

Predicament and Breakthroughs: Analysis on the Chinese Public Participation in Environmental Protection in the Era of Free Trade Zones

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Abstract: Accelerating the implementation of the Free Trade Zone (FTZ) strategy is a crucial element of China's latest phase of opening up to the world. With FTZs present in 70% of Chinese provinces, it can be said that China's economic development has entered an era driven by these zones. Faced with the dual pressures of economic growth and environmental challenges, balancing the relationship between economic development and environmental protection has become a pressing issue. This article asserts that there is substantial resistance and limited avenues for public engagement in environmental protection in China. To address this, it is suggested that legislative measures should affirm and judicial mechanisms should safeguard the public's right to participate. This would expand the channels through which the public can engage in environmental governance. Simultaneously, it is imperative to awaken a sense of agency within the public, enabling them to play a more substantial role in environmental conservation.

Keywords: Free Trade Zone; environmental protection; public participation; environmental rights; agency awareness

1. Introduction

The core strategic thinking for China's development in the new era is to "accelerate the creation of a new development pattern while promoting high-quality development." As a forefront of China's reform and opening-up, the construction and development of Free Trade Zones (FTZs) have provided powerful momentum for China's extensive and high-level opening to the world. To date, China has established a total of 21 FTZs, distributed across 70% of its provinces. FTZs, with institutional innovation at their core, serve as highly open policy experimentation areas encompassing trade facilitation, liberalized investment, and financial internationalization. Numerous studies have examined the economic consequences of FTZs, focusing on topics such as economic growth, foreign direct investment, import-export trade, and financial innovation. Findings from various scholars are generally consistent, indicating that the economic impact of FTZs is notably positive. It can be stated that China's economic development has indeed entered an era driven by FTZs.

However, concurrently, some scholars have pointed out that FTZs, while promoting rapid economic expansion, may lead to severe environmental issues. Empirical conclusions drawn by researchers like Zhuo^[1] suggest that for every 100 billion yuan increase in GDP, there is an additional 17,460 tons of wastewater and 20,016 tons of waste gas generated. According to Tachie et al.^[2], trade openness may be a factor in forced environmental pollution. Although trade openness facilitates economic expansion, it also exacerbates energy consumption and increases carbon emissions. He^[3] further confirmed that the impact of foreign direct investment on economic growth leads to increased industrial SO₂ emissions. Wang et al.^[4] used urban panel data to confirm that the construction of FTZs exacerbates environmental pollution issues within these zones. It becomes evident that behind China's rapid economic growth during the FTZ era lies substantial energy consumption and significant environmental pollution.

Addressing the issue of environmental protection, it is widely believed that public participation offers numerous benefits, such as enhancing democracy, increasing justice, and more effectively managing environmental conflicts. For an extended period, environmental governance in China has been predominantly government-led, neglecting public participation. This approach conflicts with the idea of

a diversified governance system with multiple stakeholders involved.

China presents a meaningful case for the study of public participation in environmental protection. Firstly, public participation in China has already established a relatively comprehensive institutional system. Secondly, China's social governance model is undergoing transformation. The report from the 20th National Congress of the Communist Party of China emphasizes the need to expand orderly participation by various groups at the grassroots level in grassroots governance. Thirdly, the Chinese public has limited knowledge about ways and rights to participate in environmental governance. Finally, China faces severe environmental protection challenges. Therefore, this paper aims to explore the reasons hindering public participation in environmental protection in China, the theoretical basis for public participation in environmental protection in China, and how to ensure effective public participation in environmental protection at the legal and institutional levels.

2. Challenges of Public Participation in Environmental Protection in Chinese Free Trade Zones

2.1. Significant Resistance to Public Participation in Environmental protection

2.1.1. Absence of Environmental Rights

The right of public participation in environmental governance, when examined from the origin of legal rights, should stem from citizens' environmental rights. In other words, the specific right of citizens to engage in environmental governance is determined by their environmental rights. Citizens' environmental rights serve as the cornerstone for their comprehensive engagement in various aspects of environmental protection and governance. It is only when the environmental rights of citizens are first unequivocally delineated in legal terms that a concrete interpretation of the various specific environmental rights can ensue. However, upon surveying the existing legal framework in our country, from the Constitution to fundamental laws like the "Environmental Protection Law," there exists no explicit provision regarding citizens' environmental rights.

Article 26 of the Constitution of the People's Republic of China stipulates: "The state shall protect and improve the environment and ecological environment, prevent and control pollution and other public hazards." This provision, in an obligatory manner on the part of the state, to some extent reflects the recognition of environmental rights. Nevertheless, it cannot be considered a definitive acknowledgment of the fundamental status of environmental rights. The indistinct stance in the Constitution casts uncertainty, preventing related laws and regulations like the "Environmental Protection Law," which are subordinate to the Constitution, from upholding and remedying rights through the framework of environmental rights in their specific legal principles and institutional designs. By incorporating environmental protection-related provisions into the Constitution, the ecological value of the environment can be anchored through the constitutional preservation, solidified through a rigorous amendment procedure, thus making environmental protection an imperative task that the nation must accomplish.

Based on a comprehensive and harmonious consideration of the legal system, and in the absence of constitutional provisions for citizens' environmental rights, the subordinate "Environmental Protection Law" aligns with the Constitution but fails to establish the fundamental environmental rights of citizens. While Article 4 and Article 6 of the "Environmental Protection Law" respectively outline the obligations of the state, all entities, and individuals toward environmental protection, they remain conspicuously silent regarding the corresponding rights. The 20th National Congress of the Communist Party of China has introduced new requirements for the nation's ecological rule of law construction. However, the approach of the environmental protection law, which emphasizes obligations over rights, evidently contradicts the spirit of ecological civilization and its emphasis on the rule of law.

In a rights-centric societal context, this legislative strategy hampers the effective utilization of benefits associated with the unique mechanism of rights-oriented interests and incentive systems. It fails to guide and mobilize the enthusiasm and initiative of citizens in engaging with environmental protection. Conversely, by overly emphasizing citizen obligations and expanding the mechanisms of compulsion and restraint linked to these obligations, the populace is left without remedies due to the absence of rights and subject to accountability due to their obligations. This legislative framework intensifies governmental regulatory authority while concurrently weakening citizens' rights to safeguard their own environmental interests.

Only through a legal affirmation of citizens' basic environmental rights can a legal foundation be

provided for the public to uphold their environmental interests. Furthermore, this affirmation would also serve as the legal prerequisite and foundation for the state to fulfill its environmental protection obligations.

2.1.2. Limited participation channels

In China, the traditional channel for public engagement in environmental governance adheres to the government's "top-down" approach. In alignment with the demands of the times and in response to the severe environmental pollution challenges brought about by economic development, the government, in the field of environment, has opened its administrative doors to the public. This has provided a route for the public to participate in environmental governance. Nonetheless, the public's participation is restricted to the channels stipulated by the government. The government leads the entire process of public participation, and even the outcomes of such participation are subject to governmental control. This top-down form of government-led public involvement proves challenging to realize the tangible effectiveness of public participation. Simultaneously, the influence of environmental protection organizations under government dominance remains remarkably constrained.

Consider the "Environmental Impact Assessment Law" as an example.^[5] Concerning the environmental impact assessment of construction projects, firstly, the state employs a categorized management approach for construction projects, and the compilation of the management catalog falls under the jurisdiction of the State Council's environmental administrative department. This initial phase can be deemed entirely closed-off, denying the public the right to participate. Deciding which criteria determine whether a construction project might exert a significant environmental impact unequivocally belongs to the government's administrative departments. Secondly, Article 21 of the law stipulates that the construction unit should organize forums, hearings, and other forms of public opinion solicitation before submitting the environmental impact assessment report for project approval, excluding matters required to be kept confidential by the state. This clause designates the construction unit as the organizer of public forums and hearings, implying that the construction unit holds the authority to decide the content to be made public about the construction project, whether to disclose construction-related information, when and to what extent, placing this decision-making authority squarely within the construction unit's grasp. This grants the construction unit significant leeway for manipulation. In practice, construction units often downplay significant pollution-related details, such as the types of pollutants, potential pollution levels and extent, and the consequences of pollution, during their presentation of the project's fundamentals. Conversely, they may excessively emphasize pollution prevention measures, mitigate environmental pollution risks, and in some cases, construction units might outright refuse to provide construction project information to the public, citing national security as a pretext. Even when environmental information is disclosed, discrepancies between content and reality, as well as the use of environmental jargon to mislead the public, persist. Such information disparities gravely infringe upon the public's right to be informed about the environment.

Lastly, the construction unit possesses the authority to select participating members of the public, rendering participation passive rather than proactive. Consequently, during the selection process, the construction unit frequently avoids involving sensitive public members, narrowing down the scope of potential participants. Furthermore, the questionnaires prepared by the construction unit are pre-formatted and lack specificity, often consisting of multiple-choice questions that tend to circumvent significant issues. In essence, the design formalizes the public participation process.

In the realm of environmental protection and governance, the public should no longer merely be passive participants and passive beneficiaries; instead, they ought to be active contributors, willingly sharing environmental public interests and responsibilities.

2.1.3. Government's Singular Leadership in Environmental Governance

Presently, China's mode of governmental function in ecological governance predominantly embodies a regulatory paradigm. Within this framework, ecological governance relies excessively on the administrative authority of the government.^[6] Instances of behaviors that lead to environmental pollution and ecological degradation during development are primarily controlled through government power. This approach yields certain outcomes, yet it also results in the marginalization of governmental functions. For instance, some local governments assume the role of environmental law enforcement in ecological governance, paying minimal heed to the overarching landscape of ecological civilization construction. Alternatively, they may demonstrate lukewarm attitudes towards ecological governance in favor of safeguarding local economic development.^[7] This necessitates a shift in the role that the government plays during ecological governance activities, transitioning from a guardian and intervener to a guide, and thereby evolving from a regulatory mode to a guiding mode.^[8]

Ecological synergistic governance entails fully integrating ecological environmental issues into processes encompassing governmental decisions, corporate conduct, involvement of societal organizations, and public participation. This further mandates the transformation of government management functions, shifting from the conventional government regulatory paradigm in ecological governance towards a government-led, collaborative governance model. Ecological governance necessitates not only the involvement of the government but also the participation of diverse societal entities. The government must transform its management functions by converging more social forces, including enterprises, societal organizations, and citizens, in order to establish a diversified management system for ecological governance that involves synergistic participation from multiple entities. This, indeed, constitutes a pivotal approach in reshaping government management functions.

2.2. Limited Public Engagement Awareness in Environmental Protection

Citizen awareness of rights is a hallmark of a nation's degree of democratization and legal development. Influenced by millennia of feudal-subject thinking, citizens' awareness of their rights in China remains relatively subdued. In the modern political context, citizen awareness of rights has not grown commensurately with economic and social development; rather, citizens have increasingly lost sight of their status as primary stakeholders.

Firstly, authoritarian governance models of the government have dampened the public's enthusiasm to engage in environmental protection. In theory, the self-interest of individuals and the decentralization of society necessitate a public organization to enforce norms upon societal behavior. The public nature of environmental issues and the government's role as a trustee endow the government with administrative responsibilities for safeguarding the environment. Consequently, when the environment deteriorates, our first response is to denounce government negligence. In practice, when environmental problems elevate to public issues, the government is at the forefront, establishing specialized environmental management agencies tasked with preventing and combating environmental pollution and ecological damage. These environmental protection bodies expand and elevate their functions and administrative status as environmental issues grow increasingly complex and pronounced. It must be acknowledged that the externality of people's living and consumption behaviors, along with the presence of incomplete information, do necessitate government involvement in environmental governance. However, the problem with environmental authoritarianism is that it treats the government as the sole entity responsible for environmental governance and perceives the process of environmental governance as the government's implementation of environmental volition. Whether it's the legislation and enforcement of environmental laws, or the formulation and execution of environmental policies, what to govern, how to govern, and when to govern are all determined by the government. Meanwhile, the broader society can only passively comply.

Secondly, the Chinese public's comprehension of rights remains at a sensuous stage rather than a rational understanding. Inherent flaws exist within the law itself, and the implementation of laws may result in unjust outcomes due to the presence of certain factors, thereby influencing people's understanding of rights. In society, there exists an excess of self-centered focus, disregard for the rights of others, and an attitude toward rights and obligations that stands in stark contrast. The public is unclear about the fulfillment of obligations being in service of better realizing their rights. People fail to realize the necessity of respecting and upholding the rights of others and the need to refrain from infringing on others' rights while exercising their own. In matters of realizing rights, the Chinese public is deeply ingrained with the belief that rights are "bestowed." Rights are seen as rewards granted by officials and the government, achievable only from the top-down. Consequently, when rights are infringed, they are more inclined to seek the "bestower" of those rights, often seeking out officials or higher levels of government, rather than resorting to legal action. This is the reason why some members of the public turn to petitions rather than the legal system. Yet the fact remains that every right is not a natural occurrence but a result of unremitting efforts and struggles by the right bearers.

3. Public Participation in Environmental Protection in the Era of Free Trade Zones in China

3.1. Establishing the Source of Public Participation Rights from Constitution to Environmental Legal System

Environmental rights constitute a pivotal issue within environmental law, serving as the cornerstone for environmental legislation, enforcement, management, public participation, citizen and public interest

litigation.^[9] They also form the bedrock of constructing an environmentally sound and green-civilization-oriented legal framework to ensure future ecological society. Thus, to lay the foundation for public participation in environmental protection, it is imperative to define the public's environmental rights and concretize them through legislation. This acts as the fundamental guarantee for achieving public participation in environmental protection and marks the logical starting point for developing the institutional framework for such participation.

3.1.1. Constitutional Recognition of Citizens' Environmental Rights

On a global scale, an increasing number of countries have included environmental rights provisions in their constitutions to underscore the significance of environmental rights and reflect the importance of human rights and sustainable development. As a fundamental legal instrument, China's constitution should incorporate provisions related to environmental rights, not only to highlight the advancement of citizens' rights but also to provide legal safeguards for citizens' engagement in environmental protection and governance. This would establish a constitutional basis for citizens' environmental rights within the broader context of environmental legislation. Therefore, an additional provision in the section on "Rights and Duties of Citizens" within the constitution, emphasizing that "Citizens are entitled to a favorable environment," while also stipulating the government's obligation to safeguard citizens' environmental rights, would effectively integrate citizens' environmental rights into the overall framework of national environmental protection.

3.1.2. Enacting the "Environmental Code"

While China's existing "Environmental Protection Law" and other standalone environmental laws do touch upon aspects of citizens' environmental rights, they lack precise and comprehensive clarification. These laws fail to create logical connections between their provisions, often referring to the goal of environmental protection for the sake of safeguarding citizens' health. Additionally, they tend to focus more on citizens' obligations to protect the environment. Hence, it becomes necessary to consolidate China's "Environmental Protection Law" and other relevant environmental laws into an encompassing "Environmental Code." This code should explicitly state that citizens possess the right to live with dignity in a healthy environment, distinguishing environmental rights from property rights and ownership. By clearly differentiating between the legal and moral aspects of citizens' environmental rights, the Environmental Code will ensure that environmental rights independently occupy a central position within the realm of environmental law.

3.1.3. Ensuring Judicial Safeguards

The language of legislation must be concise, rigorous, and solemn. It should also establish certain standards or directions for the behavior patterns of the general population. In other words, legislative language must be general in nature.^[10] Moreover, regardless of how precise legislation may be, there will always be gaps. Furthermore, within the ever-evolving landscape, it is difficult for legislation alone to keep up with the pace of change. As laws must maintain stability, frequent amendments are not a prudent choice.^[11] Thus, considering these factors, it is suggested that when incorporating the chapter on public environmental rights into the "Environmental Code," it is best to avoid overly detailed provisions. Instead, a brief outline of their legitimacy and definitions of fundamental terms suffices. The specifics of public participation in environmental protection can be left to other auxiliary legal systems, such as judicial interpretations and guiding cases. This approach ensures the stable operation and universal applicability of the "Environmental Code," which can adapt to the objective changes in international environmental protection trends. This perspective supports the notion that defining only a few foundational terms and broad rights and obligations within the "Environmental Code" would suffice. When new changes occur in environmental protection within free trade zones, specific judicial interpretations can be issued by the Supreme People's Court to clarify and supplement existing rules.

3.2. Clearing barriers for public to Participate Environmental Governance

The inadequate operation of citizen participation mechanisms stems from incomplete systems. The pivotal aspects of citizen participation in environmental governance lie in expressing citizen opinions and engaging in environmental decision-making. Therefore, the hearing system and citizen participation systems in environmental legislation and administrative decision-making are the key factors affecting the effectiveness of citizen participation in environmental governance.

3.2.1. Enhancing the Environmental Hearing System

One of the significant means for citizen participation in environmental governance involves

participation in public hearings. Through hearings, citizens can express their opinions and engage in dialogue with the government.^[12] Thus, the effectiveness of citizen participation is directly linked to the improvement of the public hearing system. Environmental hearings can institutionalize channels for citizens to participate in environmental governance. As a crucial institutional support for the legitimacy of environmental decision-making, their purpose is to break the "closed, structured, and unidirectional" nature of the decision-making process. However, the current implementation of environmental hearings in China falls far short of citizen demands and participation intentions. The hearing system also faces a crisis of trust. Therefore, it is essential to enhance and improve the environmental hearing system. A robust hearing system necessitates regulation in several aspects, including the selection of hearing representatives, hearing rights, hearing procedures, and feedback mechanisms for hearing opinions.

Firstly, the standardized selection of hearing representatives is vital. The selection of hearing representatives as representatives of different interest groups should be institutionalized. This can be achieved by clearly defined legal procedures that involve citizens selecting representatives from the bottom-up approach, reflecting citizens' environmental rights. Given the strong scientific nature of environmental issues, the scope of hearing representatives should include neutral experts and scholars related to environmental governance, in addition to ordinary citizens.

Secondly, safeguarding citizens' hearing rights is crucial. Building on the premise of safeguarding citizens' right to environmental information, participants should have the right to express their genuine opinions and suggestions during or after the hearing. This shift from traditional governmental environmental management methods to genuine citizen participation is imperative.

Thirdly, a well-defined hearing procedure that is open and transparent is essential. An open and transparent hearing process prevents hearings from becoming merely a formality and ensures that hearings genuinely reflect public sentiment.

Lastly, a well-structured feedback mechanism for citizen hearing opinions should be established. This mechanism should enable citizens to understand whether their suggestions have been adopted by the government and the reasons and justifications behind those decisions, thus increasing citizens' enthusiasm for participation.

3.2.2. Enhancing Citizen Participation in Environmental Legislation and Administrative Decision-Making

Citizen participation in decision-making is not only beneficial for the scientific and democratic nature of government decisions but also increases societal acceptance of decision implementation.^[13] In the context of environmental legislation and administrative decision-making, the participation of citizens should be clearly institutionalized from the drafting to the implementation stages.^[14] A well-established system of participation in environmental legislation is designed to ensure citizen participation at different stages of the legislative process, such as collecting and verifying legislative proposals, drafting bills, soliciting opinions on draft bills, and legislative review. This prevents citizen participation from being formalized or marginalized.^[15] Most environmental administrative decisions require undergoing environmental impact assessments. Citizens primarily influence the direction of environmental administrative decisions through this stage. Therefore, developing and refining methods for citizen participation in environmental impact assessments is beneficial for the effectiveness of citizen participation in administrative decision-making.

3.3. Elevating Public Awareness of Participatory Environmental Protection

3.3.1. Enhancing Citizens' Sense of Protecting the Environment

The government has long conducted environmental protection campaigns through government media, educational institutions, and environmental organizations, achieving some level of success. Citizens' environmental knowledge and awareness have increased to some extent, yet there remains a significant gap between environmental awareness and behavior. This is primarily due to citizens adopting a "not my problem" attitude, often neglecting environmental concerns that don't directly impact their personal interests. Hence, alongside environmental education efforts, it's essential to cultivate a sense of stewardship among citizens. They should clearly understand their environmental rights and obligations, viewing the protection of the Earth as an attitude to safeguard their own habitat.^[16]

Currently, environmental-related laws and regulations progressively outline the rights and responsibilities of citizens. However, citizens possess limited awareness of these rights, primarily due to the numerous and complex legal provisions. In non-essential circumstances, the general public rarely

seeks out and comprehends these legal aspects. Lacking understanding of their environmental rights and obligations, citizens fail to develop a sense of responsibility and resonance with environmental issues, let alone engage in environmental protection actions. A collaborative effort among the government, educational institutions, and environmental organizations could address this issue. The government, for instance, can publicize the nation's environmental protection policies using popular mediums, particularly emphasizing citizens' rights and obligations. Television, radio, and online platforms can be used to present environmental facts, while public service announcements, short films, and radio dramas can transform convoluted legal texts into vivid examples, captivating citizens' attention and prompting them to take notice. Schools, on the other hand, should integrate environmental protection concepts throughout the education process. Tailoring the environmental education to different student age groups can help foster a sense of environmental protection and provide clarity about the rights and responsibilities conferred by the law. Lastly, professionals in environmental organizations can utilize their expertise to educate citizens directly in grassroots communities through films, environmental manuals, and interactive problem-solving sessions. They can also deliver environmental knowledge to businesses and institutions, raising awareness of environmental responsibilities and obligations.

3.3.2. Cultivating Citizen Proactivity in Environmental Governance Through Practice

Practice serves as the driving force behind the development of consciousness, as there is a logical connection between the two. "Engaging in social practice is an effective means of cultivating civic consciousness." Environmental governance can be seen as a process of cultivating civic conduct. Therefore, alongside robust education and awareness campaigns, encouraging citizens to participate in environmental practice activities can foster a proactive inclination and a sense of responsibility, ultimately enhancing citizens' proactive involvement in environmental issues. Given current societal realities, the following targeted environmental practices can be initiated:

Firstly, strengthening environmental practice activities among student populations. "Cultivating open and practical civic education that promotes participatory awareness and enthusiasm is better suited to meet the needs of active citizens for rationality, emotions, knowledge, and skills." Presently, schools at all levels introduce environmental knowledge and concepts to students, instilling an environmental consciousness. However, practical environmental activities often remain superficial, leading to a disparity between environmental awareness and actions, and a lack of proactivity in environmental participation. Tailored environmental practice activities could be implemented to instill environmental awareness and responsibility among students of different ages. Kindergarten and primary school students can participate in simple routine environmental practices, like assisting custodians in cleaning the campus, thus fostering the belief that "protecting the environment is everyone's responsibility." For secondary school students, a collective involvement in routine environmental public service activities can consciously shape their environmental principles. At the university level, encouraging students to participate in volunteer services and social practice activities could cultivate their environmental literacy and encourage them to influence others and society at large.

Secondly, diversified "Environmental Protection Open Days" organized by environmental administrative bodies. Although various regions have initiated "public open days," achieving some results, the scope of these events remains limited. This is mainly due to the fact that most "open days" are designed as public tours. Publicizing the complex environmental processes and instruments only showcases the current technological level and the government's attitude towards environmental protection. More in-depth practical activities are required to cultivate citizens' proactive inclination to engage in environmental governance. For example, governments could establish environmental information rooms and archives in local government libraries, using visuals and texts to openly present various environmental incidents and their resulting consequences throughout the year. Environmental protection simulation laboratories could be opened to the public, allowing citizens to simulate the impact of their daily actions on the environment, thereby illustrating the importance of environmental behavior and nurturing their inclination to participate in environmental governance.

4. Conclusion

Public participation is not only a traditional means of achieving democracy and implementing good governance, but also a crucial complement to environmental governance tools and an effective approach to addressing environmental justice claims. A comprehensive set of environmental governance measures based on a command-and-control approach has proven to be less effective due to legal, economic, and political obstacles. Consequently, public participation in environmental governance is playing an

increasingly significant role. Against the strategic backdrop of the construction of free trade zones, the Chinese government should leverage the power of the general public, professional environmental organizations, mass media, and other public forces in environmental governance. This is aimed at reducing conflicts and losses caused by environmental issues, thereby consolidating the achievements of reforms in the political and economic domains.

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