degradation in China. The research aims to affirm or reject the idea that one of the possible causes of such degradation lies in the deficiency of Chinese law, more precisely Chinese criminal law which is unable to control the economic, population, and consumption growth in China. More specific questions cover the degree of clarity in which Chinese criminal law is written from the point of view of the convenience and the easiness of its efficient enforceability. The hypothesis of this research is that the lack of efficiency in addressing particularly environmental pollution lies in the obscure form of Chinese criminal law legislation along with other more fundamental structures of the Chinese society. Further, the research seeks to answer the following from this hypothesis questions. If the law is obscure, does it mean that Chinese judges on the grass root level have significant discretion to apply it to the environmental cases? Or, do Chinese judges refuse to apply the policy of judicial activism by seeking political and legal guidance from the higher level of Chinese political hierarchy? Is there a real alternative to a responsive action on the grass root level even in the situation where the obscure form of Chinese criminal legislation is somehow clarified by higher political and legal authorities? Those research questions can potentially lead to an in-depth and a long term research of the political, ethical, and cultural worldview of Chinese judiciary.



### *Scope and Methodology*

The research will be conducted in two forms. The first is making field trips to Yunnan Province of China. Interviews with Chinese experts and police officers as well as personal observations will provide insights in the real situation with environmental crime in one of the most significant, from the environmental point of view, areas of China. The second form will be the analysis of Chinese legislation and the interpretations issued by the Supreme Court of the People's Republic of China by means of documentary research.

This research will not deal with the deep ideological, cultural, economic, national, and religious (or rather irreligious) reasons for the situation of massive environmental degradation in China.<sup>4</sup> Instead, this research will give a general survey of the major Chinese legislation as well as its official interpretations. It will also examine some law enforcement practices and policies towards environmental crimes in Yunnan Province of China.

This research does not aspire to present a comprehensive picture of the overall situation with environmental crime in the whole of China. Instead, it attempts to provide an introduction to a series of further research steps in more specific areas of environmental crime in the geographical area close to Thailand. Its scope is to give a general survey of the area including its economic, social, and cultural problems within the normative context of Chinese environmental criminal law.

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<sup>4</sup> Good examination of some of those reasons can be found in Sitaraman S. "Regulating the Belching Dragon: Rule of Law, Politics of Enforcement, and Pollution Prevention in Post-Mao Industrial China" in: 18 *Colo. J. int'l Env'tl. L. & Pol'y* (Spring 2007) 267 – at. 274.