

PROTECTION OF PEASANTS' ENVIRONMENTAL RIGHTS DURING SOCIAL TRANSITION: RURAL REGIONS IN GUANGDONG PROVINCE

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Abstract

China is facing rapid deterioration of the rural environment. This is a grim problem, which causes great damage to peasants' health and property; increases poverty; widens the gap between the rich and the poor; and seriously hurts the relationship between humans and nature. All of these effects negatively impact a harmonious, stable society and impede sustainable development. Through social surveys this article analyzes how to protect peasants' environmental benefits against the special backdrop of social transformation.

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INTRODUCTION

Since China’s “Reform and Opening-Up Policy” was launched by Deng Xiaoping more than twenty years ago, urbanization and industrialization in China has rapidly continued. Unfortunately, a significant growth of environmental problems has accompanied implementation of this policy.¹ Over the past ten years, heavy pollution and environmental damage are now increasingly found in rural, rather than urban, regions.² In the course of industrial upgrades and environmental improvements, outdated and polluting industrial projects and facilities are frequently moved from cities to rural, and largely unpolluted, regions. These movements are based on the rationale that such rural areas are still able to absorb large quantities of wastes.³ In turn, rural regions have emphasized economic development and

† The translation of all Chinese materials are the author’s, as is the responsibility for any inaccuracy in the translation. This article follows the Chinese practice of placing the family name before the given name. Therefore all sources cited in short form use the author’s family name. The original Chinese text for most laws and their implementing regulations cited herein can be found on the Law Info China database located at <http://www.lawinfochina.com>. Due to confidentiality concerns the interviews in this article remain anonymous. The author has this information on file and can be contacted for further inquiry. The *Vermont Journal of Environmental Law* primarily publishes pieces focused on legal and policy analysis. This article is different because it is based on an extensive social science survey conducted in the Guangdong Province of China. The *Vermont Journal of Environmental Law* chose to publish this piece because of its critical insight into the state of mind of the citizens of China regarding their environmental laws and regulations.

1. Wen Jiabao, Premier of the State Council, The Full Implementation of the Scientific Concept of the Development to Speed Up the Building of Environmentally-Friendly Society (Oct. 7, 2006), available at <http://www.acef.com.cn/English/NewsShow.asp?productSort=414&NewsID=1180>; Decision on Implementation of Scientific Development and Strengthening of Environmental Protection (promulgated by the State Council Dec. 3, 2005), available at http://www.gov.cn/zwzgk/2005-12/13/content_125736.htm (P.R.C.).

2. Pan Yue, Deputy Dir., State Env’tl. Prot. Admin., Environmental Protection and Social Equality (Oct. 28, 2004), http://www.sepa.gov.cn/hjyw/200410/t20041028_62270.htm.

3. *Id.*

job creation in order to alleviate rural poverty.⁴ The result has been an explosion of rural businesses and family factories equipped with old technologies that usually lack pollution control features.⁵ In some circumstances, sewage from one business can pollute a whole river or destroy large tracts of land.

Rural environmental degradation is also exacerbated by the poor land management practices of peasant farmers. Pesticides are frequently applied in excessive quantities, farm animals are raised in unsustainably high numbers, and waste is either poorly-managed or simply disposed of in rivers and on land. Even though peasant farmers benefit from such unsustainable land use practices, ultimately environmental degradation worsens their living conditions, sometimes even forcing them back into poverty.⁶

Peasant farmers in China rank not only among the poorest social group, they are also the least aware of their environmental rights and remedies.⁷ Without special efforts to provide relief, rural environmental conditions will continue to deteriorate. Such conditions are also likely to widen the existing gap between rural and urban living standards, spawning new social problems and harming society as a whole. Finding solutions to rural environmental problems is therefore an urgent priority and requires an analysis of the unique circumstances of the rural countryside and the social conditions of peasant farmers, which shape and limit available environmental rights and remedies.

This article focuses on the situation of peasant farmers in Guangdong Province, which has been at the forefront of economic development under the Reform and Opening-Up Policy. Through a series of surveys conducted between July and October 2006, the students of the Environmental Law Clinic at Sun Yat-sen University Law School studied the awareness of peasant farmers of their environmental rights and their ability to protect those rights.

The survey methodology consisted of questionnaires left with

4. Jim Yardley, *The Great Divide: Rural Wastelands Rivers Run Black, and Chinese Die of Cancer*, N.Y. TIMES, Sept. 12, 2004, at A1.

5. Pan, *supra* note 2.

6. See Peter K. Yu, *China and the WTO: Progress, Perils, and Prospects*, 17 COLUM. J. ASIAN L. 1, 28 (2003) (stating that with or without the WTO, China's government cannot maintain a balanced society, and the environment is deteriorating as a result).

7. KEVIN J. O'BRIEN & LIANJIANG LI, RIGHTFUL RESISTANCE IN RURAL CHINA 28 (2006) ("[P]olicies that instruct local officials to respect villagers' lawful rights and interests are typically hot in the center, warm in the provinces, lukewarm in the cities, cool in the counties, cold in the townships, and frozen in the villages.") (quotation omitted); see also Huang Xisheng & Guang Hui, *On the Ecological Compensation for the Environmentally Weak Group*, 2 ENV'T. & SUSTAINABLE DEV. 23 (2006).

households, as well as some follow-up meetings with some respondents to clarify answers and collect survey responses. The surveys covered the cities of GuangZhou, ShenZhen, ZhongShan, YangJiang, FoShan, DongGuan, ChaoZhou, JieYang, ShanTou, XingNing, HeYuan, and ShaoGuan, as well as other areas. Survey areas were chosen to provide a broad and representative cross-section of the Guangdong provincial area.

Some of the locations are well-developed urban places located at the center of the Pearl River Delta, like GuangZhou, ShenZen, ZhongShan, and DongGuan. Others are less developed cities in the eastern and western parts of Guangdong, as well as in the mountainous regions, such as the towns of XingNing, HeYuan, ShaoGuan, ChaoZhou, JieYang, and YangJiang. The study deliberately covered places with and without apparent environmental problems in order to allow for meaningful comparisons in environmental conditions and perceptions. Age, education, marital status, and living conditions were the factors considered in the choice of survey areas in order to create a broadly representative sample.

I. THE GENERAL SITUATION OF THE RURAL ENVIRONMENT

Of the 360 respondents, 44.2% think that their environment is worsening, 21.7% consider it to be improving, 31% insist that there is no change in their environmental quality, and nearly 43% show concerns about their environmental situation.⁸ The major environmental problems, from most to least pressing, are waste pollution, water pollution, air pollution, and noise pollution.

The survey results show that as living conditions improve in rural areas, waste pollution also increases. In the past, rural solid waste (RSW) had simple ingredients and was reused as fertilizer. RSW is now increasingly composed of more complicated ingredients, such as plastic bags and other plastic products, making it difficult to reuse. The amount of construction waste, breeding waste, and industrial processing waste has risen astonishingly. Peasants no longer make it a priority to reuse RSW for fertilization and as a result large quantities of waste are discarded.

Waste has become the most serious pollution problem in rural environments. Some rural places have launched waste collection programs,⁹ but the waste collected is only moved to remote places instead

8. *See infra* Appendix A, fig.2.2.

9. In recent years, Guangdong Province has implemented a plan called "One Construction and Three Reforms" in the rural areas. Concentrating on the construction of marsh gas pits, they implemented reform projects of kitchen waste, and pigpen and sheep-pen wastes, in order to improve

of being handled because of the lack of unified planning, handling establishments, and facilities.¹⁰ This may result in even more pollution. Moreover, industrial waste continues to be transferred from urban to rural places with increasing frequency.¹¹

Nearly 12% of the respondents believe their farming lands are worse than they were before and are totally unsuitable for cultivating crops.¹² Slightly more than 33% believe that the land is worsening, leading to a significant reduction of crops.¹³ Although 34.2% think the land quality is the same as before, only 2.8% insist their land is improving.¹⁴

Generally speaking, water quality in rural regions is worse than in urban places. Almost 50% of the respondents still get their drinking water from wells, rivers, and springs.¹⁵ While the quality of tap water is relatively stable, most of the people experiencing a decline in water quality are those who fetch drinking water from natural sources. Of those surveyed, only 17.8% think that their drinking water is always very bad and nearly 30% think it is getting worse.¹⁶

The air quality in rural areas is generally quite good, but 44.7% of the respondents believe it is getting worse, and 14.7% think it is already very bad.¹⁷ Only 26.1% stated that there is no change in the air quality, and 8% consider it to be improving.¹⁸

Because of the lack of environmental monitoring facilities in rural regions,¹⁹ peasants primarily judge environmental quality based on their own experiences and feelings. They think that drastic changes in environmental quality have mainly occurred in the past decade, especially within the past five years. This period coincides with the rapid industrial restructuring and urbanization in Guangdong Province.

When questioned about the reasons for environmental change, 54.4% of respondents ascribe it to factory pollutant discharge and 16% attribute it to the rural breeding and development activities, while 17.8% link it to the

the sanitation conditions in rural areas.

10. The village head expressed this to the author when some villages were investigated in Jieyany city of Guangdong Province from November 11th to 12th, 2006.

11. Yardley, *supra* note 4; see also Wang Shufeng & Huang Minjian, *The Reasons and Countermeasure on the Transfer of Environmental Pollution in China*, 4 J. HUMAN. & SOC. SCI. 92 (2006); see also *British Living Garbage Enter Guangdong*, NANGANG DAILY, Jan. 17, 2007, at A8.

12. See *infra* Appendix A, fig.2.12.

13. See *infra* Appendix A, fig.2.12.

14. See *infra* Appendix A, fig.2.12.

15. See *infra* Appendix A, fig.2.11.

16. See *infra* Appendix A, fig.2.5.

17. See *infra* Appendix A, fig.2.14.

18. See *infra* Appendix A, fig.2.14.

19. Pan, *supra* note 2.

peasants' living behaviors.²⁰ Notably, the survey respondents named factory pollution as the main factor affecting the quality of the rural environment.²¹ The main enterprises located in the communities surveyed were hardware, electroplating, chemical, paper, and mining.²²

Outside investors have established businesses in 62.5% of the respondents' regions.²³ The survey results suggest that the operation of these businesses is closely related to the condition of the local environment. However, the number of businesses in the rural region does not always correspond with the quality of the environment. While environmental problems in rural regions with businesses can be more serious, some heavily polluted villages do not have many businesses at all. This is because pollutants are transferred from other places or result from local rural waste.

About a third of the respondents are concerned that they have been harmed, or are being harmed, by environmental pollution (polluted property or damaged health).²⁴ This number shows that environmental pollution has caused widespread and substantial damage.

II. ANALYZING PEASANTS' SENSE OF, AND ABILITY TO, PROTECT THEIR ENVIRONMENTAL RIGHTS

A. Peasants' Sense of the Environment

As a whole the peasant's sense of the environment is not strong. Their understanding of environmental problems varies from one person to the next. Many people simply equate it to a sanitation problem and focus on waste and sewage issues, while others blame living conditions. Those conducting the survey took a considerable amount of time to explain the meaning of environmental problems to rural residents before many of them understood it. Still many individuals refused to answer the survey because they did not understand the questions. Peasants' understanding of their local environmental problems is also low: 54.2% of respondents chose "a little," 29.4% "not so clear," 4.7% refused to answer, and only 11.7% responded "very much."²⁵

20. *See infra* Appendix A, fig.2.5.

21. *See infra* Appendix A, fig.2.5.

22. *See infra* Appendix A, fig.2.7.

23. *See infra* Appendix A, fig.2.8.

24. *See infra* Appendix A, fig.2.6.

25. *See infra* Appendix A, fig.3.1.

Nevertheless, peasants' attention to the environment has increased greatly. After explaining environmental problems, most of the respondents could share knowledge about the local environmental situation, distinguish good environmental quality from bad, and identify the main reasons for environmental degradation. There also appeared to be a correlation between higher levels of education and a stronger sense of the environment.

Peasants' environmental sense is also related to their access to environmental information and knowledge. Although their need for environmental information has increased, most respondents still get their environmental information from their own feelings.²⁶ Other sources, as ranked, include "newspaper and media," "hearsay," "government announcements," and "notice from village committee."²⁷ Access to environmental information is mainly by notice from government and village committees who cannot provide enough information. Thus, at present, peasants have limited means to get accurate environmental information. When asked, "Do you hope to get more environmental information?," 53.9% respondents answered "yes," 25.6% answered "nevermind," and 10.6% said "no."²⁸ This illustrates that even though peasants have considerable need for environmental information, the availability of that information is very limited.

During surveys in the "cancer villages"²⁹ in Wengyuan county of Shaguan City, our students found that local peasants knew that environmental pollution was quite serious and had already asked the local government for information and monitoring data. However, the town, county, and city governments could not provide exact information about environmental quality. At present, there is no group that has a comprehensive understanding and grasp of the rural region's environmental situation.

Another topic addressed in the survey was the question of peasants' attitudes towards nearby factories and local polluting enterprises. Over half of the respondents, 54.4%, stated they opposed the enterprises; 25.8% were indifferent; only 15.3% of those surveyed expressed a welcoming attitude towards these businesses.³⁰ At the beginning of the Reform and Opening-Up period many places and local peasants granted favors to whomever invested in businesses. Peasants are now more sensible, and many rural

26. *See infra* Appendix A, fig.3.2.

27. *See infra* Appendix A, fig.3.2.

28. *See infra* Appendix A, fig.3.5.

29. Several villages in Xinjiang town of Wengyuan County are called "cancer villages" because the morbidity rates of cancer are much higher than in other nearby villages.

30. *See infra* Appendix A, fig.3.3.

government officials are more clear-headed regarding the establishment of polluting enterprises.³¹

However, peasants' attitudes toward polluting enterprises are contradictory. About 40% of those surveyed were either ambivalent or believed that businesses would bring them benefits.³² People in developing regions hope for more job opportunities while those in developed regions are eager to increase commercial opportunities; the former struggle to get rid of poverty, and the latter to pursue wealth. Peasants' living conditions vary from one region to another. When the relationships between businesses and local people are complicated it is more difficult to handle pollution problems.

B. Peasants' Willingness and Ability to Access Protection of Their Environmental Rights

1. Peasants' Willingness to Protect their Environmental Rights.

When asked, "Have you thought about changing your situation if you are damaged by pollution?" 41.4% of respondents chose "yes, very much"; 39.7% said "sometimes, but there is little possibility to take any action"; 13.3% responded that they had never considered it.³³ This shows that most peasants are very willing to protect their environmental rights.

In articulating their environmental rights, peasants generally emphasize property rights and health rights. Many peasants, especially those in villages where health problems have been obvious in recent years, relate their health problems to the environment. But few people have sued for damages in government institutions or courts.³⁴ Many of the victims give up remedy requests because of the difficulties in proving the link between pollution and sickness.³⁵ In the rural regions diseases force families into difficult financial situations, or even poverty. Therefore, peasants take the wrong attitude toward diseases. If they are slightly sick, they prefer to do nothing about it until it is serious enough for a small clinic visit.³⁶ When

31. See Swati Lodh Kundu, *Rural China: Too Little, Too Late*, ASIA TIMES ONLINE, July 19, 2006, http://www.atimes.com/atimes/China_Business/HG19Cb01.html (cataloguing numerous protests by rural residents against industrial construction projects in the past two years).

32. See *infra* Appendix A, fig.3.3.

33. See *infra* Appendix A, fig.3.11.

34. See *infra* Appendix A, fig.3.10 (reporting that nearly 43% of the respondents stated that they thought the government should deal with environmental pollution problems).

35. Zhao Yuhong, *Environmental Dispute Resolution in China*, 16 J. ENVTL. L. 157, 180 (2004).

36. See Natasha Wong, *Counterfeit Medicine: Is it Curing China?*, 5 ASIAN-PAC. L. POL'Y J.

they are confronted with serious diseases for which there is no cure, many people give up on treatment.³⁷ As a result, it is impossible to get a clear record or document a disease, and it is very difficult to identify symptoms and causes.

Furthermore, there is a special custom in many rural regions to discard everything related to that individual after their death, including disease records and testing documents.³⁸ Because victims lack awareness to keep evidentiary records, causation is hard to prove and health-based remedies are difficult to obtain. Lastly, subjects of lawsuits correlate to litigation costs. Compensation is limited due to the Chinese court's association of court fees with the amount of damages sought.³⁹ In terms of their property rights, peasants are primarily concerned with the effects on a normal harvest. Peasants have little sense of the long-term effects of land, drinking water, and irrigation water pollution.

2. Peasants' Actions to Protect their Environmental Rights.

a. Peasants' Choice of Means to Safeguard their Environmental Rights.

When asked about the means they would use to change the pollution situation, 40.8% of the respondents chose "Complain to the village committee"; 34.4% chose "Complain to the government institution"; 9.2% chose "Negotiate with the polluters"; 1.9% chose "Launch a litigation"; and 0.8% chose "Petition."

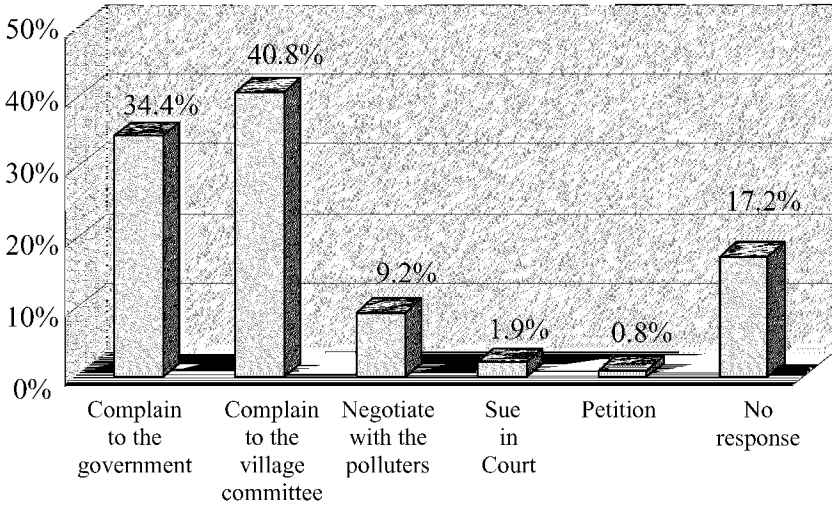
5, 172–73, (2004) (discussing how rural Chinese residents turn to traditional Chinese medicine to fill the gap when prescription medicine is unavailable).

37. See CHARLES WOLF, JR. ET AL., RAND NAT'L DEFENSE RESEARCH INST., *FAULT LINES IN CHINA'S ECONOMIC TERRAIN* 52 (2003) ("The extensive, if rudimentary, socialized healthcare system of the Maoist era has given way, under Deng era's economic reorientation, to a system that is largely pay-for-service, and full of coverage gaps, especially in rural areas.")

38. This tradition is very common in rural areas of the Guangdong Province.

39. For example, since the early 1990s the Tangxin village of Xinjiang town of Wengyuan county has suffers property damage costing over 1 million yuan RMB per year caused by pollution of a nearby mining enterprise. When the village committee brought suit in June 2006, the villagers claimed compensation and they only asked for a damage award of 600,000 yuan RMB (less than one year's loss) because they couldn't afford the court fee. (Author's note: Our environmental clinic discovered the facts of this case during our investigation of the region's environmental problems. The material related to the case is confidential until trial is complete. As such, the author cannot offer a cite for the source of this information at the present time.)

Fig. 1: Peasants’ Means to Protect their Environment



Peasants greatly depend on grassroots organizations and official institutions. The above data shows that 75% of the respondents would first complain to the government and the village committee in hopes that they will solve the problem for them. Of these two, the government would probably handle the environmental problems more effectively, but the respondents are more likely to go to the village committee first because it is the nearest “authority institution” to them. As shown by the above chart, peasants’ response to environmental pollution is passive.

As victims, peasants seldom negotiate directly with polluters or file lawsuits. In the past, there was a view that because peasants had little knowledge about the law they were prone to petition. Yet according to our survey, peasants have no such preference; petitioning is the last choice when other means are available. Therefore, governments should form a new understanding about how peasants use petitioning.

b. Measures to Deal with Environmental Pollution

The survey shows that when harmed by pollution, peasants first choose to forbear and passively adapt to it. In response to the question, “What would you do if the drinking water is polluted?,” 27.5% of respondents choose to “buy bottled water,” 27.1% choose to “still drink the polluted

water,” 15% choose to “find other water sources,” and 12.5% choose to “dig wells.”⁴⁰ This suggests that people never plan to, and never hope to, restore the quality of drinking water sources. It also shows that due to the increasing speed of urbanization and improving living conditions, many people may use alternative sources of drinking water such as tap water or bottled water. The rural regions in Guangdong province are better adapted to drinking water pollution than in other places.⁴¹ To some extent, these temporary solutions hide the water pollution problem in rural regions.

In the long run, irrigating with polluted water will harm agricultural production as well as people's safety. If the deterioration of soil quality affects crops, 30.8% of peasants would choose to “give up cultivation and look for a job outside [rural areas],” 24.7% would choose to “[do] nothing,” 21.9% would choose to “plant other kinds of crops,” while 22.2% gave no response.⁴² We should be very concerned that an increasing number of peasants choose to abandon agriculture and leave their hometown when encountering pollution problems. This trend reflects a social transformation and a change in peasants' perspective: first, peasants do not depend heavily on agriculture; second, peasants find more job opportunities in the cities; third, with the well-developed economy in Guangdong Province and strong population movements peasants have sound reasons for leaving their hometowns; finally, agriculture is not very attractive to peasants.

However, most peasants who are able to move out of the rural regions and earn their livings are literate, healthy, and young.⁴³ This results in another dilemma for rural environmental protection. First, the ability to improve the environment in the rural region decreases. The migration of young people away from their hometowns results in a serious decline in the ability of rural areas to improve their environment. When the environmental quality deteriorates, there is not enough manpower to restore it.⁴⁴ Second, the ability of rural regions to protect their environmental rights declines. In rural regions, generally speaking, it is the young people who handle the environmental issues with the local governments and the

40. See *infra* Appendix A, fig.2.11.

41. Guangdong is a relatively developed area in China. In other provinces, it is hard for many people to resolve their drinking water problems by buying bottled water. Furthermore, the high rate of urbanization makes it possible to extend tap water access to rural areas.

42. See *infra* Appendix A, fig.2.13.

43. To be qualified to work in the city one needs more education and training than for work in the rural regions. In addition, the factories usually prefer to recruit younger workers.

44. The village of Jie Yang City is an example. In the past, there was a beautiful landscape with many streams. Now, because the water quantity in the upper reaches of the river has declined, and industrial discharges have simultaneously increased, the streams are filled with dirty sludge. Previously, the village committee would direct the villages to dredge the sludge and clean the streams, but now there are not enough people to do this work.

polluters. Now that many young people are absent, their families at home are unable to protect their own environmental rights. Third, the will to protect environmental rights also declines. The old and infirm people that are left at home are only concerned about the welfare of their young offspring. They consider their own circumstances to be of no importance. Therefore, they take a complacent attitude.

The rural-land property-rights system also aggravates agricultural pollution. Under the existing system, rural lands are owned by the village collectively. Peasants only enjoy contract rights, which are limited by law to thirty years.⁴⁵ It is difficult for peasants to foresee what will happen after the contract period ends. Thus, they do not have a vested interest in the long-term quality of the land. In the Pearl River Delta, many peasants rent their farm land and leave to pursue commerce or other jobs. The lessees usually rent the farmland for only a few years, and lessors seldom request them to conserve it.⁴⁶ Unconcerned about conservation, both parties are free to pursue greater profit at the expense of land degeneration.⁴⁷

3. Peasants' Expectations for Environmental Protection Measures

When they are asked "What would you do if there are polluting enterprises near your residential areas?" of those who responded 60.8% prefer to "control and eliminate the pollution," 35% would choose to "close the polluting enterprise," 23.9% would choose "monetary compensation," and 5.6% would choose to "move and resettle in other places collectively."⁴⁸ We can see from these numbers that most of the respondents do not prefer eliminating these businesses entirely. Instead, peasants hope the industries themselves will restore the environment.

45. Law on the Contracting of Rural Land (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 2002, effective Mar. 1, 2003), arts. 2, 3, 20, LAWINFOCHINA (last visited Mar. 17, 2007) (P.R.C.).

46. See GERRIT HUIZER, U. N. RESEARCH INST. FOR SOC. DEV., PEASANT MOBILIZATION FOR LAND REFORM: HISTORICAL CASE STUDIES AND THEORETICAL CONSIDERATION (1999), available at [http://www.unrisd.org/UNRISD/website/document.nsf/ab82a6805797760f80256b4f005da1ab/706169c0417986e480256b66003e6841/\\$FILE/dp103.pdf](http://www.unrisd.org/UNRISD/website/document.nsf/ab82a6805797760f80256b4f005da1ab/706169c0417986e480256b66003e6841/$FILE/dp103.pdf).

[M]ovements of peasants to defend, conserve or recover their ancestral land and livelihood have proliferated during this century . . . [however], it appears that during the last few decades not much progress has been made by such movements, due to the resilience of commercial landed interests and the state acting in their support.

Id.

47. See Bryan Lohmar & Agapi Somwaru, *Does China's Land-Tenure System Discourage Structural Adjustment?*, in CHINA'S FOOD AND AGRICULTURE: ISSUES FOR THE 21ST CENTURY 39 (2002), available at <http://151.121.68.30/publications/aib775/aib775n.pdf> (noting that "without land ownership, farmers have less incentive to invest in land improvements").

48. See *infra* Appendix A, fig.3.15. Note: the numbers total more than one hundred because this was a multiple-choice question and respondents could choose more than one answer.

However, there are still a considerable number of people who would rather close the business altogether. This shows that people have knowledge about the damaging extent of polluting businesses. From the emphasis on both compensation and pollution elimination, we can see that peasants are becoming better informed about pollution issues. They have realized that elimination, instead of compensation, is the best way to root out pollution problems.

4. Peasants' Understanding of the Difficulties in Improving the Environment

In the survey, 43.9% of respondents chose "lack of governmental support" as the biggest obstacle to improving the environment; 38% chose "enterprises are rich and powerful"; 27.2% consider it to be "lack of legal knowledge"; 15.6% think the biggest obstacle is "illiteracy."⁴⁹ This shows that people have realized the important role of the attitudes of local governments in solving environmental problems. Governments can be the solution, or the biggest barrier, to dealing with environmental problems. Furthermore, this survey shows that peasants have insufficient legal and political knowledge. This has become a significant barrier to improving the environment.

III. ANALYSIS OF THE DIFFICULTIES IN PROTECTING PEASANTS' ENVIRONMENTAL RIGHTS

A. Contradiction Between Peasants' High Expectations of the Government and the Government's Absence from Many Environmental Issues

In various rural regions of China small-scale peasant economies still exist.⁵⁰ The loosely structured economic system hardly supports collective actions, especially in providing public services such as environmental protection.⁵¹ Therefore, people rely greatly on the government. This is

49. See *infra* Appendix A, fig.3.14.

50. See Kundu, *supra* note 31 (discussing current agricultural trends but noting that "[m]ore than 50 million farmers have been displaced by . . . land grabs with little or no compensation"); see also Zhou Li, Public Goods, Responsibility Ascertain and Development Paradigm Retrospect: On China's Rural Environmental Protection with a Case Study, <http://www.zhinong.cn/data/detail.php?id=4383>.

51. See Victor Nee & Su Sijin, *Institutional Change and Economic Growth in China: The View from the Villages*, 49 J. ASIAN STUDIES 3, 5 (1990) (observing that de-collectivization in the 1980s returned rural communities to the social structure of the "pre-revolutionary [sic] corporate village . . . in

proved by our survey results. Meanwhile, the Chinese government is lacking in its protection of the rural environment. For example, there are deficiencies in laws and policies, finance, and other investments.⁵² Current institutions are insufficient, and environmental monitoring is not very effective. As a result, there is a shortage of environmental protection by the government in rural regions. Compared to urban residents, peasants' environmental rights are not well-protected.

In the survey we found that peasants have a mixed attitude toward the government. They rely on the government to handle their environmental problems. However, they are usually disappointed because more often than not the main obstacle to solving environmental problems is the lack of support from the local government. Although forbidden by the central government of China, as well as SEPA, many times in recent years, local protectionism has become the breeding ground for environmental pollution and damage.⁵³ The current Environmental Protection Law of China stipulates that local governments should be responsible for the quality of the local environment.⁵⁴ Nevertheless, systems assuring that local governments fulfill their environmental protection responsibilities are not yet fully established, and the environmental responsibility investigation system runs inefficiently.⁵⁵ Under these circumstances, many local governments do not take responsibility for local environmental protection. Some governments ignore enterprises' illegal behavior,⁵⁶ and this local

which lineages owned and managed communal property and provided limited welfare functions to villagers"); see also Huang Jijin, *The Most Important Thing in Various Environmental Protection Issues: Summary of the First National Environmental Policy and Legal Issue Meeting*, NAT'L ENVTL. NEWS OF CHINA, Dec. 15, 2006, at 1.

52. Nee & Sijin, *supra* note 51.

53. See Zachary Tyler, *Transboundary Water Pollution in China: An Analysis of the Failure of the Legal Framework to Protect Downstream Jurisdictions*, 19 COLUM. J. ASIAN L. 572, 582 (2006) (stating that the lack of environmental enforcement is partly a result of local protectionism and corruption, and that "[p]roblems of corruption and local protectionism are exacerbated by a lack of coordination across jurisdictions and power struggles between local authorities and the central government"); Environmental Protection Laws and Regulations and Violations of Law (promulgated by the State Env'tl. Prot. Admin., Oct. 27, 2005, effective Dec. 31, 2005), available at http://www.sepa.gov.cn/info/gw/juling/200602/t20060220_74117.htm (P.R.C.).

54. Environmental Protection Law (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 1989, effective Dec. 26, 1989), art. 16, LAWINFOCHINA (last visited Mar. 17, 2007) (P.R.C.).

55. See Richard J. Ferris, Jr. & Hongjun Zhang, *Reaching Out to the Rule of Law: China's Continuing Efforts to Develop an Effective Environmental Law Regime*, 11 WM. & MARY BILL RTS. J. 569, 593-94 (2003) (citing the Regulation on Responsibility Allocation, Organizational Structure and Personnel Limitations of the State Environmental Protection Administration (State Council June 23, 1998)) (stating that SEPA by law could only hire 200 personnel for its Environmental Emergency and Incident Investigation Center when formed in 2002).

56. See Gwynne Wiatrowski Guzneau, *Indoor Air Pollution: Energy Problems in China's Residential Sector*, 11 GEO. INT'L ENVTL. L. REV. 439, 452 (1999) (discussing the difficulties of

protectionism seriously interferes with environmental protection.⁵⁷

B. Peasants' Dependence on the Environment and their Vulnerability to Environmental Degradation

Peasants are dually dependent on nature as it provides them with living conditions and production material. First, of all the economic sectors, agriculture in China remains the most reliant on natural processes. Second, peasants draw most means of subsistence, such as drinking water, fuel, foods, and construction materials, directly from natural resources. Thus, the natural environment has a direct influence on peasants' living and development. Yet, peasants are more vulnerable to environmental degradation than both polluters and urban residents. Compared with polluters, peasants are in a weak bargaining position and protests are often ineffective. Compared with urban residents, peasants are allocated fewer resources and are less able to prevent pollution. This makes peasants most vulnerable to environmental rights violations.

C. Peasants' Inability to Protect their Environment and the Complexity of Pollution Issues

The standard of living and education of peasants are obviously lagging behind those of urban residents.⁵⁸ Due to the complexity of pollution issues, even urban residents are unable to deal with environmental problems. Regardless of geography, protecting environmental rights is more expensive than other litigation because of the difficulty in collecting evidence and proving causation. The assistance of professionals, such as lawyers and scientists, is an absolute necessity. These high costs have become the biggest obstacle to peasants' pursuit of legal actions.

enforcing environmental protection on a local scale in China, and recognizing a gap between local and national enforcement of environmental protection, a prime factor of which is the "low environmental awareness" of local officials).

57. *See id.* China launched a nationwide campaign in 1996 to shut down local enterprises known for high levels of pollution, but nearly 40% of those shut down have since re-opened illegally. *Id.*

58. *E.g.*, Rowan Callick, *Bitter Harvest for China's Rural Majority*, AUSTRALIAN, Mar. 13, 2006, at 14.

IV. SEVERAL COUNTERMEASURES TO PROTECT PEASANTS' ENVIRONMENTAL RIGHTS

A. Strengthen the Role of Grassroots Organizations in Rural Areas

Peasants seriously depend on the authorities to safeguard their environmental rights.⁵⁹ As such, it is necessary to provide them with appropriate organizational support. It is unlikely that the government will establish more rural environmental protection agencies or organizations in the near future. Therefore, better use of the existing grassroots organizations in rural areas may be more effective. Village committees are now generally established in rural regions.⁶⁰ According to the Village Committee Organization Law, the village committee is in charge of a village's public affairs and welfare, mediating disputes, maintaining social order, reflecting the views of the villagers, and making recommendations to the government.⁶¹ It has an obligation to the village to safeguard the residents' interests. Although these grassroots organizations have a small number of staff and resources, they are closest to the villagers and understand their suffering the most. Although, there are still many problems, direct election of village committees is now established.⁶² As a local, elected, self-governing organization, the committee has an obligation to protect the interests of the village.⁶³ It represents the best means of advocating for peasants' environmental interests.

In our survey, we found that the village committees are aware of the local environmental situation and the harm to peasants caused by pollution. We also found that they are willing to come forward to fight for peasants' interests. Despite this willingness, there are many difficulties. First, committees are often challenged in court on standing issues when launching a lawsuit on behalf of the villagers.⁶⁴ Second, they do not have enough

59. Nearly 43% of the respondents stated that they thought the government should deal with environmental pollution problems. *See infra* Appendix A, fig.3.10.

60. *See* Embassy of the People's Republic of China in the United States of America, 470 Million Chinese Villagers Vote in Village Elections Last Year (May 18, 2006), <http://www.china-embassy.org/eng/xw/t253295.htm> (reporting the existence of 629,000 village committees in 2005—190,000 less than the previous year); *see also* O'BRIEN & LI, *supra* note 7, at 53–59 (recounting efforts by villagers to achieve democratic accountability from local governments).

61. Organic Law of the Village Committees (promulgated by the Standing Comm. Nat'l People's Cong., effective Nov. 4, 1998), art. 2, LAWINFOCHINA (last visited Mar. 17, 2007) (P.R.C.).

62. *Id.* art. 11.

63. *See generally id.* (noting the various protected interests of villagers).

64. According to article 108 of China's Civil Procedure Law, the plaintiff must show that they have a direct interest in the case and some courts may refuse the case based on this unmet burden. Civil Procedure Law (adopted by the Nat'l People's Cong., effective Apr. 9, 1991), art. 108, LAWINFOCHINA

funding to advocate villagers' rights.⁶⁵ To cope with the administrative review and litigation, committees have to carry out fundraising activities, which are often considered to be the unauthorized collection of fees.⁶⁶ Therefore, the law should provide more support for these rural grassroots organizations by reducing legal obstacles to safeguarding the rights and interests of peasants. For example, the law should recognize the committees' standing as plaintiffs who can bring a lawsuit on behalf of villagers, and allow them to undertake reasonable fundraising activities in order to safeguard peasants' rights.

B. Fill in the Gaps in Laws and Regulations

The environmental problems of the rural and urban regions have many things in common, but there are some differences. The current environmental legislation is essentially urban environmental legislation, focusing on controlling industrial and urban pollution. Some laws and regulations are not applicable to rural environmental issues. Additionally, there is almost no relevant legislation on specific rural environmental issues, such as soil pollution prevention, poultry waste pollution prevention, and garbage disposal. Therefore, we should improve the legal system of environmental protection by mandating quality standards for soil and water, as well as preventing and controlling pollution from pesticides, fertilizers, industrial waste, agricultural waste, and garbage. Non-point source pollution is a world-wide problem which must be resolved. China should conduct more investigations and studies while learning from the experience of other countries' environmental laws.

C. Strengthen Environmental Monitoring in Rural Regions

The government's environmental agencies should provide environmental services beyond urban areas. Their functions must also extend to rural regions. To strengthen the supervision of environmental protection, China must first strengthen the environmental protection sector, extending law enforcement over all rural areas. Second, China must establish relevant environmental agencies at the county and town level, with adequate levels of staff and resources. Third, China must improve the monitoring and management capacity of natural resources. It is necessary

(last visited Mar. 17, 2007) (P.R.C.).

65. The budget for the village committee is too small to afford paying the court fee.

66. To prevent peasants from bearing an overly heavy burden, the central governmental of China has issued regulations that strictly limit any organization from collecting money from farmers.

to do some investigation and research on environmental issues that are unique to rural regions and come to a consensus on the condition of the rural environment. Only in these ways can China become familiar with the rural environmental situation and explore effective ways to solve environmental problems.

As for the lack of rural environmental protection, officials in charge should be held responsible in accordance with the laws and regulations. China's central and local governments have introduced a number of regulations holding government departments and their personnel responsible for environmental violations.⁶⁷ These provisions must play their rightful role.

D. Improve Peasants' Ability to Protect their Environmental Rights

First, it is necessary to establish and improve the rural environmental information systems. Peasants must be informed of the relevant information before they can safeguard their rights. They will be able to take appropriate measures and actions to protect their own interests only if they understand their environmental situation. At present, peasants' requests for improvements to environmental quality are often refused by local governments. The local governments either do not understand the local environmental situation or choose not to disclose the information. Such activities are either in violation of the legislation on public information or of questionable legality. Therefore, the government should remove legal and institutional obstacles to establishing an effective information system.

Second, China should give environmental education to peasants so they can learn how to safeguard their rights. The government should provide various channels of information so that peasants can comprehend the environmental situation, the damage caused by pollution, and applicable environmental laws, as well as environmental dispute-resolution mechanisms. The role of the media is extremely important in environmental education and information dissemination. Peasants have become accustomed to obtaining related information and learning about cases through newspapers, television, radio, and other media.⁶⁸ Therefore,

67. Environmental Protection Laws and Regulations and Violations of Law (promulgated by the Ministry of Supervision, the State Env'tl. Prot. Admin., Oct. 27, 2005, effective Dec. 31, 2005) LAWINFOCHINA (last visited Mar. 17, 2007) (P.R.C.); see also *State Council's Poverty Alleviation Office: Rural Poverty to Be Reduced by 5.62 Million*, CHINANEWS, Apr. 12, 2006, available at <http://www.chinanews.com.cn/news/2006-04-12/8715932.shtml>.

68. *Clearing the Air: The Human Rights and Legal Dimensions of China's Environmental Dilemma: Roundtable of the Congressional-Executive Commission on China*, 108th Cong. 2 (2003)

all social groups concerned with peasants' environmental interests should focus on the use of the media in helping peasants.

Third, China should support various non-governmental organizations that provide legal services to peasants. Peasants, as the most vulnerable group in Chinese society, are in great need of this support. The government should create a firm legal foundation for non-governmental organizations to provide legal services.

E. The Legal Aid System be Available to All Rural Areas

Although China has established a legal aid system, it mainly provides services in urban areas and almost never benefits rural residents.⁶⁹ Peasants are at a disadvantage not only because of their paltry share of China's recent economic successes, but also because of their meager share of other resources, such as legal services. First, peasants do not have a fixed income, so it is difficult to prove their income status.⁷⁰ Second, poverty in the rural areas is overwhelming. Local finance is usually very difficult where peasants compose large portions of the population. As a result, very few financial resources can be used for legal aid, and legal aid agencies therefore cannot meet the needs of rural areas. Third, the applicable legal scope is limited. According to Article 10 of the legal aid ordinance, the applicable scope includes a request for "state compensation," requests for social security benefits or minimum subsistence pay, requests for pension benefits, claims for alimony, child support, maintenance expenses, payment of remuneration, and other requests.⁷¹ Environmental pollution claims are quite complicated, and include the loss of basic resources and other income. More often than not, it turns out to be a large sum of money and legal aid agencies are unable to provide assistance. Fourth, the peasants do not know about the existence of the legal aid system, nor do they know how to apply.⁷²

(statement of Elizabeth C. Economy, Senior Fellow & Dir. For Asia Studies, Council on Foreign Relations), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:85625.pdf.

69. Since the 1990s, China has established a legal aid system for the weak, but due to limited resources, governmental legal aids at all levels mainly target urban residents (municipal citizens in the past and residents, including migrant workers, living in cities at present). They are rarely able to assist the residents living in rural areas.

70. See WOLF, *supra* note 37, at 11 n.1, 17–18 (discussing difficulties in calculating rural economic statistics and corrupt local taxation practices).

71. See Regulation on Legal Aid (promulgated by the State Council, Jul. 21, 2003, effective Sept. 1, 2003), art. 10, LAWINFOCHINA (last visited Mar. 17, 2007) (P.R.C.).

72. See Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L.J., 211, 214 (1999) (stating that "[l]egal aid programs have concentrated in economically developed urban

China's rural population is relatively large and poverty-stricken.⁷³ Providing legal assistance to peasants is not only a matter of equitable justice but also of stability of the entire society. The state should establish legal aid mechanisms that correspond with the actual situation of peasants. This mechanism should combine legal assistance from the government and other social groups. The primary short-term objective for the government should be to fully utilize the existing legal aid mechanism while allocating more resources to rural areas. The long-term objective should be to establish legal aid agencies in rural areas that specialize in legal assistance for peasants. From a social perspective, China should encourage community groups, schools, law firms, government departments, and judicial institutions to provide peasants with a wide range of legal services, creating favorable conditions for their ability to preserve and enforce their environmental rights.

areas; lawyers remain out of reach of the majority of China's rural poor").

73. China is a large and agricultural country with a population of nearly 1.3 billion. More than 63% of the total population is peasants. Thus, more than two-thirds of the members of society are peasants. According to a survey, by the end of 2005, the rural population living in absolute poverty across the country is 23.65 million, and the low-income population in rural regions is 40.67 million. Information from the State Council's Poverty Alleviation Office shows that rural poverty decreased by 5.62 million people from 2001 to 2005. JIAN LIU, INT'L FOOD POL'Y RESEARCH INST., *THE ACHIEVEMENTS AND EXPERIENCES OF POVERTY ALLEVIATION IN RURAL CHINA* (2005), http://www.ifpri.org/pubs/books/ar2004/ar2004_essay03.asp (last visited Mar. 17, 2007) (charting a decline in poverty from 250 million in 1978 to 26.1 million in 2004). The author is the Director of the State Council Leading Group Office of Poverty Alleviation and Development. *Id.*

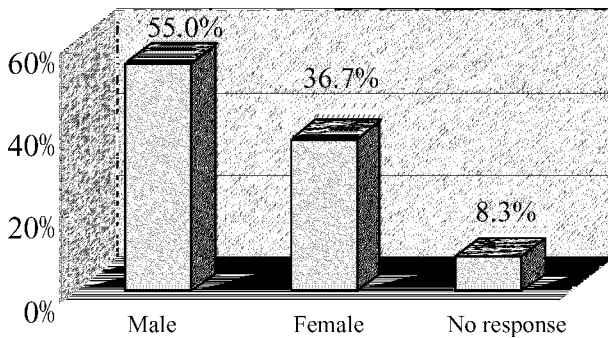
APPENDIX :
STATISTICAL ANALYSIS OF THE QUESTIONNAIRE SURVEY OF
PEASANT'S ENVIRONMENTAL RIGHT PROTECTION IN RURAL AREAS

(Conducted by students of the Environmental Law Clinic at
the Law School of Sun Yat-sen University, July – October 2006)

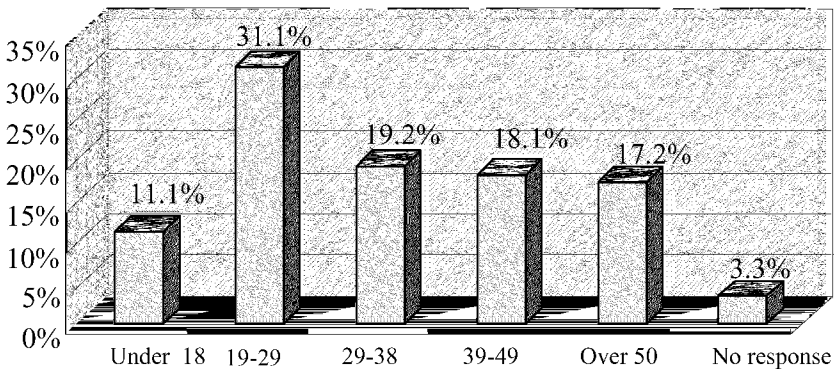
1. Respondents' Background

With 360 questionnaires completed, the general backgrounds of the respondents were as follows:

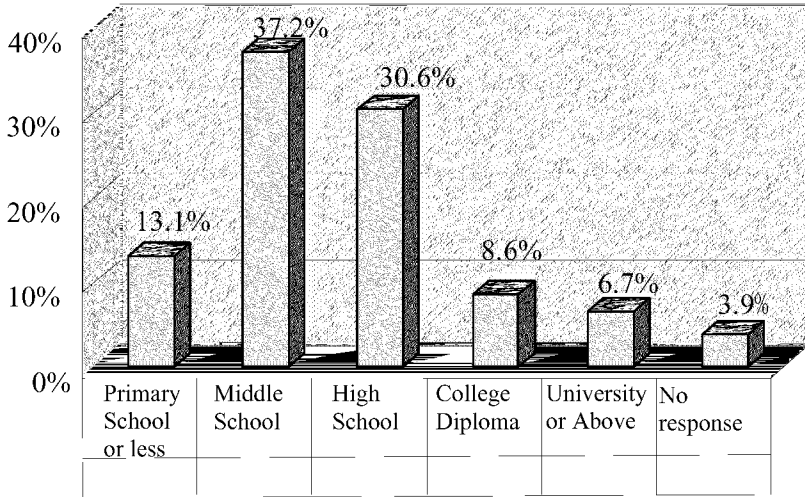
1.1 Gender



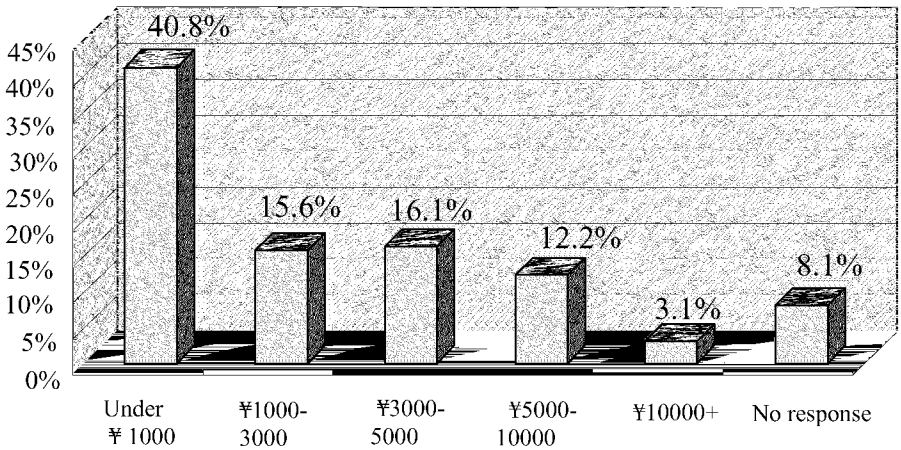
1.2 Age



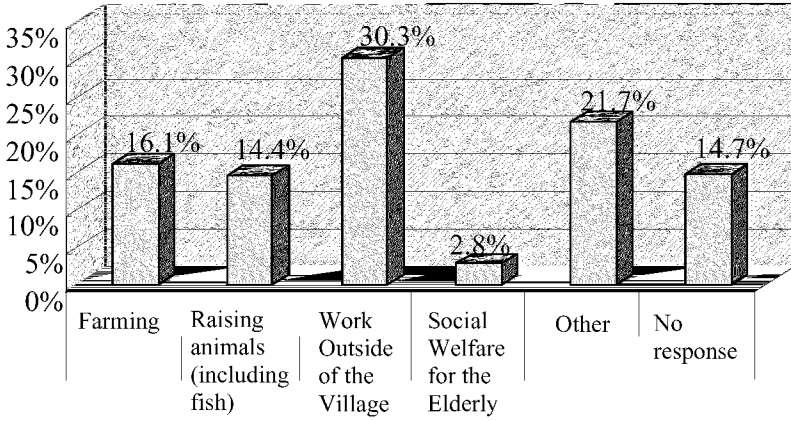
1.3 Education



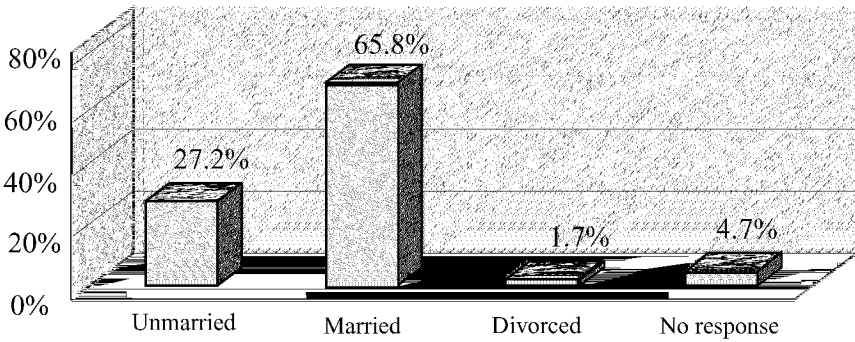
1.4 Annual Income



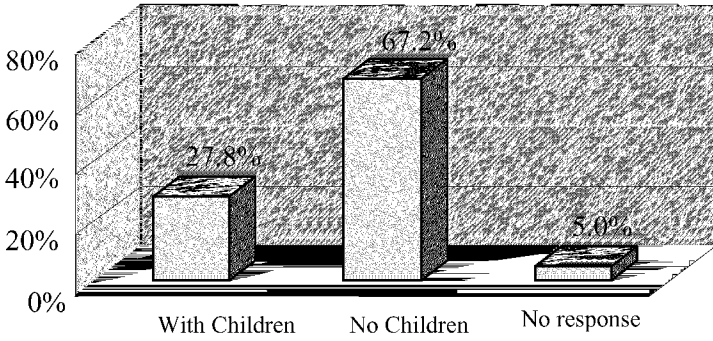
1.5 Sources of Income



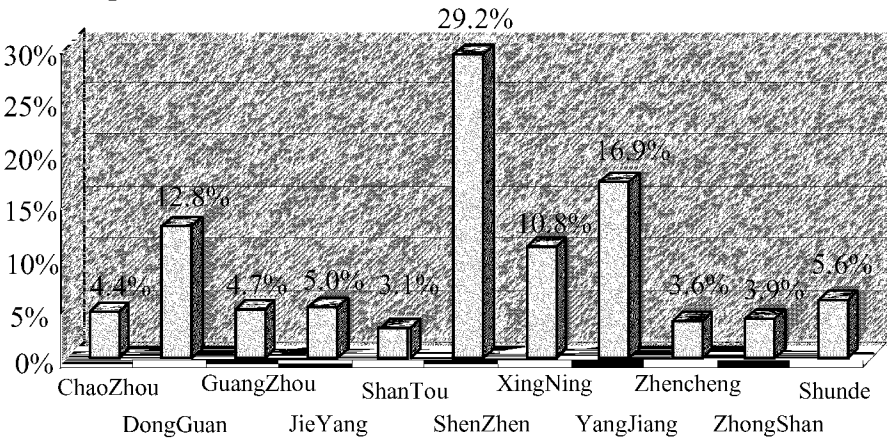
1.6 Marital Status



1.7 Respondents with Children

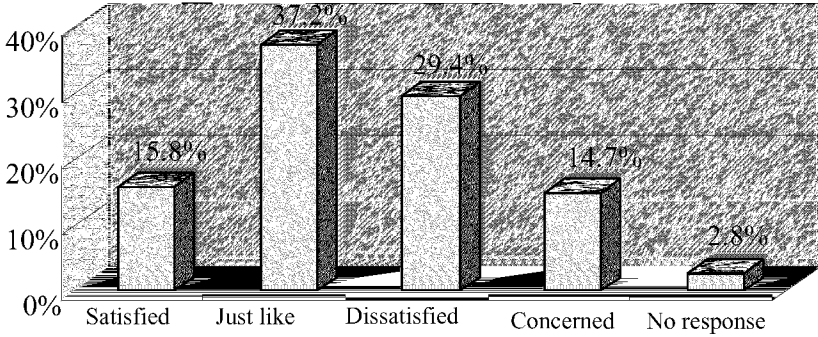


1.8 Respondents' Location

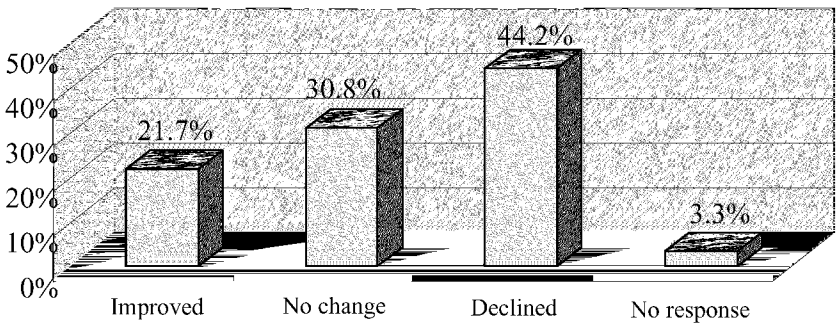


2. Respondents' ideas about environment quality

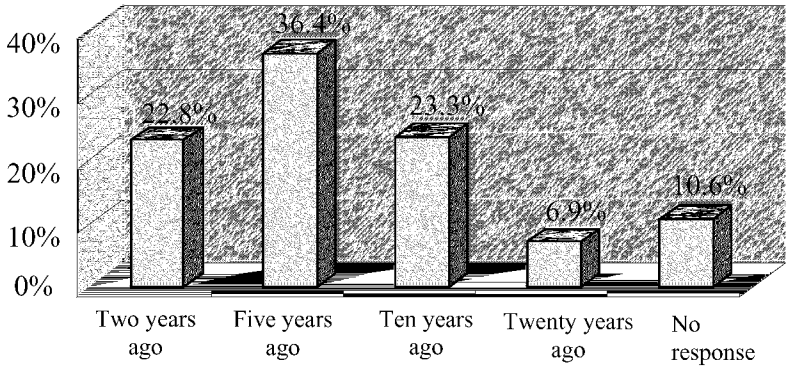
2.1 Are you satisfied with the current environmental quality?



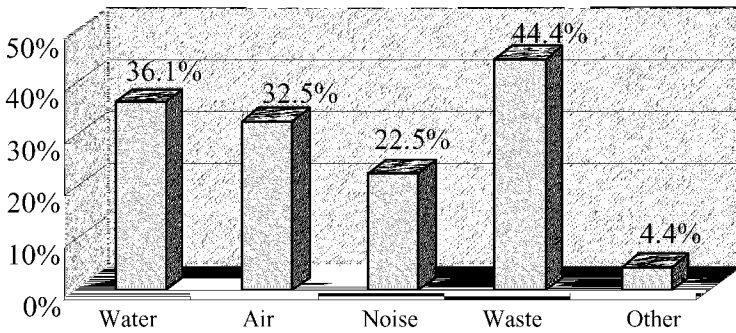
2.2 Has environmental quality improved or declined over the past several years?



2.3 When did the environmental quality change?

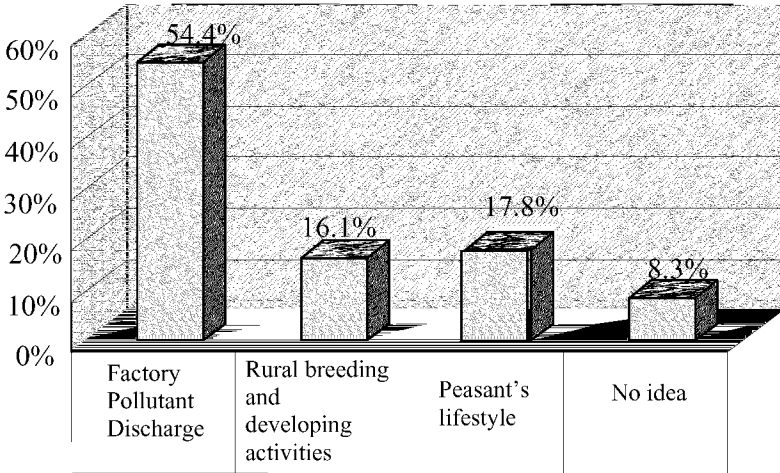


2.4 What are the main areas of the environmental change? (multiple choice)¹

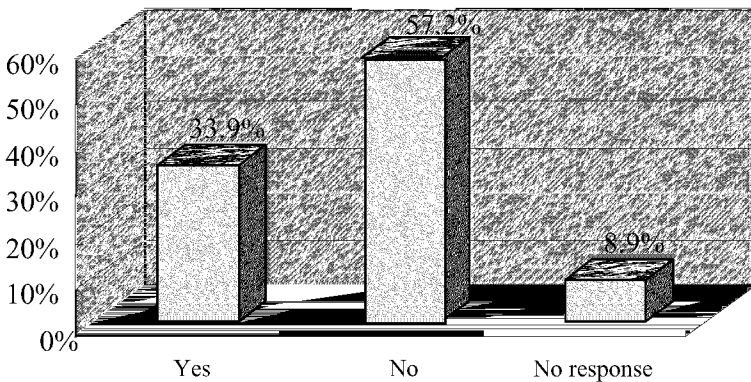


1. For multiple-choice questions, respondents could choose more than one answer.

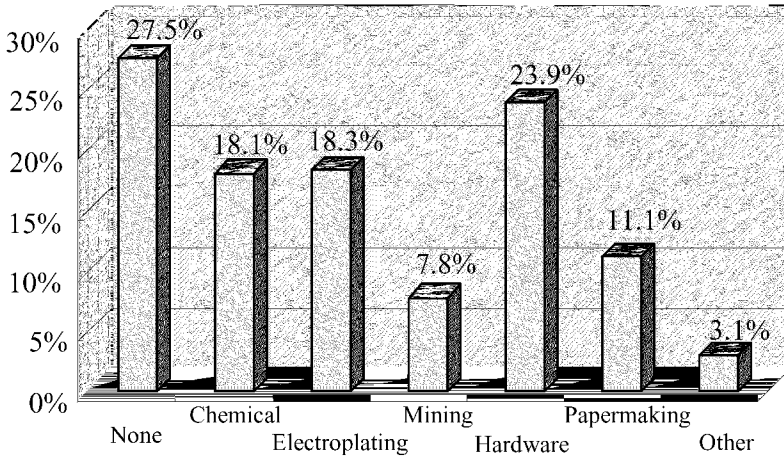
2.5 What are the reasons for the environmental change? (multiple choice)



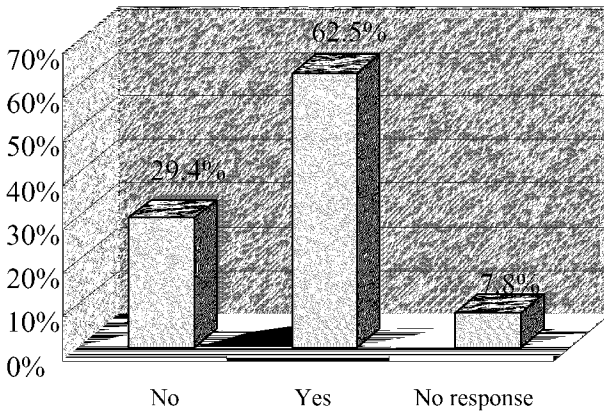
2.6 Do you and your family members ever suffer property loss and health damage because of environmental pollution?



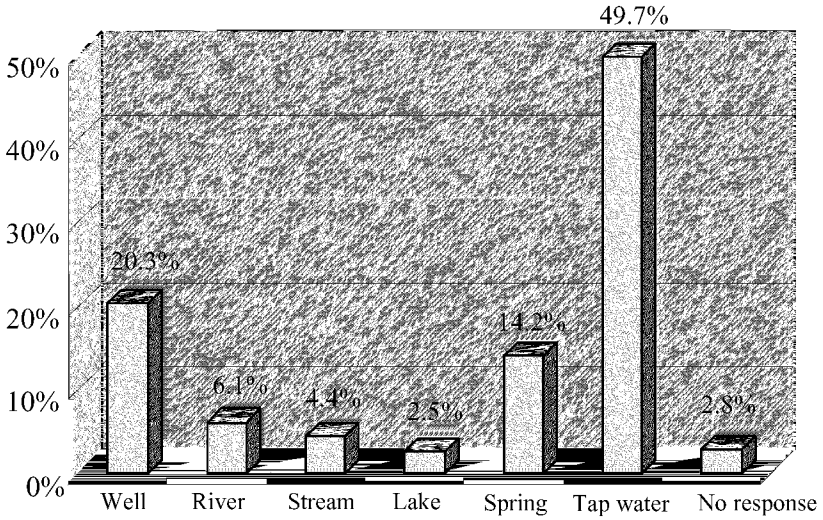
2.7 What kinds of factories does your village have? (multiple choice)



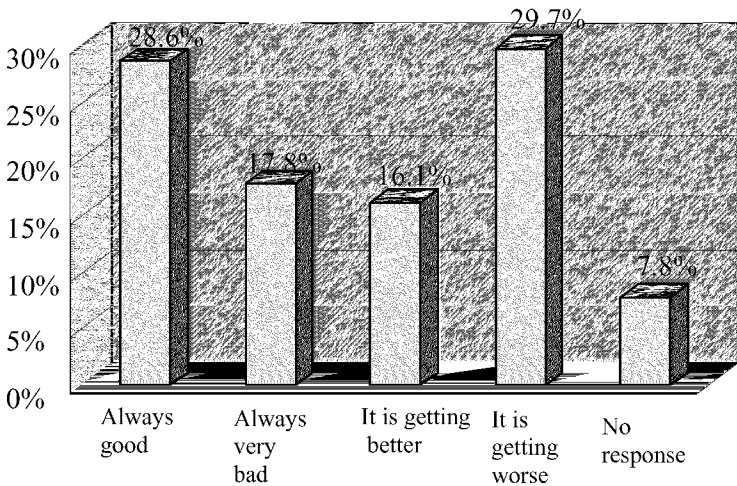
2.8 Are there any investor-established enterprises in your village?



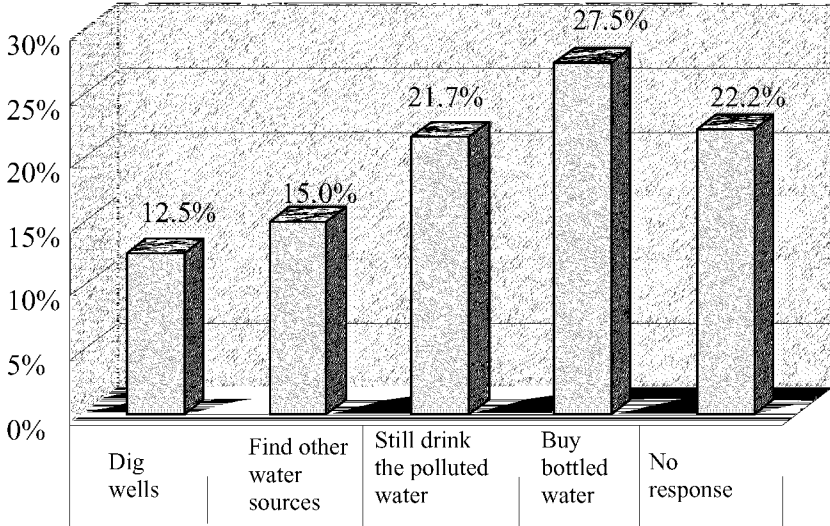
2.9 What is the source of your drinking water?



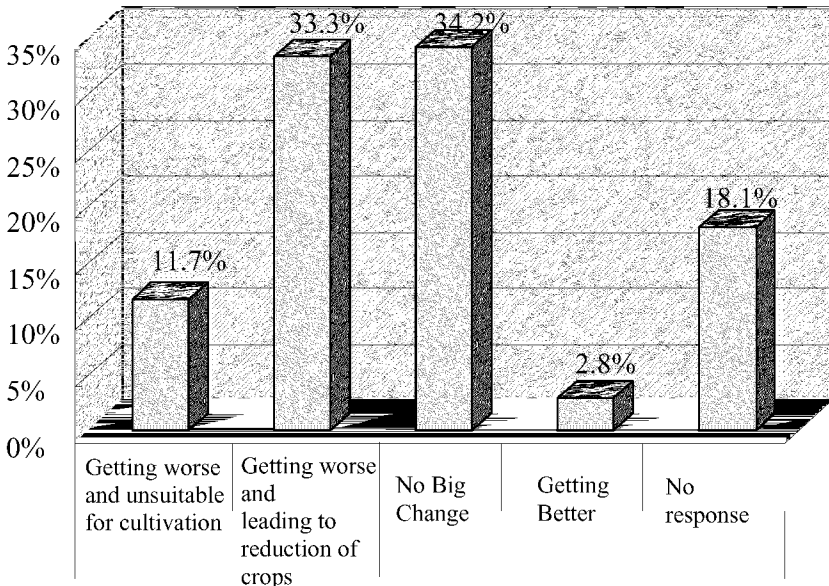
2.10 How is the quality of your drinking water?



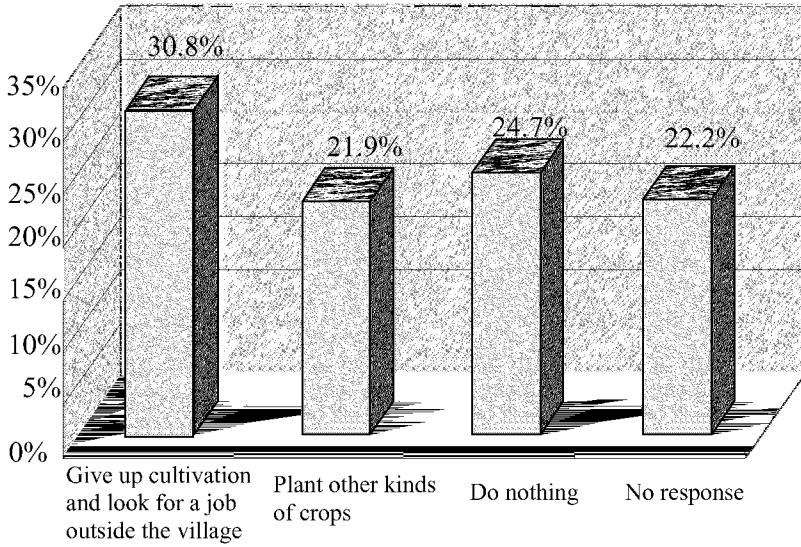
2.11 How do you adapt to this change?



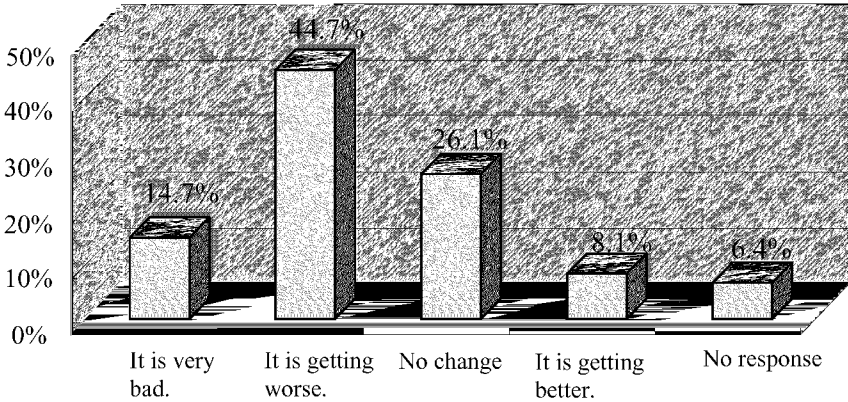
2.12 What is the condition of the farmland?



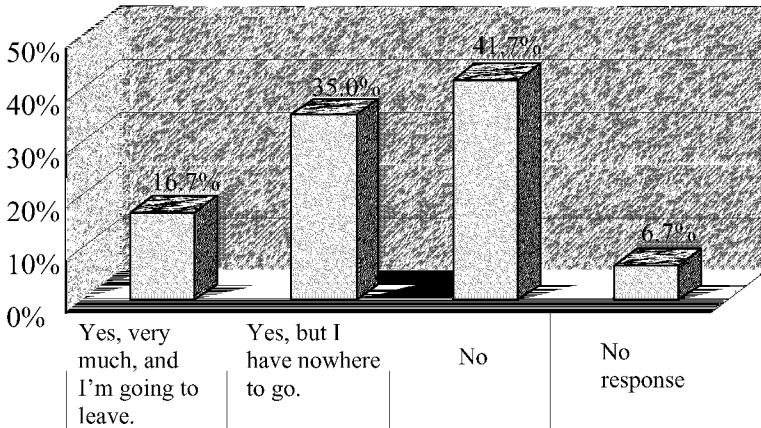
2.13 How do you adapt to this change?



2.14 How is the air quality?

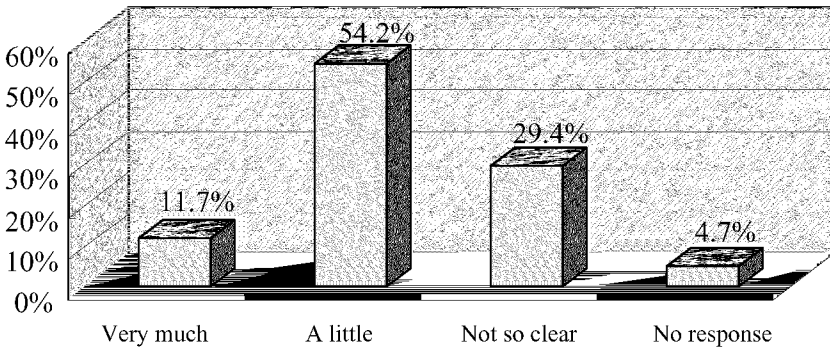


2.15 Do you ever think about leaving your hometown?

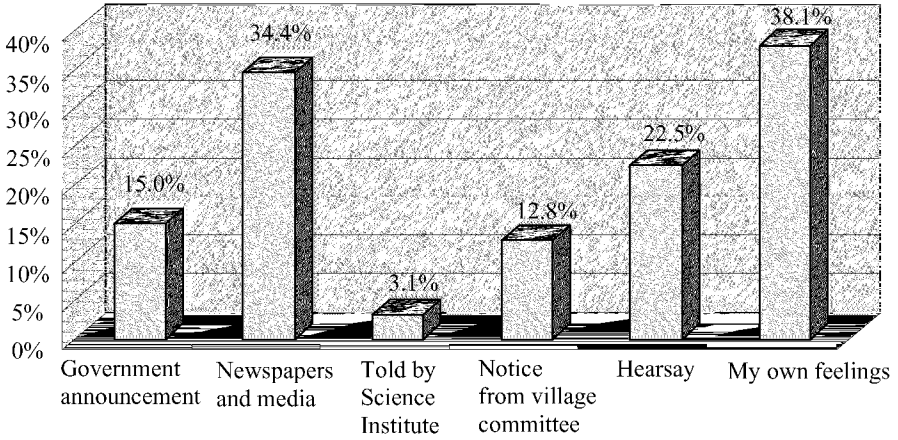


3. The sense of environmental rights and remedies

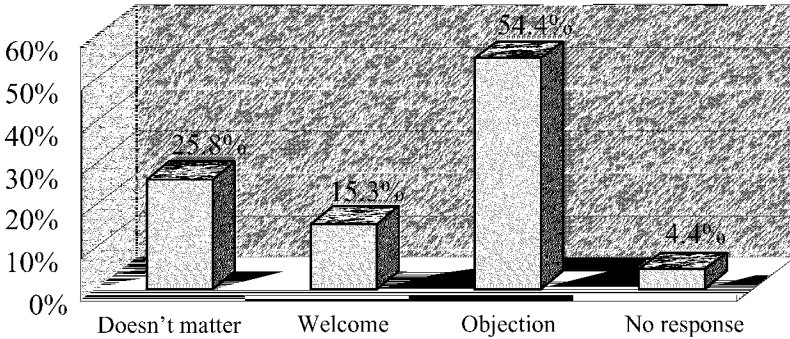
3.1 Do you know the cause of environmental problems?



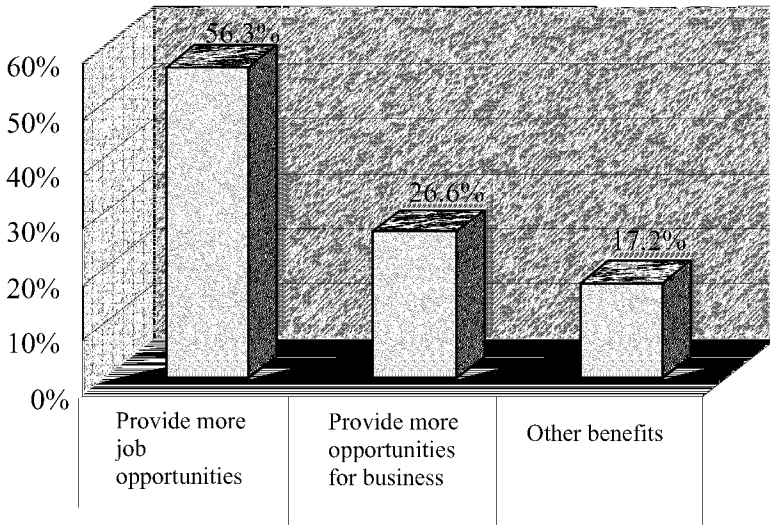
3.2 How do you know it? (multiple-choice)



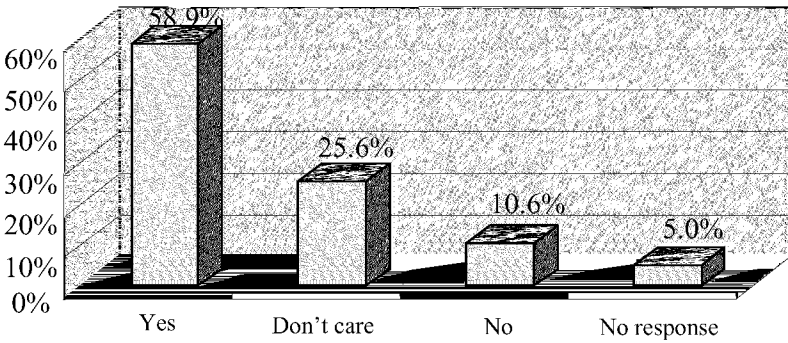
3.3 What is your attitude toward the establishment of polluting enterprises in your area?



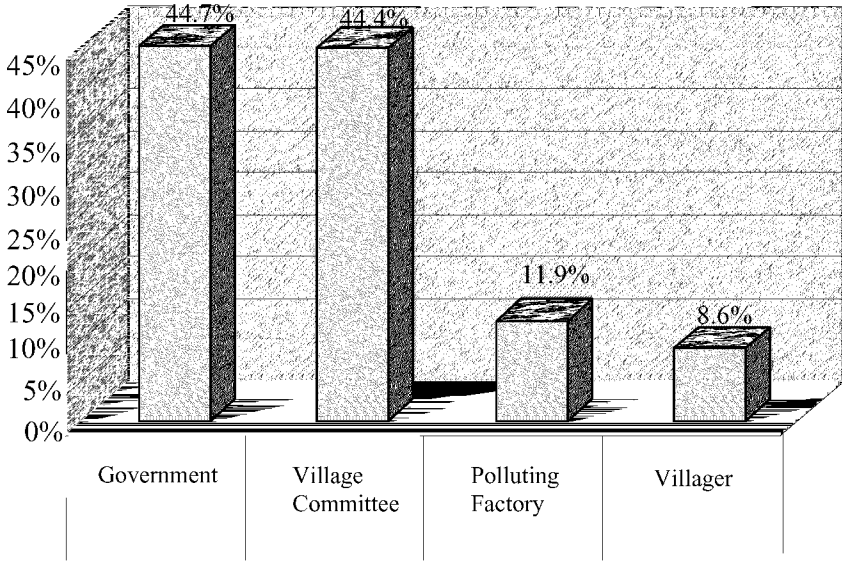
3.4 What are your reasons for not objecting to polluting enterprises?



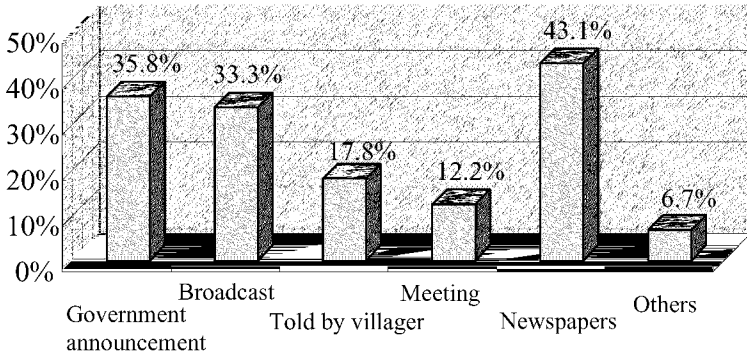
3.5 Do you want access to more information on the environment?



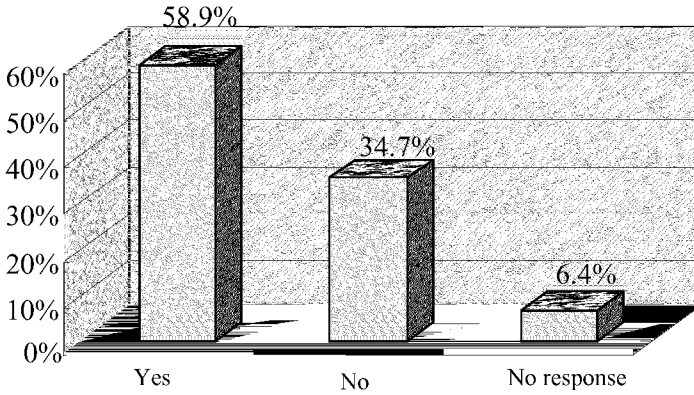
3.6 Who should provide this information? (multiple-choice)



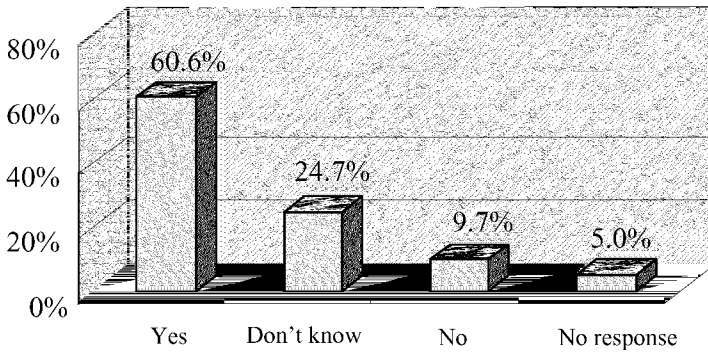
3.7 In what ways do you want to get the information? (multiple-choice)



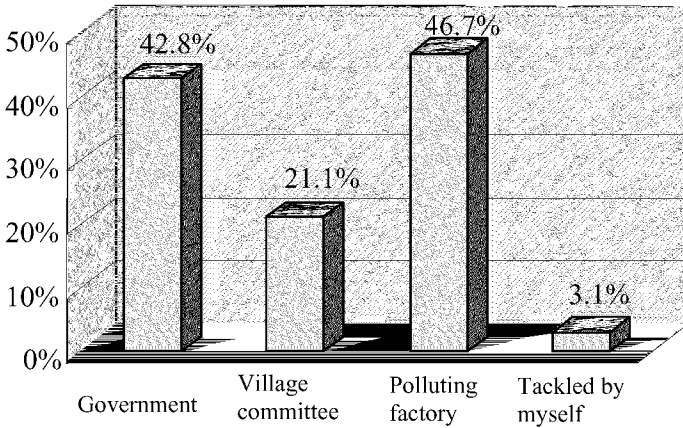
3.8 Did you know that there is a department of environmental protection in our country?



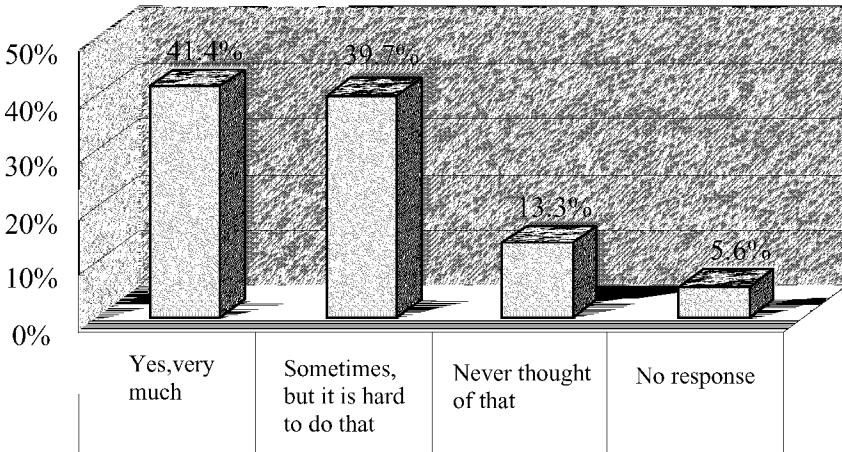
3.9 Do you think that polluting the environment is illegal?



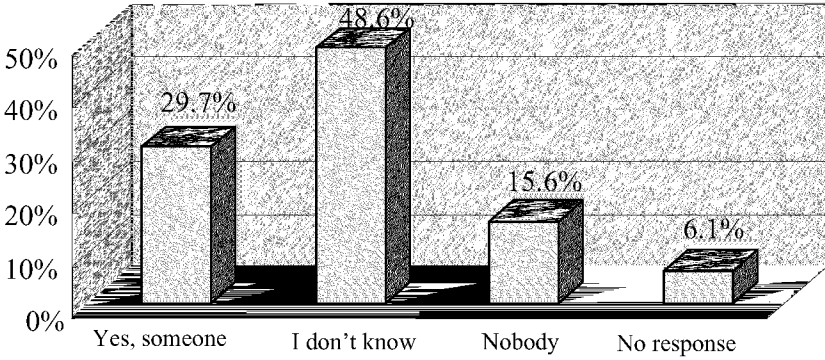
**3.10 Who should deal with environmental pollution problems?
(multiple-choice)**



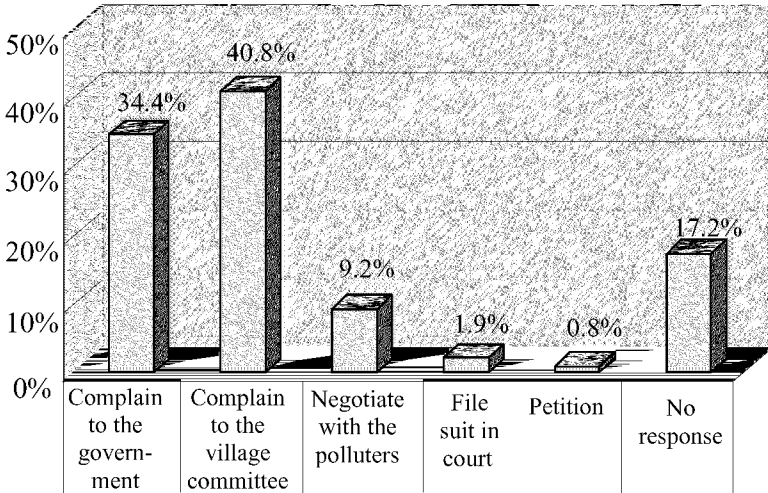
3.11 Have you thought of changing the situation if you are damaged by pollution?



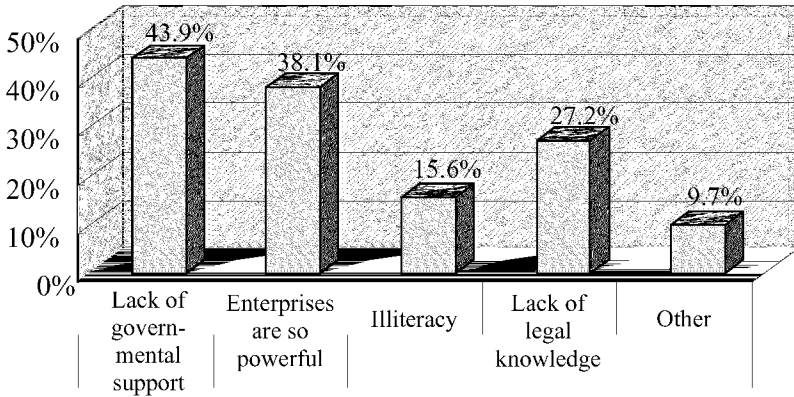
3.12 Do you know who has taken action to change this situation?



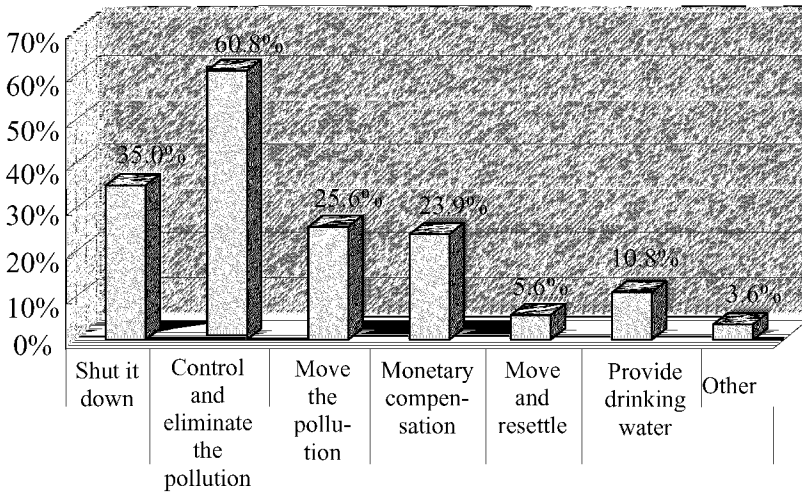
3.13 What means do you prefer to change the pollution situation?



3.14 What are the main difficulties in improving the environment? (multiple-choice)



3.15 What would you do if there were polluting enterprises near your residential area? (multiple-choice)



SPRING 2007 SYMPOSIUM

**CHINA IN TRANSITION:
ENVIRONMENTAL CHALLENGES
IN THE FAR EAST**

March 1 – 2, 2007

*at the
Vermont Law School
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South Royalton, Vermont*

*Hosted by the
Vermont Journal of Environmental Law*

SYMPOSIUM 2007

CHINA IN TRANSITION: ENVIRONMENTAL CHALLENGES IN THE FAR EAST¹

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1. The following speeches and panels were presented during a two day symposium at Vermont Law School on March 1–2, 2007, titled “China in Transition: Environmental Challenges in the Far East.” The Symposium was organized by the *Vermont Journal of Environmental Law* with support provided by U.S. A.I.D. and Vermont Law School. These speeches are also available in audio format at the *Vermont Journal of Environmental Law* website: www.vjel.org.