

LAWS ON ENVIRONMENTAL PROTECTION: Asian experiences and lessons for Vietnam

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1. Singapore's experiences

It is regarded by the Singaporean Government that environmental protection is a strategic task in the socio-economic development policy. Therefore, various controlling and protective measures have been implemented such as issuing environmental acts, strictly applying civil and administrative sanctions, and promoting the use of criminal sanctions on environmental offences.

Singapore has enacted quite many laws to protect the environment such as Environmental Public Health Act; Environmental Pollution Control Act; Drainage Act; Act on import-export and transit of toxic waste, etc., all of which are accompanied by tens of guiding documents. However, the enactment of various laws and normative documents on environment does not mean that the environment will be protected, but it is the enforceability of those legal documents and appropriate ensurance remedies for those that count.

To ensure the enforceability of laws, coercive measures are indispensable. Singapore laws on environment has

prescribed various measures of such kind:

Criminal sentences

Singapore laws on environment view criminal sanctions as the main implementation tool. Criminal sentences include: incarceration, fine, sequestration and attachment of property, compensation, compulsory correctional community labour (for defendants of minor offences and over 16 years of age and standardly healthy). Specifically as follows:

+ *Incarceration*: This is the most severe sanction for stubborn offenders who would earn much profit from their infraction if their offences were not discovered and for whom fine is not threatening enough. Take this as an example: according to Act on Environmental Pollution Control, offenders of first-time violation who are charged with bringing waste or other hazardous substances into the underground water will be sentenced up to 12 month imprisonment.

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+ *Fine*: This is the most popular sanction in Singapore laws on environment. Fine is considered very effective in enhancing the validity of environmental laws, punishing offenders and preventing other similar violative acts. Fine is also favoured for its precision, concreteness and flexibility, and thus, effectiveness. Singapore applies various levels of fine, depending on laws and the extent of danger of violative acts. For example, people convicted of waste dumping in public places will serve a fine of 10,000 Singapore dollars for first time violation, and 20,000 SGD if reoffending.

Besides, Singapore laws are also very flexible in terms of fining minor offences. That is, offenders have to pay a reasonable amount of fine to Ministry of Environment and their offences will not be brought to court.

+ *Sequestration and attachment of property*: Some environmental legal documents stipulate the sequestration and attachment of tools and means of violative acts. Moreover, health-hazard food will also be seized and destroyed according to Act on Environment and Public health and Act on food trading.

+ *Compulsory correctional community labour*: This seems effective in preventing minor offences. For example, offenders of some minor environmental offences are obliged by Court to clean and clear some specific public places without pay under the supervision of some authorised people.

Administrative measures

Although Singapore regards criminal sanctions the most important in

environmental protection, administrative and civil ones are not thus discounted since criminal sanctions alone are not effective enough. The most popular administrative sanctions are land use plans, licenses and notices.

Planning land use in environmental control is primarily preventive. Areas for heavy industries, average industries and cleaning industries are usually clearly identified. Also there exists close cooperation between Ministry of Environment and such agencies as City re-development Agency and Bureau of Construction Control.

Moreover, Ministry of Environment is in charge of issuing licenses and certificates in order to closely supervise and manage environmental risky activities. That is to say, before any activity is carried out, Ministry of Environment must be sure of its environment-friendliness. For example, Environmental Pollution Control Act stipulates that any environmentally-risky industrial activities must receive the Ministry's permission in order to be performed.

Notices and commands are applied in case property owners or managers do not obey environmental standards or conditions stipulated in related acts. Then those notices and commands will serve the function of ordering the property owners or managers to obey the rules, and their failure to follow the notices and commands will result in their presence before and the punishment by court.

However, recipients of such notices and commands, if disagreeing, are allowed

to send a petition of opposition to Minister of the related Ministry, who will then make a decision whether to keep, modify or revoke the notice or command issued. This decision is considered final. For example, according to Article 93, Environmental Public Health Act, any person disagreeing with the notice, command or decision of the competent can file a petition of opposition to the Minister and the Minister will be in charge of examining and solving the complaint.

Besides, administrative sanctions also act in noise control to ensure that noise level at construction sites is not beyond acceptable standards. If there is any complaint from residents about noise from construction sites, the Ministry of Environment will have to carry out independent assessment of noise level. If the noise level is beyond the standard, based on the collected evidence, owners or managers of the construction site will be fined at maximum 2,000 SGD, and if re-offending, 100 SGD for each day of reoffense.

Civil measures

In addition to criminal and administrative sanctions, Singapore's environmental acts also state many civil sanctions such as fine, financial compensation, paying for environmental cleaning, etc. According to Article 97, Environmental Protection Act, the government can charge the property owner or manager fees for environmental cleaning as stipulated in law. Within 14 days, failure of those people to pay will result in their presence before court.

2. China's experiences

China has recently made several achievements in environmental protection thanks to her combined implementation of many measures and policies.

Firstly, the Government puts much emphasis on environmental protection.

Ever since 1997, China's government has continually held conferences during the period of Cabinet meeting to update information and provide directions on environmental protection. Chinese leaders believe that environmental protection is a strategic task in order to enrich and empower the country. According to them, the nature of environmental protection lies in production protection. Therefore, a comprehensive decision making mechanism regarding environment and development need to be completed. Local officials have to stay informed of the environmental information and take responsibility for the environmental matters in their locality. Whereas, the Government has to supervise and uniformly control environmental matters, increase investment into environmental protection, and encourage the public to participate in environmental protection. Furthermore, environmental programs and projects need to stay focused on pollution prevention in cities, deltas, areas and important marine areas. In the administrative reform, the number of environmental protection agencies has continually increased. In 1988, the National Environmental Protection Bureau was separated from the Ministry

of Construction and belonged the Cabinet. In 1993, Head of the Bureau became Deputy Minister, and then in 1998, Minister of the Head Department of Environmental Protection.

Secondly, environmental legislative activities are especially attended to.

Recently, China has amended and issued several acts such as: Air Pollution Prevention Act; Water Pollution Prevention Act; Marine environment Protection Act; Noise Pollution Prevention Act; Guiding documents on water pollution prevention; Regulations on environment protection for construction projects; and so on. Up to now, China has enacted 36 laws and acts protecting the environment, 10 laws on natural resources, and more than 90 regulations on environmental protection, 430 environmental standards and 1020 legal documents protecting local environment.

Thirdly, China also pays special attention to propagandize and enhance the public's awareness of environmental protection.

From 1998 to 1999, the State's Head Department on Environmental Protection and Ministry of Education have entrusted the National Affairs Research Center, Beijing University with the task of conducting a survey on environmental protection within 10,000 households in 139 districts of 31 provinces, self-governing areas, and cities. And the result shows that environment has become a hot topic in the society. Environmental protection has become a topic for citizen's education in the 9th grade curriculum.

The activity of building a green school and a green community has become more and more influential socially.

China has always encouraged her citizens to protect the environment. There is a telephone line for reporting and denouncing environmental destruction activities, actively publicizing environmental news, predicting and announcing air quality of 47 major cities, weekly reporting water quality in some big river deltas, and sea water quality in some popular beaches, issuing yearly official announcements reporting environmental conditions over the entire nation on the occasion of International Environment Day, i.e. June 5th.

Fourthly, the Government has constructed a stable development strategy which closely considers environmental protection as follows:

- Building a plan for environmental protection, which is within the comprehensive socio-economic development plan. Both these plans are put under the governmental management, and environmental protection is increasingly invested in.
- Building and perfecting environmental protection agencies from local to central government, establishing a complete environmental protection mechanism which can effectively handle the task of managing and supervising the environment.
- Accelerating technological and scientific application into environmental protection.

- Develop environmental protection activities.

3. Lessons for Vietnam

Vietnam has “continually and increasingly witnessed the violation in environmental laws” (7). According to the inspection results of Ministry of Natural Resources and Environment, the number of enterprises making administrative offences in environmental protection and water resource in 2005 and 2006 accounted for 96.6%. To make the matter worse, 100% of waste water of the enterprises inspected did not meet the standards; 100% of enterprises did not supervise or supervise the quality of waste water in the wrong manner; and most of the enterprises inspected did not hold a license for dumping waste water into the water resource. 2007 also saw the same high violation rate as 2006: 100% of enterprises in question released unprocessed production air into the environment; 98% dumped non-standard waste water into the environment; 97% did not supervise the environmental quality in the stipulated frequency. 2008 figures of Ministry of Natural Resources and Environment showed that about 4,000 centers and 1,400 craft villages are doing harm to the environment. And Vedan Company is a typical example of serious offence. Its direct dumping of waste water into Thi Vai River has caused severe pollution to a river area which is over 10 kilometers long. Scientists call this type of water pollution “totally dead” (8) as no creatures can now live in it. Despite that, Vedan Company has only served an administrative punishment with a fine of

270 million VND and also paid arrears of 127 billion VND, besides being withdrawn the license of waste water disposing and suspended from operation, without being punished criminally. The way Vedan is being punished is controversial, partly due to the incompleteness of laws.

From Singapore’s and China’s legislative and executive experience, it can be said that:

Firstly, the legislative system regarding environmental protection in Vietnam needs perfecting towards detailedness, clarity, greater severity and easier implementation, without too many guiding documents as it is currently.

According to the statistics of Ministry of Justice, Vietnam has issued about 300 documents on environmental protection. However, still amendments should be made to include several important matters such as tax on environmental protection; environmental auditing; environmental damages; policy shortage regarding environmental industry; socialization of environmental protection; shortage of regulations on use of environment-friendly labelled products. Furthermore, legal documents regarding environmental protection lack transparency, causing much misunderstanding. For example, Article 131 Environmental Protection Act 2005, “degradation of environmental functions and usefulness is divided into three levels: level 1 – degradation, level 2 – severe degradation, level 3 – particularly severe degradation”. Nevertheless, criteria for classifying whether it is “severe” or “particularly severe” are not

clear in reality. This may lead to advantages for offenders if there is some underlying agreement between them and the assessors.

Another matter is the low stability of legal documents on environmental protection. Some documents cannot exist long before amendment such as Decree 80/2006/N§-CP issued in 2006 which was amended only after one year of implementation, with the issuance of Decree 21/2008/N§-CP on February 28th 2008.

Additionally, punishments for environmental offences are not threatening enough. Take Phong Chau Paper Production Company for example. It was fined only 30 million VND for causing serious pollution, which is too little compared to the profit of 10 billion VND that the company makes every year. That is why the company did not care about investing in a sewage processing line, but directly discarding its waste water into the environment.

Secondly, Vietnam needs to socialize environmental protection, enhance every citizen's responsibility as well as participation of civil and non-governmental organizations. Specifically as follows:

- Enhancing the propaganda, education and awareness-raising about socialization of environmental protection;
- Widening business in environmental protection services and equitizing enterprises and other agencies which are participating in socializing urban services;

- Adjusting policies, increasing financial preferentials and providing best conditions for entrepreneurs and investors to participate in socialization of environmental protection;
- Institutionalizing society's supervision and democratizing investment in environmental protection;
- Equally distributing benefits and charges of environmental protection;
- Combine the task of solving environmental problems with eradicating poverty, making benefits of environmental protection benefits of every citizen's daily life;
- Designing an appropriate initiative scheme for officials protecting the environment.

Thirdly, state management in terms of environmental protection needs to be enhanced.

Based on Environmental Protection Act 2005, state mechanism needs improving in both capacity and effectiveness. Duties and powers of Ministry of Natural Resources and Environment, and division of powers among state agencies have to be specified. Once each has a specific duty, they will be more active and responsible in doing their job, putting an end to passing the buck to each other when it comes to inter-disciplinary tasks.

Together with the division of powers, duties and responsibilities, human and other resources should also be divided in a suitable proportion among ministries and agencies. Experiences from the administrative reform show that without division of human and financial

resources, division of powers and duties would be worthless in reality.

Fourthly, it may be a good idea to apply economic measures in environmental protection.

In a market economy, administrative and coercive measures turn out to be of little use. The thing is entrepreneurs need to realize and enjoy the benefits of environmental protection. Therefore, to ensure the enforceability of environmental laws, the Government should give credits to such economic measures as environmental protection fees, environment-friendly labels, environmental protection funds, environmental compensation, capital supporting schemes, tax incentives, subsidies in environmental protection, environmental franchise, and so on.

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