The background of the slide features a traditional Chinese ink wash painting style illustration. It depicts a pond with several lotus flowers in various stages of bloom, including a prominent pink one in the lower left and a red bud on the left. Large, dark green lotus leaves are scattered throughout. In the center, two fish are shown swimming, one appearing to be a silver carp and the other a darker, more ornate fish. The sky is a pale blue with soft, white clouds. The overall aesthetic is serene and naturalistic.

Sustainable Development through a Rights-based Approach to Conserve Protected Areas in China

—— Miao He; An Cliquet

Ghent University, Faculty of Law

Department of Public International Law

“The IUCN AEL”, Baltimore July 1-5, 2012

Overview

Background Information

The Existing Legal and Policy Instruments in China

Why a Rights-based Approach(RBA) is a Better Method

How to Adopt a RBA to Conserve Protected Areas in China

Conclusion

Background Information

Background Information

The Examples of Conflicts in China

✂ Yu Long Xue Shan protected area

✂ Binzhou Marine Nature Reserve

The question arises:

What channels of representation could guarantee, or at least help, local people to influence the decision-making?

The Existing Legal System for Protected Areas in China

The Existing Legal and Policy Instruments Referring to the Right to Information

- The Regulation of the People's Republic of China on the Disclosure of Government Information (2007)
- The Environmental Information Disclosure (Trail) (2007)
- The Nature Reserve Land Management Approach(1995) ---Article 13
- The National Human Rights Action Plan (2012-2050)

The Right to Information ?

Some Limitations for Public Participation in China

The Existing Legal and Policy Instruments Referring to the Right to Participation

- Constitution of the People's Republic of China (2004)

--- Article 2

- The Regulation of the People's Republic of China on Nature Reserves (1994) -

-- Article 7

- Chinese Agenda 21 (1994)

- Water Pollution Prevention and Control Law of the People's Republic of China (2008)

Some Improvements in the Existing Legal instruments for Public Participation

- Special Marine Protected Areas Management Approach (2010) --- Article 13,17
- China Biodiversity Conservation Strategy and Action Plan (2011-2030) --- Action 29
- The National Human Rights Action Plan (2012-2050)
- Notification on Further Strengthening the Hydropower Construction for Environmental Protection (2012)
- The “Enshi Tujia and Miao autonomous prefecture of Hubei Xingdoushan National Nature Reserve Management Regulation”

The General Theory of a Rights-based Approach to Conservation

What is Rights-based Approach(RBA) to conservation?

Source: Greiber T. et al. 2009

The General Theory of a Rights-based Approach to Conservation

Some important added-values of a rights-based approach to conservation

- ❖ Clarifying rights and duties
- ❖ Responding to increasing demands from NGOs
- ❖ Focusing on the most vulnerable
- ❖ Forming the earliest basis for international cooperation
- ❖ It is a holistic approach to achieve a long term goal

The General Theory of a Rights-based Approach to Conservation

A rights-based approach is a better method but not a panacea

Challenges:

Challenges from outside

- Challenge from governments' efforts
- Challenge from global or regional human rights texts

Challenges inherent to the RBA itself

- Competition between rights
- RBA requires substantial resources of time, expertise, information, and funding to build capacity

How to Implement RBA to conservation in China

How to Implement RBA to conservation in China

❖ Step 1: Empowering Rights in Legislation on Protected Areas

- 1) analyzing the related parties
- 2) dividing the power or interests for the different related parties

❖ Step 2: Safeguarding rights in the enforcement of legislation on protected areas

- 1) providing information to the related parties
- 2) ensuring participation
- 3) stimulating the enthusiasm of the related parties

How to Implement RBA to conservation in China

❖ **Step 3 : Assessing rights when evaluating the enforcement**

❖ **Step 4 : Providing legal remedy**

- 1) Compensation
- 2) Prosecution where violation amounts to a crime when it is necessary
- 3) NGO's role

Conclusions

- ★ China has made some progress in solving the conflicts, but some problems still exist.
- ★ A RBA can contribute to meet the need of the Chinese contemporary situation
- ★ How to specifically implement a RBA in China needs further research
- ★ To achieve sustainable development between protected areas and human rights need the efforts from various parties

Q&A

Welcome any suggestions or comments to Email: miao.he@ugent.be