Enhancing Environmental Protection Through Judicial Means

Environmental Courts and Environmental Public Interest Litigation in China: Current Circumstances, Challenges, and Recommendations

All-China Environment Federation (ACEF)

Natural Resources Defense Council (NRDC)

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All-China Environment Federation

Established on April 22, 2005, the All-China Environment Federation (ACEF) is a Chinese non-profit social organization that consists of individuals, enterprises, and public institutions devoted to environmental protection. The Federation aims to implement the strategy of sustainable development, achieve the State's goals related to the environment and development, and safeguard the environmental interests of the public and society.
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Natural Resources Defense Council

The Natural Resources Defense Council (NRDC) is a non-profit environmental organization with more than 1.3 million members and online activists. Since 1970, NRDC lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and environment. NRDC's China Environmental Law Project has extensively cooperated with the Chinese government, judiciary, academics and local NGOs to implement environmental rule of law through open information, public participation, and effective environmental governance.
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Report Summary and Project Overview

I. Background

Since the reform and opening-up policy, China has made strides toward the construction of a legal system that incorporates environmental protection. However, deteriorating environmental quality has outpaced these efforts. China currently lacks comprehensive environmental legislation and suffers from ineffective law enforcement; under these circumstances, utilizing judicial means to resolve environmental problems has become increasingly important. To achieve the Chinese government's goals of sustainable development, the people's courts have been charged with the authority to increase punishment and sentencing for environmental crimes, accept and hear environmental tort cases, and support administrative authorities in their managerial functions according to the law. However, we must recognize that there are still a number of measures that judicial authorities can take in order to protect the environment, punish illegal actions that harm the environment, and reinforce supervision of environmental law enforcement.

In recent years China has seen the establishment of judicial institutions specifically for the adjudication of environmental cases. These institutions have been set-up throughout the country and include environmental courts, environmental protection tribunals, and environmental collegiate benches (all referred to as environmental courts below). These environmental courts exhibit the growing role of judicial authorities in resolving environmental disputes. The courts have accepted and rendered decisions on a small number of environmental public interest litigation cases; these court decisions have substantially improved the environment and have already created a promising precedent for utilizing judicial channels for enforcing environmental protection.

In practice, however, the environmental courts have encountered considerable difficulties and challenges. This paper seeks to summarize the lessons and experiences of the environmental courts throughout different regions of the country and explore the role of these courts in promoting environmental public interest litigation. We believe this analysis and information is useful for amending and improving environmental laws in China. Furthermore, this report is beneficial to enabling judicial authorities to utilize their special functions in the protection of the environment, punishment of illegal actions that harm the environment, and supervision of government enforcement.

The All-China Environment Federation (ACEF) and Natural Resources Defense Council (NRDC) jointly set up a project team (hereinafter "project team") to complete the field research in this report. From September to October 2010, the project team visited and distributed a field survey at the following courts:

- High Court of Hubei Province;
- Maritime Court of Wuhan City;
- High Court of Yunnan Province;
- Intermediate Court of Kunming City;
- Intermediate Court of Wuxi City; and,

- Intermediate Court of Zhangzhou City.

The field investigation and survey identified the current obstacles faced by the courts in their daily practice and operation. Based on the results of the research investigation and discussions with local judges, we developed a series of recommendations for advancing public interest litigation in China. This project takes environmental courts as the entry point toward achieving this goal. We provide both legislative and judicial recommendations for the long-term development of environmental public interest litigation in China, and our recommendations take a special focus on increasing public participation in environmental public interest litigation.

It is important to note that the recommendations in this report are limited to addressing problems in judicial practice in China. This report does not attempt to provide a comprehensive theoretical legal framework for the establishment of an environmental public interest litigation system in China.

II. Report Structure

This report is organized into four chapters and an appendix:

The first chapter provides an overview and analysis of environmental courts in China. This includes an overview of the history and establishment of the courts, comparison of courts throughout the country, internal organization and structure, and the responsibilities and procedural rules undertaken by the courts. Lastly, the first chapter examines the impact of the courts and obstacles encountered in establishing the environmental courts.

The second chapter analyzes the national political and policy environment as it relates to environmental public interest litigation. This chapter identifies current barriers to environmental public interest litigation in China, and compares approaches taken by courts in different regions of the country and at every level of the judicial system.

The third chapter introduces citizen suits in the USA. This chapter provides a summary of relevant provisions in citizen suits regarding standing and procedure; although the circumstances of China and the USA differ greatly, there are important lessons that can be learned from the US experience in citizen enforcement and the establishment of a robust public interest litigation framework for protecting the environment.

The fourth and final chapter sets forth a series of recommendations for advancing the development of an environmental public interest litigation system in China. The suggestions in this chapter include provisions for standing in environmental public interest litigation, jurisdiction in environmental public interest litigation cases, evidence rules, and other relevant measures.

The appendix at the end provides a general overview of the Chinese governmental structure and judicial system of relevance to this report. Information provided is intended to help facilitate understanding of the vocabulary and principles referenced in this report.

III. Major Findings and Recommendations

A) Environmental Public Interest Litigation in China: Necessity and Feasibility

1) A clear need exists for environmental public interest litigation in China.

Establishing an environmental public interest litigation system in China has been recognized as vital to China's future. This opinion is expressed not only in the academic community but also by legislative institutions, judicial bodies, and administrative departments. The trend in support of an environmental public interest litigation system can be attributed in part to growing awareness about the deteriorating condition of China's environment and to further democratization and strengthened rule of law in China.

As China continues to improve and develop its legal system, international experience in public interest litigation is exceedingly relevant. Indeed, establishing an environmental public interest litigation system would provide a powerful supplement to improving China's environmental legislation, reinforcing citizen monitoring and legal enforcement, and enhancing public awareness.

Establishing and implementing an environmental public interest litigation system will directly benefit environmental, social, and economic policies. Environmental public interest litigation will not only influence the plaintiffs and the court system, it will also promote the emergence of new environmental legislation and impact the revision of current laws to favorably shape a comprehensive legal system.

Secondly, should environmental groups and citizens be given the legal standing as plaintiffs in environmental public interest litigation, these groups would serve as an important supplement to the government's legal enforcement capacity. Should environmental protection administrative authorities also be entitled to standing in environmental public interest litigation suits, the administrative authorities could utilize litigation for enforcement when administrative supervision does not achieve satisfactory outcomes.

Lastly, rules and regulations about standing in a public interest litigation system will be crucial to advancing rule of law in China. Public interest litigation will promote public awareness of environmental protection rule of law, public compliance with the law, and public participation in environmental protection. At the same time, it will be a source of deterrence for offenders.

In summary, establishing an environmental public interest litigation system will greatly improve the legal system from multiple perspectives: environmental laws will be structurally strengthened; legal enforcement and supervision will be reinforced; channels for public participation will be fortified; resolution of social conflicts will be facilitated; and China will continue on its path toward establishing a harmonious society within the framework of rule of law.

2) The establishment of an environmental public interest litigation system is feasible.

The foundation for establishing an environmental public interest litigation system in China is, in many ways, already in place. This is the result of important joint efforts in multiple sectors over the years. We firmly believe that the current legal system, judicial framework and institutional capacity are all currently in a position to foster the establishment of an environmental public interest litigation system in China. This is not only necessary, but it is also feasible in China's near future.

According to the State Council's "Decision on Implementing the Scientific Outlook of Development and Reinforcing Environmental Protection," China will work to "improve the mechanism for providing legal aid to victims of pollution and look into establishing a civil and administrative public prosecution system for environmental issues." In addition, the report from the 17th National People's Congress of the Chinese Communist Party clearly states that China will strive to "cultivate ecological civilization, fundamentally establish an industry structure and growth mode that is energy- and resource-saving and protects the environment." Lastly, Wan E'xiang, Vice President of the Supreme People's Court in China, has called upon China to "learn from the experience of other countries to use judicial means for the protection of the ecological environment—namely, to establish an environmental public interest litigation system in China."

In recent years, the Supreme People's Court issued an advisory opinion governing environmental courts and environmental pollution damage compensation cases. Some local governments and judicial departments throughout the country have also promulgated a series of regulations and documents establishing environmental protection courts and a public interest litigation system. The promulgation of these policies, regulations, and documents has not only provided legal bases for local environmental courts, but has also laid the basis for establishing a national environmental public interest litigation system. In addition, local environmental courts have gradually accumulated important experience in handling public interest cases and creating relevant rules and standards for these trials. Therefore, this combination of broad central support with concrete experiments on the ground in various localities across China have set the stage for the future of China's environmental legal enforcement and protection. A national system permitting environmental public interest litigation is feasible given these exciting circumstances.

B) Legal Barriers for Developing Environmental Public Interest Litigation in China

China's courts, both specialized environmental protection courts and non-specialized courts, currently lack legal basis to try environmental public interest litigation in two main aspects: substantive and procedural.

Chinese laws contain no clear rules regarding environmental rights. Although some local laws and regulations contain provisions about environmental rights, the legal validity of these provisions is unclear without relevant national legislation. Thus, substantive law for environmental rights that are relevant for filing environmental public interest litigation lawsuits currently do not exist.

There are also several procedural laws for environmental public interest litigation that remain unclear. There are no specific laws that stipulate who has the right to file litigation on behalf of the environmental public interest; furthermore, there is no law on how court jurisdiction is to be assigned, how to allocate the burden of proof, when to apply an injunction, how to carry out judgments, and other procedures.

C) Strategy for Developing Environmental Public Interest Litigation in China and Priority Action Areas

1) A macro-strategy for establishing an environmental public interest litigation system.

The path to realizing an environmental public interest litigation system in China requires a multi-tiered strategy that will allow for objectives to be implemented step by step.

In our view, the long-term objective is to write a special law for public interest litigation. This law should set public interest litigation as an independent type of litigation with special procedural rules.

The mid-term objective should be to revise Article 6 of the Environmental Protection Law, establishing environmental public interest litigation provisions similar to citizen suit provisions in the USA. Revision of the Civil Procedure Law and Administrative Procedure Law will be necessary to define the unique procedural rules governing public interest litigation.

In the short–term, the objective is the issuance of a judicial interpretation of Article 6 of the Environmental Protection Law. The interpretation should define filing environmental public interest litigation as another method for citizens to exercise their legal right of action; additionally, it should define "any organization and any person" to include the procuratorate, administrative authorities, environmental protection organizations, and citizens. Lastly, the Supreme People's Court should summarize the experience of courts at different levels in hearing environmental public interest litigation; this will aid the Supreme People's Court in issuing an interpretation or guidance document providing comprehensive judicial procedural rules for environmental public interest litigation.

2) Priority action areas for achieving the above objectives.

The Environmental Protection Law is currently being amended. This offers a unique opportunity for the insertion of provisions that would stipulate citizens' environmental rights and the ability for environmental protection organizations to file environmental public interest lawsuits.

Similarly, the "Comments on Providing Judicial Safeguards for Accelerating the Transformation of Economic Development Modes" also present an opportunity to encourage environmental protection administrative departments to represent the country in litigation seeking compensation for environmental damage caused by pollution. In particular, regional environmental protection supervision and inspection centers under the jurisdiction of the Ministry of Environmental Protection should be encouraged to actively file lawsuits for major cross-regional environmental public interest cases.

Next, through amending the Civil Procedure Law and issuing judicial interpretations, procuratorial authorities should be clearly delegated the right to represent the country when filing environmental public interest litigation in the courts. Standing, procedural rules, and burden of proof all must be further standardized for environmental public interest lawsuits.

Lastly, maritime courts should utilize their unique cross-regional jurisdiction to actively push the Supreme People's Court to issue a judicial interpretation that will clearly state the jurisdiction of maritime courts over water pollution cases and environmental public interest litigation.

D) Judicial and Legislative Recommendations for Developing Environmental Public Interest Litigation

1) Defining environmental public interest litigation.

Environmental public interest litigation is a special kind of litigation designed to protect the public interest. The plaintiff's legal right of action should be stipulated by statute, not restricted by traditional elements of interest, as defined in conventional private interest litigation. Plaintiffs who have no direct interest in the cases should also be able to file public interest lawsuits. The existing Civil Procedure Law and Administrative Procedure Law in China establish norms only for conventional private interest litigation. Should an environmental public interest litigation system be designed within the current conventional legal framework, substantial legal contradictions would still remain to be resolved. Therefore, we also advocate for clearly designed procedural laws governing environmental public interest litigation.

2) Types of environmental public interest litigation.

Environmental public interest litigation should be distinguished into two categories based on the status of the defendant.

The first type of environmental public interest civil litigation should be defined by the defendant's status as an individual or company that has violated the law and caused damage to or destroyed the environment. The relief sought by this type of litigation should be divided into two main categories: requesting the defendant(s) to stop unlawful actions; and, requesting the defendants to partake in renewal and remediation so that the environment returns to its prior conditions before the damage was made, or to provide monetary compensation for the ecological damage to the environment.

The second type of environmental public interest civil litigation should be defined by the defendant's status as an administrative authority that is responsible for the supervision and management of environmental protection. The relief sought by this type of litigation should include two types: requesting the administrative authorities to revoke environmental administrative decisions; and, requesting the administrative authorities to fulfill environmental protection responsibilities as stipulated by law.

3) Standing in environmental public interest litigation.

Plaintiff standing in environmental public interest litigation should be given to administrative authorities tasked with supervision and management of the environment, procuratorial authorities, environmental protection organizations, and citizens.

Subjects who satisfy requirements to be plaintiffs should abide by the rules of precedence when filing environmental public interest lawsuits. If the plaintiff is not an administrative authority, then the relevant administrative authorities should be notified before filing the environmental public interest lawsuit. If the administrative authorities do not take action within the time limit provided by law after receiving the notification, then the complainant should be able to bring their claim to court.

Administrative authorities tasked with supervision and management of the environment should first use administrative supervision and management functions to enforce environmental laws. Only when these measures fail to bring about adequate change should these authorities file environmental public interest litigation within the courts.

All subjects qualified to be plaintiffs should be able to directly file environmental public interest lawsuits in the courts. After accepting an environmental public interest lawsuit, the court should notify other subjects that qualify as co-plaintiffs so that they can join the lawsuit as a third party.

4) Jurisdiction over environmental public interest lawsuits.

Jurisdiction over environmental public interest litigation cases should be centralized. Using the current judicial system as a basis, Intermediate Courts should act as first instance trial courts.

In addition, the advantage of cross-regional jurisdiction for maritime courts should be fully considered. Through a judicial interpretation by the Supreme People's Court or by designated jurisdiction in High Courts, the maritime courts should be given exclusive jurisdiction over environmental public interest litigation cases involving water pollution in cross-regional bodies of water.

5) Injunctions in environmental public interest litigation.

In environmental public interest litigation cases, the court should be able to issue an injunction prior to releasing the judgment in order to immediately curb ongoing polluting actions that damage or destroy the environment.

Courts should be able to issue injunctions when the following conditions are satisfied: evidence adduced by the plaintiff initially establishes that the defendant's polluting actions are in violation of the law; the actions of the defendant are still ongoing; the actions of the defendant may cause major or irreversible damage to the environment. In environmental public interest litigation, the plaintiff should not be required to post a bond.

6) Burden of proof for environmental public interest litigation.

The burden of proof should be inverted in environmental public interest litigation. The defendant should bear the burden to disprove causation between the defendant's actions and the pertinent environmental damage. For environmental public interest litigation that seeks an immediate halting of the defendant's unlawful actions, the plaintiff should only be required to prove that the defendant's actions are unlawful, rather than also having to prove actual damage resulting from the unlawful actions.

Opinions from expert examination should be regarded as expert testimony. The losing party of the lawsuit should be required to pay for the expert examination. Either party should be able to apply for the expert examination to determine the consequences of environmental damage or the causation between the polluting actions and environmental damage. Opinions from the expert examination completed by uncertified examination organizations should also be regarded as expert testimony. After the testimony is verified by the court, such evidence should also be admissible evidence at trial. The courts should issue the ultimate decision regarding whether or not the losing party will bear the expert costs. Administrative documents should also be considered admissible evidence. For environmental public interest lawsuits filed by the procuratorate, environmental protection organizations, and/or citizens, administrative authorities should be obliged to provide relevant administrative documents upon request by the plaintiff. These administrative documents should be regarded as evidence produced by the plaintiff.

7) Judgment rendered for environmental public interest litigation.

Judgments rendered in environmental public interest litigation cases should include: (1) ordering the defendant to fulfill responsibilities within a given time limit; (2) revoking the administrative actions in violation of the law; (3) ordering the defendant to halt actions that cause environmental pollution or damage; (4) eliminating hazards in the environment; (5) restoring environmental quality; (6) compensating for environmental damage; and (7) paying punitive damages.

For environmental public interest administrative litigation, cases filed against administrative authorities for failure to act could result in a court decision ordering the administrative authorities to fulfill their responsibilities within a given time limit; cases filed against administrative authorities for violating the law could result in a court decision revoking the administrative actions that are in violation of the law.

For environmental public interest civil litigation, the court should be able to render a decision that would order the defendant to halt actions that cause environmental pollution or damage; if polluting actions have already caused environmental damage, the court should have the authority to simultaneously order the defendant to carry out remediation and to pay compensation for the environmental damage. The court should also have the authority to decide punitive damages. This monetary compensation should only be used for a specified purpose, or it should go into a public interest fund for environmental restoration and treatment.

For environmental public interest litigation filed by non-public authorities, the court should have the authority to render a judgment that will require the defendant to pay a certain amount to the plaintiff to reward the plaintiff's contribution to the public welfare.

An information disclosure and public supervision mechanism should also be established to assist in the execution of judgments.

8) Litigation costs in environmental public interest litigation.

Litigation costs for the plaintiff in the environmental public interest litigation should be reduced as much as possible. The plaintiff should be allowed to defer the payment of litigation fees when filing a case; if the plaintiff eventually loses the case, the court should be able to decide whether the plaintiff can be exempted from the litigation fee; if the defendant loses the case or adopts restoration measures as a result of a public interest litigation case, the court should be able to require the defendant to pay the litigation fees and the other litigation expenses for the plaintiff, including attorney fees, expert examination fees, etc.

9) Establishment of a public interest litigation fund.

A public interest litigation fund should be established at three distinct levels of the government: national, provincial, and municipal.

The finances that form the public interest litigation fund are derived from allocated government funds, donations from society, and compensation for environmental damage paid from environmental public interest litigation. The public interest litigation fund is primarily used to restore destroyed or damaged environment and to compensate the plaintiff for litigation costs from filing environmental public interest litigation, including litigation fees, attorney fees, expert examination fees, etc.

10) Supplementary measures necessary to promote the development of environmental public interest litigation.

In addition to solidifying laws to include substantive law and clear procedural rules for environmental public interest litigation, other supplementary measures should also be enacted to foster the development of this new type of litigation. These measures could include cultivating public awareness about environmental protection and legal knowledge and training judges, lawyers, and personnel within administrative authorities.

Environmental protection organizations and other social groups will play an increasingly important role in the establishment of an environmental public interest litigation system. Therefore, strengthening the capacity and skills of these organizations will be critical in the effort to promote an environmental public interest litigation system in China.

Chapter One: The Status and Development of Environmental Courts

I. Overview of the Establishment of Environmental Courts

This report uses the term "environmental courts" to refer generally to judicial organs adjudicating environmental cases, including environmental courts and other organs adjudicating environmental cases, such as collegiate benches and circuit courts, within the intermediate people's courts and basic people's courts.

The establishment of environmental courts or specialized courts by the people's courts is not a new phenomenon. In the 20th century, environmental tribunals first emerged in the 1980s (see Table 1). However, such courts operated in large part within the State Environmental Protection Agency and not within the courts. In addition, the tribunals were established in large part to ensure the implementation of administrative decisions and did not involve providing civil relief for victims of environmental pollution.

Table 1. Early Establishment of Environmental Courts

Year of Establishment	Location	Sector
1989	Hubei Province Wuhan City Qiaokou District Basic People's Court	Environmental Tribunal
1996	Liaoning Province Shenyang City Intermediate People's Court	Environmental Tribunal
1999	Heilongjiang Province Harbin City Xiangfang District Basic People's Court	Environmental Tribunal
2002	Liaoning Province Shenyang City Dongling District Basic People's Court	Environmental Tribunal
2004	Jiangsu Province Nanjing City Qinhuai District Basic People's Court	Environmental Collegiate Bench
2004	Liaoning Province Dalian City Shahekou District Basic People's Court	Environmental Circuit Court
2004	Hebei Province Jinzhou City Intermediate People's Court	Environmental Tribunal
2006	Shandong Province Liaocheng City Chiping County Basic People's Court	Environmental Circuit Court
Source: The project team compiled the information from public sources.		

The emergence of such tribunals prompted the Supreme People's Court, in its Feb. 10, 1989 response to the "City of Wuhan Qiaokou District People's Court's Establishment of an Environmental Court Status Report," and its notification (No. [1993]37) following the publication of the "Vice President Ma Yuan's National Civil Trials Seminar Speech" and the "National Civil Trials Symposium Minutes," to state:

"Currently, some regions have established specialized courts (e.g. tax courts, environmental courts, real estate courts, etc.). The utilization of personnel from administrative departments for the purposes of adjudication in these specialized courts is inappropriate…

The roles and functions of administrative and judicial organs should not be obfuscated. The people's court should not join with administrative departments in establishing specialized courts."

Because these types of specialized courts did not receive approval from supreme judicial authority, they have become defunct. Around 2006, the Liaoning Province High Court formally informed the Shenyang City Intermediate Court that in order to ensure judicial fairness and the people's courts' standardization of procedures, the Shenyang City Intermediate Court shall order the removal of all courts unsupported by the law. Shenyang's Environmental Court has also become defunct.

However, as China's environmental pollution and destruction crises accelerate, the demand for a movement toward judicial enforcement of environmental protection is growing rapidly. Since entering the 21st century, the establishment of environmental courts has resurfaced. The provinces of Jiangsu, Liaoning, Hebei, and Shandong have each established environmental circuit courts that specialize in adjudicating environmental cases. These courts have elicited widespread public attention. In 2007, Guiyang City of Guizhou province established an environmental court. Subsequently, Wuxi City of Jiangsu Province, Kunming City of Yunnan province, and Zhangzhou City of Fujian province established specialized environmental courts. (See Table 2.)

Table 2. Current Environmental Courts in China

Place of Establishment			Date	Court
Fujian Province	Fuzhou City	Gulou District Basic People's Court	05/2009	Environmental Collegial Tribunal
	Zhangzhou City	Intermediate People's Court	05/2010	Ecological Resources Court
		Nanjing County Basic People's Court	05/2010	Ecological Resources Court
		Longhai City Basic People's Court	04/2010	Environmental Collegial Tribunal
		Zhangpu County Basic People's Court	05/2010	Ecological Resources Collegial Tribunal
	Sanming City	Datian County Basic People's Court	06/2010	Natural Resources Collegial Tribunal
		Taining County Basic People's Court	04/2010	Tourism Ecological Resources Collegial Tribunal
	Ningde City	Zherong County Basic People's Court	06/2009	Ecological Environmental Court
Guizhou Province	Guiyang City	Intermediate People's Court	11/2007	Environmental Court
		Qingzhen City Basic People's Court	11/2009	Environmental Court

Guizhou Province, cont'd.	Liupanshan City	Zhongshan District Basic People's Court	03/2010	Industry and Mining Environmental Court
	Tongren City	Wanshan Special County Basic People's Court	04/2008	Environmental and Natural Resources Collegial Tribunal
	Bijie Prefecture	Qianxi County Basic People's Court	09/2008	Environmental Collegial Tribunal
Hainan Province		Changjiang Lizu Autonomous County	11/2008	Environmental Collegial Tribunal
Hunan Province	Zhuzhou City	Chaling County Basic People's Court	07/2009	Environmental Collegial Tribunal
	Chenzhou City	Yizhang County Basic People's Court	04/2010	Environmental Collegial Tribunal
Jiangsu Province	Nanjing City	Jianye District Basic People's Court	02/2008	Environmental Circuit Court
	Wuxi City	Intermediate People's Court	05/2008	Environmental Court
		Binhu District Basic People's Court	05/2008	Environmental Collegial Tribunal
		Xishan District Basic People's Court	05/2008	Environmental Collegial Tribunal
		Huishan District Basic People's Court	05/2008	Environmental Collegial Tribunal
		Beitang District Basic People's Court	05/2008	Environmental Collegial Tribunal
		Jiangyin City Basic People's Court	05/2008	Environmental Collegial Tribunal
		Yixing City Basic People's Court	05/2008	Environmental Collegial Tribunal
	Changzhou City	Xinbei District Basic People's Court	08/2008	Environmental Circuit Court
	Yancheng City	Sheyang County Basic People's Court	11/2010	Environmental Circuit Court
Shaanxi Province	Xi'an City	Beilin District Basic People's Court	09/2007	Environmental Collegial Tribunal
Shandong Province	Qingdao City	Chengyang District Basic People's Court	04/2010	Environmental Court
Sichuan Province	Yibin City	Cuipin District Basic People's Court	10/2009	Environmental Circuit Court
Tianjin City		Heping District People's Court	04/2009	Environmental Collegial Tribunal
Yunnan Province	Kunming City	Intermediate People's Court	12/2008	Environment Court
	Yuxi City	Intermediate People's Court	12/2008	Environment and Natural Resource Court
		Chengjiang County Basic People's Court	01/2009	Environment and Natural Resource Court
		Tonghai County Basic People's Court	01/2009	Environment and Natural Resource Court
	Qujing City	Huize County Basic People's Court	07/2009	Environmental and Natural Resource Collegial Tribunal

Yunnan Province, cont'd.	Wenshan Zhuang and Miao Autonomous Prefecture	Funing County Basic People's Court	07/2009	Environmental Collegial Tribunal
Beijing City		Yanqing County Basic People's Court	11/2010	Environmental Court
Source: The project team compiled the information from public announcements (as of Dec. 30, 2010).				

Based on the information gathered, China now has 11 provinces that have established 39 different environmental courts. Six intermediate people's courts have set up environmental tribunals, ten basic people's courts have set up environmental courts, 18 basic people's courts have set up environmental collegial tribunals, and five basic people's courts have set up environmental circuit courts.

The current environmental courts are sufficiently separated from environmental protection agencies, thus differentiating these current courts from the earlier courts created in the 20th century and bringing the current courts closer aligned with the original intent of "environmental courts." Thus, the current courts have received approval from the highest judicial authorities. On June 29, 2010, the Supreme People's Court, in its "Opinion on Judicial Guarantee and Service in Order to Speed Up the Transformation of the Mode of Economic Development," stated: "Courts that receive a high volume of environmental disputes may establish environmental divisions, specializing in environmental adjudication, in order to increase judicial expertise in environmental protection."

II. Comparison of Environmental Courts

In practice, the environmental courts of Wuxi, Guiyang and Kunming have made the largest impact in advancing environmental public interest litigation. Focusing on these three region's environmental courts, the following analysis will compare the environmental courts of different regions.

A. Background on the Establishment of Environmental Courts

Two general rules can be gleaned from an analysis of the establishment of environmental courts in China:

1) Major environmental pollution incidents are catalysts to the creation of environmental courts.

Of the aforementioned three regions' courts, Guiyang was the first to attempt the creation of environmental courts. The Environmental Court of Guiyang Intermediate People's Court and Environmental Court of the Qingzhen Basic People's Court (hereinafter "Guiyang Environmental Court" and "Qingzhen Environmental Court," respectively, and together as "Guiyang Environmental Courts") were created following serious pollution of the "Two Rivers, One Reservoir" (两湖一库), which refers to the Hongfeng Lake, Baihua Lake, and Aha Reservoir in Guiyang. Similarly, with the backdrop of the Taihu Lake water resources crisis, the Environmental Court of the Wuxi Intermediate People's Court's acceptance of the first environmental public interest lawsuit commenced by an environmental organization drew widespread public attention.

The Environmental Court of Kunming Intermediate People's Court, representative of the Yunnan environmental courts, was created following serious lake pollution. In particular, the pollution of the Dianchi Lake and Yangzong Sea directly spawned the creation of the environmental courts in Kunming and Yuxi.

2) The support of local leaders and higher courts are requisite political safeguards.

Establishing environmental courts involve staffing, funding, and other resource issues. Solely relying on the ability of the court itself to operate, without the support of local leadership and higher courts, is difficult. Environmental courts with stronger influence, like those in Guiyang, Wuxi, and Kunming, have all received the support of local leadership and higher courts. For example, after the Guiyang Intermediate People's Court requested the establishment of environmental courts to the Guiyang Province Party Committee, Guiyang City Party Committee, and Guiyang Higher People's Court, the Guiyang Environmental Courts were created in 68 days, a speed rarely seen in China.

The Environmental Court of the Wuxi Intermediate People's Court was established even more expeditiously. When the Wuxi City government recommended that the Wuxi Intermediate People's Court establish an environmental court, this recommendation was quickly approved by the provincial Higher People's Court and Supreme People's Court. The time from recommendation to the opening of the environmental court was only approximately a month.

The establishment of the Environmental Court of the Kunming Intermediate People's Court received the benefit of support from the Kunming City Party Committee and the Yunnan Higher People's Court.

B. Institution Type

Of the existing environmental courts, there are four main types: environmental courts at basic courts, environmental courts at intermediate courts, environmental collegial tribunals and environmental circuit courts. Some higher courts are preparing, or have already created, environmental collegial tribunals. For instance, the Yunnan Higher People's Court established a more permanent staff for its environmental collegial tribunal, focused on hearing environmental cases.

The majority of environmental courts established at the basic and intermediate levels are newly created independent judicial institutions. There are a minority of environmental courts that have been created through the modification of existing institutions. The Ecological Resource Court of Zhangzhou City Intermediate People's Court was created through modifying its former Forestry Court. Whether newly created or not, environmental courts in the form of independent institution are officially acknowledged by official institutions and have relatively more stable staffing and financial support.

In contrast, the environmental collegial tribunals are not independently standing judicial institutions. Such tribunals are frequently held in other courts. For example, the Kunming environmental collegial tribunals are frequently held in administrative courts, and the Zhangzhou

environmental collegial tribunals are often held in civil courts. In order to improve expertise, these tribunals are frequently composed of relatively consistent staff.

In addition, there is a special type of environmental judicial body—the environmental circuit court. These court judges are appointed in rotation by the basic courts. They regularly tour within the jurisdictional area to receive and adjudicate cases. In practice, environmental circuit courts mainly hear environmental administrative cases; its main responsibilities are to provide legal advice to people seeking redress on environmental rights, mediate environmental administrative disputes prior to the commencement of a lawsuit, mediate environmental civil disputes and damages prior to the commencement of a lawsuit, adjudicate simple administrative procedure cases, adjudicate environmental enforcement cases commenced by the environmental department, and adjudicate other environmental enforcement administrative cases.

C. Institutional Duties

Overall, existing environmental courts use environmental protection as a nexus to combine cases involving criminal, civil and administrative legal issues into one lawsuit, thus creating the "three in one" (三合一) or "four in one"（四合一） model. The difference between the two models is whether the environmental court enforces court decisions.

The Environmental Court of Guiyang Intermediate People's Court has jurisdiction over cases involving the "Two Rivers, One Reservoir" (两湖一库) water resources protection, water and land within the jurisdiction of Guiyang, mountain and forest protection, water drainage and emission violations, compensation for environmental damages, environmental public interest litigation and related civil, administrative, and criminal claims in the first and second instances. When authorized by the Guizhou High People's Court, the Environmental Court of Guiyang Intermediate People's Court can adjudicate administrative, criminal, civil, and other enforcement cases outside of Guiyang's jurisdiction related to the "Two Rivers, One Reservoir" water resources, fishery resources, forest resources, and land resources protection.

The Environmental Court of Wuxi Intermediate People's Court is charged with the following duties: adjudication of criminal, civil, and administrative cases in the first and second instances within the jurisdiction of Wuxi City involving water and land protection, mountain and forest protection, emission violations, environmental damage compensation, environmental public interest litigation and related criminal, civil, and administrative cases in the first and second instances; the enforcement of judgments; notifying relevant institutions and businesses of judicial opinions related to environmental protection, publicizing and disseminating relevant legal information, and providing professional guidance to the basic level courts.

The Environmental Court of Kunming Intermediate People's Court is charged with adjudicating cases within the jurisdiction of Kunming City involving environmental protection "One Lake, Two Rivers" (一湖两江) basin administration, including drinking water protection in criminal, civil, and administrative public interest and enforcement lawsuits of the first and second instances.

It is worth noting that whether the "three in one" or "four in one" model is employed, the cases are largely limited to pollution and environmental damage actions. The Environmental Court of the Zhangzhou Intermediate People's Court has expanded its caseload to include natural resources cases. According to the trial implementation rule "Ecological Resources Courts' Jurisdictional Scope Rule," Ecological Resources Courts hear wide ranging ecological environment disputes involving criminal, civil, and administrative law.

D. Jurisdiction

Environmental courts have largely followed the principle of territorial jurisdiction set out by the three main procedural laws (Civil Procedure Law, Administrative Procedural Law, and Criminal Procedure Law). Therefore, environmental courts hear only those cases that take place within a court's territorial jurisdiction. However, environmental protection cases often entail cross regional pollution. Adhering to a strict principle of territorial jurisdiction inhibits the courts' adjudicatory ability.

Guiyang's attempt to transcend territorial jurisdiction is instructive. The Guiyang Intermediate People's Court assigns all first instance environmental protection cases to the Qingzhen City Environmental Court. In this way, Guiyang has instituted cross regional jurisdiction at least within its own province. Similarly, the Guiyang Higher People's Court has assigned to the Environmental Court of the Guiyang Intermediate People's Court first instance criminal, civil, and administrative cases involving the "Two Rivers, One Reservoir" water, fisheries, forestry and land resources protection, administration, and violations. This cross regional jurisdiction is, however, limited to environmental protection cases involving the "Two Rivers, One Reservoir."

E. Accepting and Adjudicating Cases

Since the establishment of environmental courts, the number of environmental cases accepted and adjudicated has increased dramatically (see Table 3).

Table 3. Number of Environmental Cases Accepted by Environmental Courts

	Environmental cases accepted			
	Criminal	Civil	Administrative	Total
Kunming	12	7	3	22
Guiyang	129	13	28	170
Wuxi	600+			
Zhangzhou	100+			
Source: Information compiled by the project team, as of Oct. 2010.				

For example, before the Qingzhen City Environmental Court was established in Nov. 2009, the Qingzhen Court received only seven environmental cases in 2006. Since the environmental court's establishment, there have been a total of 170 environmental cases. Wuxi's basic and intermediate level courts accepted 302 environmental cases between 2005 and 2007. After the establishment of Wuxi's environmental courts through Oct. 2010, the Environmental Court of Wuxi Intermediate People's Court alone adjudicated over 600 cases.

However, some environmental courts have experienced a lighter caseload. For example, the Environmental Court of the Kunming Intermediate People's Court has accepted 22 cases and

adjudicated 20 cases since its inception on Dec. 11, 2008. The caseload of the Environmental Court of Zhangzhou Intermediate People's Court has not varied much from that of its former Forestry Court.

Overall, the caseload of environmental courts have increased, reflecting the need for the adjudication of environmental cases. Still, there are several problems that must be noted:

First, there are very few public interest environmental lawsuits. Thus far, the environmental courts of Qingzhen, Wuxi's Intermediate People's Court, and Kunming's Intermediate People's Court have cumulatively accepted only six environmental public interest cases.

Second, the caseload of the environmental courts of Guiyang and Kunming largely consist of criminal cases, which account for at least 50% of the cases. This may be partly attributed to the procuratorates' higher likeliness of prosecuting a case. In Wuxi, the main casework is on non-litigation administrative enforcement, which may partly be attributed to Wuxi's emphasis on utilizing the courts to support environmental enforcement by environmental agencies.

Third, many environmental courts that do not have enough environmental cases take on other non-environmental cases in order to reach their assessment targets of caseload. The Environmental Court of Wuxi Intermediate People's Court accepted second instance civil cases and the Environmental Court of Zhangzhou Intermediate People's Court adjudicated many labor dispute cases.

F. Procedural Rules

In general, environmental courts' procedural rules follow those of civil, administrative, and criminal law, depending on the nature of the case. In terms of traditional environmental cases, this approach is not inappropriate. However, for environmental public interest litigation, such procedural rules may be too restrictive. Based on traditional administrative and civil procedure rules, the requirement that the plaintiff must have a direct interest in the case would result in almost no one being able to commence an environmental public interest lawsuit. Even if the environmental agencies and departments might satisfy the direct interest requirement, traditional legal rules still remain challenging for judges and parties to apply to environmental cases. In order to avoid confusion, some environmental courts have explored using special environmental public interest litigation procedures (see Table 4).

Table 4. Environmental Public Interest Litigation Procedures in Local Courts

	Document Name	Institution of Issuance	Date of Issuance	Main Details
Jiangsu Province	Provisional regulations on the handling of civil environmental public interest cases	Wuxi City Intermediate People's Court; Wuxi Municipal Procuratorate Office	9/2008	Procedural rules on the procuratorate's initiating case

Jiangsu Province, cont'd.	Opinion on environmental agencies' providing evidence to the procuratorate in civil environmental public interest litigation	Wuxi City Intermediate People's Court; Wuxi Municipal Procuratorate Office; Wuxi Municipal People's Government Office of Legislative Affairs	12/2008	Procedural rules on administrative agencies providing evidence to the procuratorate in civil environmental public interest litigation
Yunnan Province	Minutes from the conference on the establishment of environmental courts and the adjudication of environmental cases in Yunnan	High Court of Yunnan Province	05/2009	Clarifies plaintiff standing and procedural rules in environmental public interest litigation
	Opinion on coordinating the implementation of environmental protection enforcement mechanisms	Intermediate Court of Kunming; Kunming Municipal People's Procuratorate Office; Kunming Public Security Bureau; Kunming Environmental Protection Bureau	11/2008	Clearly establishes the plaintiff's standing in environmental public interest litigation
	Opinion on issues pertaining to the handling of civil environmental public interest litigation (Provisional)	Intermediate People's Court of Kunming	11/2010	Establishes detailed procedural rules on civil environmental public interest litigation
Guiyang Province	Regulations on promoting the establishment of an ecological civilization	Guiyang People's Congress	03/2010	Clearly defines plaintiff standing in environmental public interest litigation
	Opinion on vigorously promoting environmental public interest litigation and advancing an ecological civilization	Intermediate People's Court of Guiyang	03/2010	Clearly defines plaintiff standing and procedural rules in environmental public interest litigation
Source: The information was compiled by the project team based on research data collected and publicly reported data.				

G. The Procuratorate, Environmental Protection Bureau, and Joint Working Mechanisms

Environmental protection is a systematic project that requires a comprehensive approach; emphasis must be placed on the source of prevention. If legislation is a source of prevention and enforcement is the process, then the justice system is the ultimate securer of legal rights. Therefore, in order to utilize the judiciary as a mechanism for environmental protection, it is crucial to understand its system and position: resolving environmental disputes is only one way through which the courts can play a role in environmental protection. In fact, resolving disputes may not be its most important role; in the realm of environmental protection, the judiciary is able to advance the development of environmental protection law and bolster enforcement through adjudicating and resolving disputes.

Many local environmental courts have since their establishment began attempting to collaborate with the Procuratorate, administrative agencies, and legislature to set up joint working mechanisms, demonstrating the greatest effect of the judiciary.

Kunming created an environmental protection enforcement joint working mechanism consisting of the courts, procuratorate, and 19 related administrative departments. From the joint working mechanism, the Kunming Intermediate People's Court established its environmental court, the Kunming Procuratorate established its environment and natural resources inspection bureau, and the Kunming Public Security Bureau created its environmental protection sub-bureau. Through this cooperative mechanism, the courts are able to be involved with environmental litigation enforcement in a more active way before legal disputes break out. For example, the courts can provide legal advice and recommendations for administrative departments. This allows the courts to avoid being restricted to a passive role in adjudicating cases after disputes have already arisen.

Likewise, the Zhangzhou Intermediate People's Court has joined with the forestry, environmental protection, water conservancy, land, ocean, and planning administrative agencies to create a joint working mechanism. Through periodic discussion forums, the joint working mechanism works on solving enforcement problems encountered by environmental administrative agencies. Additionally, through the exchange of information, expert witness testimony, dispute resolution, and regular communication policies, the joint working mechanism is able to strengthen communications and cooperation, fully maximize the specialty of each institution's expertise, and promote environmental justice and enforcement. Generally, the joint working mechanism meets in a quarterly or biannual conference; emergency joint conferences may also be held when major environmental incidents occur. Through the joint working mechanism, the Zhangzhou Intermediate People's Court can discover environmental disputes, instruct the administrative agency in carrying out mediation before litigation takes place, and, when necessary, affirm the mediation.

III. Environmental Courts' Effectiveness and Challenges

Since the establishment of the two Guiyang Environmental Courts in 2007, other environmental courts across the country have sprung up. The establishment of these environmental courts has provided major support for the advancement of environmental protection and the enforcement

efforts of environmental government agencies across the country. However, the development of environmental courts has met obstacles.

A. Environmental Courts' Effectiveness

1) Standardize legal application and increase judges' expertise.

Environmental cases require a greater need for judicial expertise. Distributing cases across general courts can lead to inconsistent results, which can undermine the authority of the courts. Establishing specialized environmental courts with exclusive jurisdiction over environment related criminal, civil, and administrative cases would help maximize the efficient use of judicial resources, provide consistency, and raise the level of judicial expertise.

Through specialized courts, judges will be able to gain expertise in procedural rules, scientific evidence, and other professional issues. Increasing the judges' expertise will also improve the quality of adjudication.

2) Raise environmental protection awareness and strengthen environmental enforcement monitoring.

In the area of establishing environmental courts, environmental awareness has undoubtedly risen among policymakers at all governmental levels, administrative agencies, and the public. This has provided a solid foundation for, and guarantee of, the prompt address of sudden environmental crises and emergencies and the improvement in environmental management and enforcement monitoring. For example, after the establishment of Wuxi's environmental courts, the municipal government and the People's Congress now seek the environmental courts' opinion on environmental policy and decision-making. The public's awareness of environmental protection has also risen. As Qingzhen's environmental court has discovered, the public will, upon discovery of illegal behavior, notify both the administrative agency and the environmental court, in order to pressure governmental institutions to aggressively investigate illegal behavior. This kind of public action in Qingzhen prior to the establishment of the environmental court was very rare. An increase in public awareness has also proved beneficial to elevating the quality of adjudication, manifested by the increase in the court's attention to, and involvement in, environmental cases and especially by the increase in technical expertise provided to the courts by designated agencies and departments. Some judges of environmental courts believe that the increase in the number of mediation cases is a result of the increased involvement by these expert agencies and departments. The Guiyang Environmental Courts have accepted 62% of all civil environmental mediation cases.

The adjudication of typical environmental cases also has a deterrence effect on potential violators. For example, since the trial of the Yangsong Ocean pollution case, there has not been another comparable instance of environmental violation and damage within the province of Yunnan. Similarly, through the expanded power of non-litigation administrative enforcement, punishment for environmental violations has become easier to impose, thereby providing an additional deterrence force.

3) Promote the advancement of environmental public interest litigation.

Although the number of environmental public interest litigation cases remains low, it has already increased substantially from the time before environmental courts were established.

Through specializing in environmental cases, the environmental courts have provided an innovative foundation and space for environmental public interest litigation in China. The formulation of environmental courts has led to the official creation of environmental public interest litigation rules. The accumulation of environmental cases and decisions has helped to establish the environmental public interest litigation system.

B. Environmental Courts' Challenges

1) Statutory basis for the establishment of environmental courts is unclear.

According to the People's Court Organization Law, art. 24, ¶2, art. 27, ¶2, and art. 31, ¶2, the intermediate court, high court and Supreme People's Court establish criminal, civil, and economic divisions, and are allowed to establish other tribunals and courts based on need. This should be the statutory basis for the establishment of environmental courts.

Therefore, the establishment of environmental courts at the intermediate court level is grounded in statute; however, the establishment of environmental courts at the basic court level still lacks statutory grounds. Indeed, the Supreme People's Court has already stated in its response "Regarding Qiaokou District, Wuhan City People's Court's Establishment of an Environmental Court Report" that at the basic court level, the establishment of environmental courts is not authorized by statute.

Since there is no statutory basis for establishing environmental courts at the basic court level, environmental courts can be created at the intermediate and high court levels. However, even with statutory basis, the establishment of environmental courts at these levels will still run into conflict with subject matter jurisdiction of courts at different levels provided in the People's Court Organization Law, Civil Procedure Law, Criminal Procedure Law, and Administrative Procedure Law.

For instance, the model of the Environmental Courts of Wuxi Intermediate People's Court and Kunming Intermediate People's Court follows the law in establishing environmental courts in the intermediate level. However, it does not follow the "two trials and one final ruling system" as stipulated by statutory law. If the environmental court of the first instance is set at the basic court level, then statutory basis is lacking; if the environmental court of the first instance is set at the intermediate court level, then it would not be in compliance with jurisdictional rules and contrary to the rules on case acceptance by intermediate courts.

From the rule of law perspective, the legality of environmental courts is the largest obstacle to ensuring their survival. The establishment of environmental courts in various regions reveals that the support of key local political leaders is an important safeguard for the courts' survival. If the local leaderships' support for the environmental courts falters and the courts have also not received excellent performance marks, then the survival of the courts becomes tenuous.

Therefore, in order to ensure the continued survival of the courts, their existence must be authorized by statute.

2) The environmental courts' functional status is unclear.

What is the function of the environmental courts? Why are environmental courts needed? Most political leaders have probably not seriously contemplated these questions. The creation of environmental courts has thus far largely resulted from political leaders responding to major environmental pollution crises. They have been viewed as image-building projects for political leaders who seek to show their commitment to solving environmental pollution problems.

If environmental courts only fulfill the same functions as the existing courts, then environmental courts are not adding much value to the current court system. Some environmental courts, such as those in Guiyang, Wuxi and Kunming, have dealt with this problem by specializing in environmental public interest cases. As the judges of the Environmental Court of the Wuxi Intermediate People's Court stated, "We must consider the problem of the environmental court's survival; if it does not have a special function, it will be shutdown. The environmental court's adjudication of environmental public interest cases is its main differentiated asset that is not easily replaceable." However, subject to existing laws and regulations, environmental courts' promotion of environmental public interest litigation has been rather slow and is faced with a myriad of obstacles.

3) Other technical challenges.

First, there is a gap between the judges' expertise and the knowledge required for adjudicating environmental cases. Second, environmental litigation is a new field of litigation without clear legal rules on standing and burden of proof, thus resulting in a lack of parties filing suits. Additionally, case summaries and legal documents need systematizing by higher-level departments. Third, according to the current system and allotment of official positions, environmental courts are limited to one or two judges; therefore, environmental courts are prevented from creating three-judge tribunals at the basic court level, with fixed collegiate benches for adjudicating environmental cases. Fourth, there are few cases being commenced. Despite the existence of many pollution incidents, there remains little public knowledge of filing environmental lawsuits and a deficiency in environmental pollution evaluation mechanisms. Fifth, because many environmental pollution disputes involve a large number of people, courts are unwilling to accept such cases based on the consideration to avoid social unrest.

C. The Development Trend of Environmental Courts

1) The selective establishment of courts depending on local needs.

Environmental cases represent a small proportion of the people's courts' caseload. Therefore, it is not necessary to expand the number of environmental courts.

Generally speaking, in areas where there are more environmental cases, it is necessary to establish environmental courts at the intermediate court level. However, establishing environmental courts at the higher and basic levels are separate issues.

If intermediate level courts act as the environmental courts of the first instance, then basic level environmental courts will be unnecessary and environmental courts at the higher level will be necessary. At that time, the crux of the issue will be dealing with intermediate court's jurisdiction over environmental cases.

If the current jurisdictional rules apply, the basic courts should establish environmental courts depending on the local situation and needs. If the environmental cases are more centralized, consisting of river basin, water, and water pollution cases, then environmental tribunals at the basic level can be set up near the river or water to handle all such related cases. If the environmental cases are dispersed, environmental collegiate benches with relatively more stable members could be established in convenient locations where jurisdiction over such cases can be concentrated. At that time, environmental courts at the high court level will not be necessary; establishing relatively stable environmental collegiate benches will satisfy the criteria requiring both courts of the first and second instances to be available for hearing the cases.

2) Expand the maritime courts' jurisdiction, implement cross regional jurisdiction or exclusive jurisdiction over river basin pollution cases.

The establishment of environmental courts is meant to foster technical expertise and to overcome the current strict territorial jurisdiction rules. Although some environmental courts have obtained cross regional jurisdiction by way of appointment, this is merely done on a case-by-case basis and not a permanent basis.

Because of this, certain regions have begun trying to include water pollution cases into the caseload of maritime courts, which have cross regional jurisdiction. The ten existing maritime courts are located at ten locations of importance along the oceans and the Yangtze River. As such, these courts are specially placed to play a role in water resources protection. First, the jurisdiction of maritime courts is determined based on bodies of navigable waters and are not restricted to the jurisdictional limits of typical administrative regions. Therefore, maritime courts can utilize the law as a mechanism to prevent local protectionist interferences. Second, giving maritime courts special jurisdiction over water pollution cases can create a uniform national judicial standard, promote fairness, and put an end to the inconsistent varying approaches, enforcement standards, and procedures of different regional courts. Third, maritime court judges possess experience and technical legal expertise in water pollution cases.

In reality, according to the Supreme People's Court's legal interpretation "Regarding Maritime Courts' Jurisdiction" (legal interpretation (2001) no. 27), the cases accepted by maritime courts already include (cross-boundary) seawater pollution cases. The Supreme People's Court, in its advisory opinion "The Supreme People's Court's Opinion Regarding the Development of Maritime Courts' Adjudicatory Duties," requested the timely adjustment of maritime courts' jurisdiction to include cases on land-based water pollution and navigable waters pollution, the maximization of maritime courts' cross regional jurisdiction and technical expertise, and the support of public interest litigation through selective jurisdiction over such cases.

However, based on the current regulations, maritime courts' jurisdiction is limited to oceans, rivers along the coast, and navigable waters connected to oceans. Water pollution cases that

occur on non-navigable waters, inland lakes such as the Yellow River, Huaihe River, Liaohe River, other important cross provincial rivers, Poyang Lake, Dongting Lake, Qinghai Lake, and other large lakes are not within the jurisdiction of maritime courts. Local courts either lack the authority to exercise jurisdiction because of administrative geographical limitations or lack the will to resolve such disputes. The result is weak judicial safeguards and relief being provided for water pollution cases.

In addressing this problem, the Vice-President of the Supreme People's Court, Wan E'xiang, using his status as a member of the Chinese People's Political Consultation Conference (CPPCC), proposed to the CPPCC that: the Standing Committee of the National People's Congress amend current maritime laws and the maritime litigation special procedural law, and clarify the maritime court's special jurisdiction over all water pollution cases in the first instance. If the Standing Committee of the NPC finds enacting a new law to be burdensome or amending the laws difficult to fit into the agenda, the NPC can consider having the Supreme People's Court issue a judicial legal interpretation to solve the nation's water pollution jurisdiction problem.

Hubei's High Court has already designated all water pollution cases to be adjudicated by the Wuhan Maritime Court.

3) Focus on the demonstrative effect of standard model cases, using model cases to advance legislative innovation.

In practice, the number of model environmental lawsuits is very few. At the time this report was being researched, the All-China Environment Federation (ACEF) was the only environmental group to have been a plaintiff in an environmental lawsuit. Given China's current pollution and environmental damage, environmental NGOs from around the country must be allowed to commence environmental lawsuits in order to fully maximize environmental public interest litigation and push the justice system to solve environmental problems. Therefore, while avoiding frivolous lawsuits, environmental courts should increase their adjudication of environmental public interest litigation to accumulate more experience in this field.

On top of accumulating experience, environmental courts should thoroughly analyze this experience and provide feedback to the Supreme People's Court and other higher judicial departments, along with the NPC and regional legislative departments. Guiyang's two environmental courts have already progressed in this direction. In Oct. 2009, under the advice and guidance of the courts, the Guiyang Municipal People's Congress passed the Guiyang Promotion of an Ecological Civilization Act, which was approved by the Guizhou Provincial People's Congress Standing Committee and made effective Mar. 1, 2010. Article 23 of the Act clarifies regulations on the procuratorate, environmental administrative agencies, and environmental public interest groups' ability to bring forth an environmental public interest lawsuit. This Act is the first regional regulation on environmental public interest litigation in the country.

Chapter Two: The Practice of Environmental Public Interest Litigation in China

I. The Trial of Environmental Public Interest Litigation in China

A. Overview of Environmental Public Interest Trials in China

Judicial practice is often the forerunner of legislative change. While academia was researching theories of environmental public interest litigation, the judiciary had already progressed with environmental public interest trials. The Guiyang, Wuxi, and Kunming environmental courts represent the new generation of such courts since 2007, pushing forth the advancement of environmental public interest trial practice.

Public records to date, which may not be comprehensive, show that different levels of courts in the country have already accepted at least seventeen environmental public interest cases (see Table 5).

The trial experience provided by the courts has been a valuable model contributing to the theoretical study of environmental public interest litigation and the construction of an environmental public interest litigation system.

Of the seventeen environmental public interest cases, six were administrative, eleven were civil, six were initiated by the Procuratorate, three were initiated by administrative agencies, three were initiated by environmental groups, and five were initiated by individual citizens.

The six cases raised by the Procuratorate were all found in favor of the plaintiff. The three cases commenced by administrative agencies were all found in favor of the plaintiff. Of the three cases brought forth by environmental groups, one was found in favor of the plaintiff, one was withdrawn by the plaintiff, and one was resolved in mediation, although all three were considered to have, in effect, been resolved in favor of the plaintiff. The five cases initiated by individual citizens have resulted in favor of the defendant because three of the cases were found inadmissible and the other two were ruled in favor of the defendant.

In the six cases brought against administrative agencies, except when the case was withdrawn because the administrative agency had fulfilled its responsibility, the cases have resulted in losses for the defendant. All eleven environmental public interest cases brought against polluters have been found against the defendant.

It is worth noting that of the nine environmental public interest cases since 2007, seven were accepted by environmental courts. This reflects the important role of environmental courts in advancing environmental public interest litigation.

It must be pointed out that there have been many environmental public interest complaints that were never officially filed, and therefore were never heard in court. For example, in August 2009, the Green Volunteers League of Chongqing raised a complaint to the Wuhan Maritime Court requesting the cessation of Jinsha River hydropower developers' illegal construction. In May

2010, the Green Volunteers League of Chongqing also raised a complaint to the Kunming Intermediate People's Court requesting the Yangzong Sea Power Company Ltd. to reduce its sulfur dioxide emissions and pay damages. Courts have accepted neither case.

Table 5. Summary of Major Environmental Public Interest Litigation Cases

Year	Court	Parties		Case Details and Claims	Rationale and Result
		Plaintiff(s)	Defendant(s)		
2000	City of Qingdao, Southern District People's Court	Du Wen, Mu Miliang, Zhong Jianli	City of Qingdao's Planning Bureau	Defendant's administrative license approval caused severe damage to the peace of the Music Plaza and to the neighboring environment, and violated their environmental rights. Plaintiff requests the court to revoke the license approval made by Qingdao's Planning Bureau.	The environmental rights of citizens as a specific right have not yet been explicitly recognized by statute. Plaintiff's complaint was rejected.
2001	City of Nanjing Intermediate Court	Shi Jianhui, Gu Dasong	City of Nanjing's Planning Bureau	Defendant's administrative approval of a planning license resulted in the construction of an observation deck that caused damage to the natural scenery of Zijin Mountain. Plaintiff requests that the court revoke the planning license approval made by the defendant.	This case does not belong among the important and complicated administrative cases accepted within the jurisdiction of the intermediate court. Plaintiff's complaint was rejected. (In 2002, the City of Nanjing's Planning Bureau confirmed the dismantlement of the "observation deck.")
2002	City of Hangzhou, Yuhang District Court	Chen Faqing	City of Hangzhou, Yuhang District EPB	Defendant failed to regulate the dust and noise created by a quarry company, which is considered an administrative omission. Plaintiff requests that the defendant perform its administrative duties.	After receiving the report and the complaints, the defendant investigated the quarry for dust emission and noise production and has already fulfilled its legal obligations. The plaintiff's complaint was dismissed.
2002	Tianjin's Maritime Court	City of Tianjin's Oceanic Bureau, City of Tianjin's Fisheries & Ports Supervision & Management Office	Ying Fei Ni Te Shipping Co., London Steamship Mutual Insurance Association	The "Tasman Sea" Tanker caused an oil spill, resulting in severe damages to the fishing resources and ecological environment of the western shore of Bohai Bay. The City of Tianjin's Oceanic Bureau seeks more than 98.3 million RMB in compensation for marine ecological losses. Tianjin's Fisheries & Ports Supervision & Management Office requests more than 18.3 million RMB in compensation for resource losses on behalf of the fishing industry.	The court ordered the two defendants to jointly compensate the City of Tianjin's Oceanic Bureau for losses in environmental capacity as well as for related investigation, evaluation, and research costs, totaling more than 10 million RMB. The two defendants were also ordered to jointly compensate the City of Tianjin's Fisheries & Ports Supervision & Management Office for losses in fishing industry resources and for investigation and evaluation fees, totaling more than 15 million RMB.

2003	City of Hangzhou's Intermediate Court, Jiangsu Province's Superior Court	Chen Faqing	Government of Zhejiang Province and Zhejiang Province's EPB	Plaintiff requests that the defendant perform its administrative duties.	The first trial concluded that the plaintiff had no direct interest affected by the pollution, so the plaintiff did not have standing and the case was dismissed. On appeal, the court affirmed the lower court's ruling and dismissed the case.
2003	City of Leling's People's Court	Procuratorate of the City of Leling	Jinxin Chemical Factory	The plaintiff brings an environmental civil action against the defendant for pollution. The plaintiff requests that the court order [the defendant] to cease violations, remove related negative effects, and eliminate related dangers.	The court ruled that the Jinxin Chemical Factory must voluntarily dismantle its polluting equipment, stop its violations, remove related negative effects, and eliminate related dangers.
2003	City of Hangzhou, Xihu District People's Court	Jin Kuixi	City of Hangzhou's Planning Bureau	The plaintiff requests that the court revoke the project license the defendant issued to Zhejiang Province's University for the elderly project, to protect society's public interest according to the law, and to protect Hangzhou's famous Xihu (West Lake) scenic district according to the law.	The plaintiff had no direct interest affected by the construction of the Zhejiang University for the Elderly, so the plaintiff had no standing to sue. The court dismissed the case.
2003	City of Liangzhong's People's Court	Procuratorate of the City of Langzhong	Qunfa Bone Meal Co.	The plaintiff requests that the defendant cease its environmental violations and improve its facilities within one month so that the emitted dust, noise, and suspended particulates do not exceed the density limits set by law.	The pollutants emitted from the Qunfa Bone Meal Factory to an extent violated the work and lives of the people nearby. The court upheld the plaintiff's claims and requests.
2007	Qingzhen Environmental Protection Court	City of Guiyang's "Two Rivers, One Reservoir" Management Bureau	Guizhou Tian Feng Chemical Co.	Located in Anshun District, the defendant, during the process of making phosphamidon, produces large amounts of phosphogypsum waste residues, which is placed in a phosphogypsum tailings pond about 3 km north of the factory area, polluting the Yangchang River upstream of the Hongfeng Lake. The plaintiff requests that the defendant stop polluting the river.	The court ordered the defendant to immediately stop the use of the phosphogypsum tailings waste dump, to implement relevant measures to remove the problems caused by the phosphogypsum tailings waste dump on the environment, and to eliminate its environmental impact before March 31, 2008.
2008	Guangzhou Maritime Court	City of Guangzhou, Haizhu District Procuratorate	Owner of Xin Zhong Xing Washing Co., Zhongming Chen	Defendant emits pollutants illegally, causing the Shi Liu Gang riverbed to become polluted. The plaintiff seeks compensation for the environmental costs and losses resulting from the pollution.	Because the Haizhu District Shi Liu Gang River is a national resource, the procuratorate, as the State's office for legal supervision, has the right to sue the washing factory, which is located within its jurisdiction, for the damages caused by its illegal actions. The ruling ordered the

	Guangzhou Maritime Court cont'd.				defendant to pay a compensation fee for environmental pollution damages, totaling 117,289.20 RMB.
2008	City of Guiyang, Qingzhen Environmental Protection Court	Procuratorate of the City of Guiyang	Xiong Jinzhi, Lei Zhang, Chen Yanyu	Defendant destroyed vegetation and illegally constructed houses within the border of the Aha Reservoir, Level 1 protection area. The plaintiff requests that the defendant: (1) cease its violations, eliminate the dangers, and dismantle the illegally constructed houses on the Aha Reservoir's Turtle Mountain; and (2) restore more than 200 sq mi of damaged vegetation on the Aha Reservoir's Turtle Mountain.	Through mediation by the court, the two parties reached a settlement. The defendant agreed to dismantle the houses and their affiliated facilities constructed on the City of Guiyang's Aha Reservoir Turtle Mountain and to restore the plants on Turtle Mountain. If the defendant does not dismantle the houses and their affiliated facilities within the set period of time, the plaintiff, the Procuratorate of the City of Guiyang, has the right to apply for mandatory enforcement from the People's Court.
2009	Guangzhou Maritime Court	City of Guangzhou, Panyu District Procuratorate	Dong Yong Dong Tai Leather Dying and Finishing Factory	Defendant illegally dumped wastewater, causing land and sea pollution. The plaintiff requests that the defendant stop its environmental violations immediately and to assume the costs of environmental pollution damages.	The court affirmed all the claims and requests raised by the Panyu District Procuratorate.
2009	City of Wuxi, Xishan District People's Court	City of Wuxi, Xishan District Procuratorate	Li, Liu	The defendant illegally logged 19 poplar trees (a total of 3.9 cubic meters) from the Xishan section of the forest landscape belt of the Shanghai-Nanjing highway. The plaintiff requests the two defendants to assume civic responsibility for restoring the original state.	The ruling orders the two defendants to replant 19 Italian poplars of the same age in the region designated by the Xishan District Bureau of Agriculture & Forestry within 1 month and manage and protect them for 18 months from the date of the planting. The City of Wuxi, Xishan District Bureau of Agriculture & Forestry will be responsible for supervising.

2009	City of Wuxi Intermediate Court	ACEF	Jiangsu Province, Jiangyin Port Container Co., Ltd.	The plaintiff requests that the defendant immediately stop violating public environmental interests and to eliminate the threats to the sources and intakes of drinking water in the cities of Wuxi and Jiangyin.	Through mediation by the court, the two parties reached a settlement. The defendant must reapply for approval of their loading and unloading operations of iron ore (powder) at ports, approvals for their construction projects, and related procedures for getting administrative licenses approved. If the administrative licenses are not awarded within 90 days, the defendant must immediately stop loading and unloading iron ores (powder) and its storage and transportation operations. During the application period, the loading and unloading of iron ores (powder) at ports must be a dust-free practice. The defendant cannot dump any pollutants that would affect the water quality of nearby rivers nor produce any noises that exceed nationally set limits.
2009	City of Guiyang, Qingzhen Environmental Court	ACEF	City of Qingzhen, Bureau of Land Resource Management	The plaintiff requests that the defendant fulfill its administrative duties.	After the lawsuit was filed, the defendant fulfilled its administrative duties as requested by the plaintiff. The plaintiff withdrew the lawsuit at the beginning of the hearing.
2010	Kunming Intermediate Court	City of Kunming's EPB	San Nong Farming and Pasturing Co., Ltd	The plaintiff requests that the defendant stop endangering the environment and to compensate for all costs associated with the water pollution of the Dalong Lake.	The ruling supported all of the plaintiff's claims and requests.
2010	City of Guiyang, Qingzhen Environmental Protection Court	ACEF	City of Guiyang, District of Wudang, Dingpa Papermaking Factory	The plaintiff requests that the defendant immediately stop dumping wastewater into the river and to bear the plaintiff's attorney's fees and comply with procedural law.	The court affirmed all of the plaintiff's claims and requests.
Source: Information was compiled by the project team based on public reports					

B. The Problems in Environmental Public Interest Trials

The worsening environmental damage and rising environmental awareness among Chinese society has not only triggered academic research into the establishment of an environmental public interest litigation system but also prompted judicial attention to this issue. The State Council's "Regarding Reinforcing Scientific Development Decision" art. 19 reads: "Improve legal assistance mechanisms for victims of environmental pollution and consider the establishment of civil and administrative public interest law systems." The 17th CCP's Report

clearly pointed out the need "to establish natural resource conservation and ecological protection growth, industry structures, and consumption patterns." The Vice President of the Supreme Court, Wan E'xiang, has urged repeatedly, "It is apparent from the experience of other countries that the most important part to utilizing the justice system to promoting environmental protection is building an environmental public interest litigation system."

The greatest obstacle now for academics researching this topic and for those in judicial practice is how to go about creating such a breakthrough in the existing law.

Substantive law, the Constitution, the Environmental Protection Law, the Water Pollution Control Act, and other relevant laws do not provide environmental rights to citizens. On the contrary, the Environmental Protection Law, the Water Pollution Control Act, and other related laws only allow compensation for directly affected individuals, which precludes the right to compensation based on damage against the public welfare.

In looking at procedural law, China's Administrative Procedural Law, art. 2 states: "If a citizen, a legal person or any other organization considers that his or its lawful rights and interests have been infringed upon by a specific administrative act of an administrative organ or its personnel, he or it shall have the right to bring a suit before a people's court in accordance with this Law."

The Civil Procedure Law, art. 108(1) provides: "The plaintiff must be an individual, legal person or any other organization that has a direct interest in the case."

The Civil Procedure Law and Administrative Procedure Law stipulate that plaintiffs raising a case must have a direct interest affected and that the objective of the suit is to protect a legitimate personal right or benefit. However, environmental litigation often does not fit these criteria. There may not always be a direct interest affected. Either a large number of people's environmental public interests are indirectly affected or only the public welfare is affected. The objective of the lawsuit is to protect the public welfare. Existing procedural laws do not allow for redressing the violation of such interests.

The problem described above has become manifest in environmental public interest litigation. Thus far, the majority of environmental public interest litigation cases have been civil actions, which have generally resulted in the plaintiffs' favor. However, environmental administrative public interest litigation has resulted against plaintiffs. The five cases raised by individuals failed due to two main reasons: (1) neither the plaintiff nor the defendant has a direct interest involved in the cases, therefore the plaintiff does not have legal standing, and (2) the plaintiff has no substantive right to form a legal basis for the lawsuit.

Even if the court takes the initiative through legal interpretation to accept an environmental public interest lawsuit, the court will still face unresolved procedural questions on the allocation of the burden of proof, use of evidence, how to execute a judgment, and other procedural issues.

Aside from legal obstacles, non-legal factors also can pose as hindrances to environmental public interest litigation. Because such litigation can involve large numbers of people whose interests have been affected, an improper handling of the case may instigate mass reactions. Therefore,

local governments and courts inevitably also consider the need to maintain social stability before accepting a case. In addition, although public awareness for environmental protection has increased greatly, when economic growth and environmental concerns come in conflict, environmental interests are more likely to be overridden. Meanwhile, scientific development for environmental protection has not been fully implemented. Environmental protection departments and the judiciary's inherent handicaps lead to environmental courts' inability to fully utilize the law and political resources, challenge large enterprises, resolve major environmental problems, and safeguard environmental justice.

In sum, courts adjudicating environmental public interest lawsuits lack procedural rules and substantive law bases and are restricted by a myriad of non-legal factors.

II. The Environmental Public Interest Litigation System in Practice

Despite the many obstacles, environmental courts have amassed a considerable amount of experience. Analyzing these experiences will be beneficial to improving the public interest litigation practice and related legislation. A closer look at the Guiyang, Wuxi, and Kunming courts is of particular value.

Guiyang has given environmental public interest litigation legal basis through the enactment of local laws. Furthermore, its courts have solved procedural problems through judicial specification of environmental public interest litigation procedures.

In general, Guiyang's local laws stipulate that plaintiffs of environmental public interest litigation may include the procuratorate, relevant administrative departments, the "Two Rivers, One Reservoir" administrative department, and other specialized agencies; environmental public interest organizations are by no means excluded. In not denying to hear *ACEF v. Qingzhen Land and Resources Bureau*, the two Guiyang Environmental Courts seem to agree that environmental groups have plaintiff standing.

The Wuxi Intermediate People's Court, in conjunction with its People's Procuratorate, jointly launched the regulation "Regarding the Conducting of Environmental Public Interest Litigation Provisional Rule," making Wuxi the first region in the country to enact a relatively detailed rule on this topic. In order to minimize the Procuratorate's obstacles to providing evidence, the Wuxi Intermediate People's Court, in conjunction with the People's Procuratorate and the Government Office of Legislative Affairs, jointly issued the opinion "Regarding Environmental Civil Public Interest Litigation Involving the Environmental Protection Administrative Departments' Providing Evidence to Procuratorate Offices." Overall, judicial practice in Wuxi for environmental public interest litigation has reflected the Procuratorate's leadership role in this field. The role of environmental administrative departments, however, is still lacking. With regard to environmental groups, Wuxi's environmental court made a major breakthrough in approving plaintiff standing for environmental groups in *ACEF v. Jiangsu Jiangyin Port Container Co., Ltd.*

Of the three pilot provinces, Yunnan was the latest to establish environmental courts; however, its environmental court system and environmental public interest litigation regulations have

emerged superior. Aside from establishing the largest number of environmental courts, it is the only province in which environmental courts at the city and provincial levels have issued official documents regarding environmental public interest litigation. In Nov. 2008, the Kunming Intermediate Court, Procuratorate, Public Security Bureau, and Environmental Protection Bureau jointly issued the "Regarding Environmental Protection Enforcement Coordination Implementation Opinion," establishing rules on Kunming environmental courts' acceptance of environmental public interest lawsuits. On May 13, 2009, Yunnan's High People's Court approved the "Establishing Environmental Trials and Environmental Adjudication Meeting Minutes" (hereinafter "May 2009 Meeting Minutes") that has become Yunnan's trial guidebook for all Yunnan environmental or environmental public interest trials. Most important is that for the first time, the Yunnan environmental courts officially clarified the issue of plaintiff standing for environmental public interest organizations. The May 2009 Meeting Minutes state, "Only the procuratorate and registered, public interest, environmental protection groups have plaintiff standing; the courts are currently not accepting environmental public interest suits raised by individual citizens." The Kunming Intermediate Court and Procuratorate jointly ordered the "Regarding Questions about Environmental Public Interest Litigation Provisional Opinion" and "Kunming Public Interest Litigation Fund Management," providing further information on procedural rules for environmental public interest litigation.

Below is a summary of environmental public interest litigation systems set up around the country:

A. Types of Environmental Public Interest Litigation

In environmental public interest litigation, the environmental damage involved can usually be attributed to civil activities or to administrative actions. Current environmental public interest litigation can be grouped into civil public interest litigation and administrative public interest litigation. Civil public interest litigation includes cases in which the defendant is either an enterprise, corporation, other organization or individual person; administrative public interest cases are those in which the defendant is an administrative agency or public institution.

In looking at the environmental public interest litigation regulations around the country, Wuxi and Kunming place emphasis on civil environmental public interest litigation without delving into administrative environmental public interest litigation. Guiyang's regulations include both kinds of public interest litigation. For example, "Guiyang's Promotion of Establishing an Ecological Civilization Regulation," art. 23 clarified that plaintiffs may sue on behalf of the public interest when pollution and resource destruction violations occur. In such cases, violators are responsible for ceasing the illegal activity, eliminating the dangers posed, and restoring the environment to its pre-damaged state. Plaintiffs may also sue based on illegal administrative actions or inaction related to environmental resources, or an administrative agency's failure to perform its duties in environmental protection.

B. Plaintiff Standing in Environmental Public Interest Litigation

1) Plaintiff Scope.

From environmental public interest litigation cases that have already been concluded, those with plaintiff standing include the procuratorates, administrative agencies, and environmental protection groups. Individual plaintiff standing had received the support of theorists but not the courts. Even in the *Qingdao Planning Bureau* case, the courts recognized individual plaintiff standing but did not find that the plaintiff had a legitimate substantive right to claim.

Regional approaches to plaintiff standing in environmental public interest litigation still differ (see Table 6).

Table 6. Guiyang, Wuxi, and Kunming's Approaches to Plaintiff Standing in Environmental Public Interest Litigation Rules

	Environmental Administrative Agencies	Procuratorate	Social Organizations	Individual Citizens
Guiyang	✓	✓	✓	✓
Wuxi	×	✓	✓	×
Kunming	✓	✓	✓	×
Source: Information researched and gathered by the project team. ✓ = approve plaintiff standing, × = unclear, no existing cases approving plaintiff standing				

Guiyang's Promotion of an Ecological Civilization Regulation stipulates that plaintiff standing is given to the procuratorate, environmental regulatory agencies, and environmental public interest organizations. In Mar. 2010, however, the Guiyang Intermediate People's Court issued the "Regarding the Vigorous Promotion of Environmental Public Interest Litigation and an Ecological Society Implementation Opinion," clarifying that individual citizens also have plaintiff standing in environmental public interest litigation. Article 2 stipulates: "Environmental public interest litigation is defined as litigation brought forth in the people's courts, based on a legal claim, by a governmental agency, social group or individual for purposes of protecting the public welfare, promoting an ecological civilization, and targeting damage made to the public interest."

Wuxi's "Regarding the Handling of Environmental Civil Public Interest Litigation Provisional Regulation" only provided how the procuratorate may commence an environmental public interest suit, however prosecution referral rules (督促起诉) make clear that administrative agencies also have plaintiff standing. Wuxi judicial practice has also progressed beyond the Regulation, accepting environmental groups as plaintiffs in public interest litigation.

Yunnan's High People's Court issued the "Environmental Trials Establishment and Environmental Adjudication Discussion Minutes," which determined that plaintiff status extended to procuratorates and registered environmental protection and public interest social groups. Still, Kunming's Intermediate People's Court, People's Procuratorate, Public Security

Bureau, and Environmental Protection Bureau jointly issued the "Regarding Environmental Protection Enforcement Coordination Implementation Opinion" and Kunming's Intermediate People's Court issued the "Regarding Questions about Handling Environmental Civil Public Interest Litigation Opinion (Provisional)," both of which altered plaintiff standing rules as set out in the High People's Court's Discussion Minutes to include procuratorates, administrative regulatory agencies, and related social groups. Furthermore, the Kunming Intermediate People's Court has already accepted an environmental public interest lawsuit in which the plaintiff was an environmental administrative agency, and the Yunnan High People's Court approved. This clarifies that the Yunnan High People's Court approves the expansion of plaintiff standing from its Discussion Minutes.

Overall, procuratorates, administrative agencies, and environmental groups' plaintiff standing has gained approval from regions across the nation. However, individual citizen's standing as plaintiff in environmental public interest litigation has not received widespread approval. The common reasons for this are that individual citizens are disadvantaged in proffering evidence and there is the need to prevent the use of public interest litigation for selfish motivations or objectives that are counter to public interests.

2) Regulations on Exercising the Right to Sue.

Environmental public interest litigation in China largely includes three types of plaintiffs: governmental agencies, social groups, and individual citizens. Assuming all three types of plaintiffs have standing, do they have priority in exercising their rights?

Wuxi and Kunming have not yet systematized their regulations on public interest litigation. However, some generalizations can be made on their relevant regulations and judicial practice.

According to the Wuxi "Regarding the Handling of Environmental Civil Public Interest Litigation Provisional Measure," the procuratorate can only file a lawsuit after having supervised the appropriate administrative department to file the suit; however, the administrative department failed to do so within the given time limitation without legitimate reasons. Therefore, the administrative department's right to file a lawsuit takes priority before the procuratorate's. In practice, the judiciary has not followed this regulation. In *Wuxi Xishan's Procuratorate v. Lee*, the procuratorate directly filed the lawsuit without following the procedures to first supervise the appropriate administrative department to file the lawsuit.

The court regulations of Yunnan province and Kunming City do not specifically address a plaintiff's exercising of the right to sue. However, based on current regulations, courts prefer when public institutions file suit first. Thus far, the main plaintiff has been administrative agencies, namely the environmental departments. The reason for this is to avoid contradicting the local government's position; if a governmental administrative agency is filing the claim, then it is assumed that the local government must approve.

The Guiyang Intermediate People's Court issued the "Regarding Vigorously Promoting Environmental Public Interest Litigation and an Ecological Civilization Opinion," which clarified the procedural rules for plaintiffs' exercising the right of action. These rules are to date

the most detailed of its kind in the nation. According to the opinion, citizens, legal persons, and other organizations have the right to monitor, report, file environmental public interest suits against, and request regulatory agencies to investigate polluting activities. If the relevant regulatory agency fails to respond within a specified timeframe, the citizens, legal persons, or organizations may file a public interest claim requesting that the regulatory agency fulfill its environmental protection duties, prevent pollution, or cease administrative activities that cause damage to the environment. Citizens, legal persons, or other organizations may also file environmental public interest lawsuits requesting defendants to assume responsibility for ceasing polluting activities, removing obstacles and dangers, and restoring the environment to pre-damaged states. In general, the rules on exercising the right of action are comparable to citizen suits in the United States. However, the administrative agencies have first priority in filing the claims, while citizens and environmental groups may file suits only after administrative agencies have failed to do so.

C. Rules on Evidence

1) Assignment of the Burden of Proof.

Environmental public interest litigation is in essence a type of administrative challenge. According to the Administrative Procedure Law and related rules set out by judicial interpretation, administrative legal challenges assigns the burden of proof to the defendant, requiring the administrative agency to prove that its actions are legal. Therefore, the assignment of the burden of proof in environmental administrative public interest litigation is not a major problem. For environmental civil public interest litigation, however, the assignment of the burden of proof is the main problem facing the judiciary.

In civil litigation, the burden of proof is usually assigned to the party raising the claim. However, according to China's "Tort Liability Act," environmental pollution tort suits allocate the burden of disproving causation between the alleged violating act and resulting damage to the defendant in order to avoid liability. This is often referred to as the inverted burden of proof. The question for environmental civil public interest litigation is whether or not the use of the inverted burden of proof should be used?

In answer to this question, only Guiyang and Kunming have established clear rules in this area for environmental public interest litigation. The Kunming Intermediate People's Court issued the "Regarding Questions about Handing Environmental Civil Public Interest Litigation Provisional Opinion," which stated that in environmental civil public interest litigation the plaintiff has the burden of proving the defendant's violations and the resulting damage. The defendant has the burden to disprove causation between the defendant's acts and damage. The Guiyang Intermediate People's Court issued the "Regarding Vigorously Promoting Environmental Public Interest Litigation and an Ecological Civilization Implementation Opinion," which stated: "In environmental public interest litigation, the standard of proof is no fault liability—the plaintiff has the burden of proving the defendant's violations and resulting damage, while defendant has the burden of disproving causation to avoid liability. When necessary, the People's Court may, ex officio, investigate and collect evidence."

2) The Issue of Authentication.

In environmental public interest litigation, investigating causation between the defendant's harmful acts and the resulting damage inevitably requires scientific expertise. It is possible that the plaintiff and the defendant may not have comparable resources for meeting their burdens of proof. Therefore, the existence of expert evidence authentication institutions is especially necessary. Still, the current judicial system has not yet integrated the use of environmental expert authentication institutions. This results in difficulties for the parties involved in environmental public interest litigation to provide the evidence and for the court to evaluate the evidence.

Different regions have taken varying approaches to address this problem.

Kunming has addressed this problem in a two-pronged approach. First, the Kunming Intermediate People's Court and Kunming Environmental Protection Bureau jointly established authentication institutions that are accredited by the judiciary. Conclusions made by these authentication institutions are considered admissible in court. Second, conclusions reached by other expert or research institutions will be considered general evidence, subject to cross-examination by the parties, and to be determined admissible or not by the courts. If necessary, the courts may establish expert councils to provide expert opinions.

Guiyang has taken a similar approach. The Guiyang Intermediate People's Court issued the "Regarding Vigorously Promoting Environmental Public Interest Litigation and an Ecological Civilization Implementation Opinion," which stipulated: "When adjudicating an environmental public interest lawsuit, depending on need, the court ought in a timely manner to seek the opinion of experts on pollution and causation issues while using the law to determine its admissibility."

3) The Weight of Administrative Documents as Evidence.

Environmental public interest litigation often involves evidence on the polluting behavior, environmental damage, and causation, most of which is within the possession of the administrative agency. If a plaintiff is not an administrative agency, then the question remains whether or not the plaintiff is entitled to use evidence obtained by the administrative agency.

Wuxi has enacted rules directly addressing this question. According to the regulation set by "Regarding Environmental Administrative Agencies Providing Evidence to the Procuratorate in Environmental Civil Public Interest Litigation Opinion," the Procuratorate may issue a notice called the "Assisting in the Production of Evidence Notice" to relevant environmental administrative agencies. The agencies are then expected to provide inspection, monitoring, detection, testing, evaluation, and other technical data conclusions. During this process, agencies are expected to employ legal, objective, and scientific methods in providing a thorough evaluation of the evidence. Any evidence provided by agencies must be certified by the official producing the evidence and by the agency. If the agency has an expert investigatory department, the department should also certify the report. Any public expert monitoring and investigation institutions are expected to help provide evidence for the Procuratorate. As long as the evidence is obtained in a legal way, then it is considered admissible evidence from the Procuratorate.

D. Injunctions

The ultimate objective of environmental public interest litigation is not only to restore and administer the environment that has been damaged but also to stop current pollution and environmentally damaging activities. The need for prevention of environmental damage makes the court's ability to issue injunctions crucial. Currently, there are no clear regulations regarding injunctions in environmental law or other relevant laws.

In practice, Wuxi's courts have used the Civil Procedure Law's enforcement rules to issue rulings to enjoin polluting behavior. The "Regarding Handling Environmental Civil Public Interest Litigation Provisional Measure" clearly stipulates: "The Procuratorate may, prior to or during an environmental public interest lawsuit, request that the court issue the appropriate enforcement actions, without having to post a bond."

The Kunming Intermediate People's Court issued the "Regarding Questions about the Handling of Environmental Civil Public Interest Litigation Provisional Opinion," which stipulates that requests for injunctions are allowed under certain urgent circumstances: the defendant's action may seriously threaten environmental safety, the defendant's action may cause irreversible environmental damage, or the defendant's action may seriously exacerbate damage to the environment. After inspection, the People's Court may enjoin the defendant's act. The public security agencies are to assist with enforcement of the injunction.

If, in the future, the maritime courts handle water pollution cases, it is also possible to experiment utilizing the maritime courts' injunction to enjoin the defendant from causing environmental damage.

Because the use of injunctions in environmental public interest litigation often does not require the posting of bonds, the use of injunctions should be subject to strict criteria and stringent evaluation.

E. Determining the Judgment

Because environmental public interest litigation often involves challenging administrative acts (or failures to act), the way a judgment is determined does not differ greatly from administrative litigation. However, in environmental civil public interest litigation, the plaintiff's pleading and the way a court rules vary greatly from traditional environmental pollution tort cases.

Wuxi has enacted regulations with regard to environmental public interest litigation cases raised by the Procuratorate. In cases in which the Procuratorate wins, the defendant is required to fulfill its relevant duties; in cases in which the Procuratorate lacks evidence or legal basis, the plaintiff loses; in cases in which the victims or other parties of interest reach a settlement, the People's Courts should issue a mediation document that should record the facts established by the Procuratorate.

Other regions have not yet clarified the types of judgments courts should render in environmental public interest cases. However, there is a consensus on a few points: First, the plaintiff may not ask for personal damage payments in public interest litigation. Second, any reward paid by the defendant should be public money, which is to be managed by a public agency. For example,

Kunming has allocated the money to a public interest litigation relief fund. Third, the judgment may require restitution, which the defendant may pay certified agencies to carry out.

F. Litigation Costs

Generally speaking, environmental public interest litigation costs include court fees, attorney fees, expert witness costs, and other costs to obtaining evidence. In addressing the burden of litigation costs, different regions have taken similar regulatory approaches and have waived the plaintiffs' court fees.

Wuxi's "Regarding the Handling of Environmental Civil Public Interest Litigation Provisional Measures" stipulates that the People's Procuratorate is exempt from court fees when filing environmental civil public interest lawsuits; if the People's Procuratorate wins the lawsuit, the People's Court may order the defendant to pay for the plaintiff's litigation costs.

The Guiyang Intermediate People's Court has issued the "Regarding Vigorously Promoting Environmental Public Interest Litigation and an Ecological Civilization Implementation Opinion" stipulating that in environmental public interest lawsuits raised by citizens, legal persons, and organizations, the courts may determine, based on the circumstances of the case, that the plaintiff may be exempt from, or postpone payment of, court fees. If the defendant loses the cases, the defendant is required to pay the court fees; if the plaintiff loses, the plaintiff may be exempt from paying certain court fees.

The Yunnan High People's Court issued the "Province-wide Court Environmental Protection Trial Establishment and Environmental Protection Adjudication Discussion Minutes," which states that the Procuratorates and environmental groups raising environmental public interest lawsuits are exempt from court handling fees. Kunming's Intermediate People's Court issued the "Regarding Questions about Handling Environmental Civil Public Interest Litigation Provisional Opinion," which clarifies that court fees may be postponed for those bringing forth environmental public interest lawsuits while those that lose the suit may be exempt from court fees; if the defendant loses, the defendant is responsible for paying the court feeds.

However, aside from court fees, only the Kunming Intermediate People's Court has stated in the "Regarding Questions about the Handling of Environmental Public Interest Litigation Provisional Opinion" that the remainder of the litigation costs incurred, such as travel fees, evidence collection fees, expert testimony fees, and attorney fees, shall be paid for by the losing defense. Such costs are to be paid in advance through the Kunming Environmental Civil Public Interest Litigation Relief Fund, and then reimbursed by the losing defendant.

Chapter Three: U.S. Citizen Suits and Their Lessons for China

The concept of environmental public interest litigation in this report has its origins in citizen suits created in U.S. environmental law. Citizen suits were first authorized by the Clean Air Act of 1970. Since then, the federal government has included provisions authorizing citizen suits in a series of environmental laws enacted, including the Clean Water Act, Endangered Species Act, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as Superfund), Safe Drinking Water Act, Toxic Substances Control Act, and Resource Conservation and Recovery Act.

The provisions authorizing citizen suits mainly state that citizens may, according to law, file a suit against the government or a corporation's non-compliance or against an administrative agency for failure to perform its environmental protection duties.

Understanding the function of citizen suits in the United States provides useful insights for the creation of an environmental public interest litigation system in China.

I. An Overview of U.S. Citizen Suits

A. Plaintiff Standing

Provisions authorizing citizen suits usually state: Any person or any citizen can commence a civil action on behalf of himself.

"Any person" or "any citizen" is the plaintiff. The term "person" in the Resource Conservation and Recovery Act is defined as: an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States. 42 U.S.C.A. §6903(15).

Although the citizen suit provisions authorize standing for "citizens," in practice any person, organization, business, or state government may file an environmental public interest lawsuit as a "citizen" plaintiff.

B. Restrictions on Exercising the Right to Sue

1) Standing Criteria.

First, citizen suits can only target noncompliance acts. The federal statute must provide a citizen suit provision in order for citizens to file a citizen suit.

Second, the claims allowed in environmental citizen suits are usually defined by the federal statute. There are two general types of actions allowed: One is for a violation of the federal statute that contains a provision allowing citizen suits for the violation. The second is for the Environmental Protection Agency's (EPA) failure to perform its duties.

2) Plaintiff's Responsibilities Prior to Filing the Lawsuit.

The plaintiff must, prior to filing the lawsuit, first notify the defendant of the claim. The plaintiff must wait for a specified amount of time for the defendant to respond before filing the claim in court.

There are two main types of notices: First, in claims addressing violations of federal law, the plaintiff must provide notice of the claim, including the violations alleged and the cause of action, to the defendant. From the time that the notice is provided until the legally specified amount of time expires, the plaintiff may not bring the claim to court. Second, in claims against a federal agency's failure to perform its duties, the plaintiff must provide notice of the claim, including the alleged unfulfilled duties and cause of action, to the agency. Here, the plaintiff must also wait the specified amount of time before bringing the claim to court.

The amount of time specified for the wait period is usually 60 days, although different statutes may vary. For example, the Resource Conservation and Recovery Act states that no action may be commenced prior to 90 days for complaints against any person, U.S. government agency, or generator that has contributed to the handling of hazardous waste which may present an endangerment to health or the environment. 42 U.S.C.A. §6972(b)(2)(A)(i)-(iii).

Notice is a crucial element in the procedural rules of raising a citizen suit. Courts refuse to hear claims brought forth by plaintiffs who have not satisfied their duty to provide notice to the defendant.

3) Action Prohibited When Government Responds.

In general, citizen suit provisions provide restrictions on when an action may be commenced if the government has taken responsive measures toward the violation. Such measures may be categories into two types:

The first is when the EPA or state government is diligently prosecuting a civil or criminal action in federal court against the alleged noncompliance behavior.

The second is when the administrative agency has already taken civil or administrative action to penalize the violator for noncompliance.

C. Procedural Rules to Citizen Suits

1) Courts Fees and Litigation Costs.

In order to encourage public participation in citizen suits and decrease the cost of litigation, the Clean Water Act provides that the court may order the losing defendant to pay for the plaintiff's attorney fees, expert fees, and related litigation costs. This lessens the financial burden of litigation for the plaintiff.

2) Emergency Relief

There are generally two kinds of emergency relief provided by citizen suits. The first is an injunction ordered by the court. The injunction may require the defendant to cease its polluting behavior or the administrative agency to fulfill its duty. The Clean Air Act of 1970, for example, incorporated a provision allowing for injunctions. The Clean Water Act introduced the second kind of relief, which is in the form of a fine ordered by the court. Originally, the Clean Water Act allowed fines of 1,000 USD. However, the 1987 Amendment to the Act raised the fine to 25,000 USD. The money collected from the fines is retained by the government and not paid to the plaintiff.

II. The Societal Effects of Citizen Suits

A. Citizen Suits Are an Important Source of Support for Limited Governmental Administrative Resources

Because of limited administrative resources, along with problems such as agency capture, the government cannot possibly patrol every case of pollution or environmental violation. Therefore, citizen suits provide another source of monitoring to help patrol environmental violations. The past thirty years in which the United States has allowed for citizen suits shows that these suits have played an undeniable role in supporting the government's administrative efforts.

B. Citizen Suits Act As a Deterrence for Environmental Violations

The threat of penalties, such as hefty fines and even the possibility of being imprisoned, is a source of deterrence for environmental violations. Businesses may be more likely to choose alternative practices that are in conformance with environmental regulations, which means that citizen suits help prevent environmental violations at the original source of the problem. Additionally, citizen suits that may be or have already been litigated act as deterrence for future environmental violations.

C. Citizen Suits Help Shape Public Policy

Citizen suits not only impact those involved in the suits but also often help shape public policy. For example, citizen suits litigated by the NRDC have established that the EPA must implement policies on reducing the lead content in gasoline and restricting non-road engine emissions and that exceeding chimney emission limits is deemed illegal.

D. Citizen Suits Help Maintain Social Stability

Citizen suits provide the public with a legal means of solving environmental disputes, which helps to maintain social stability. Those who would otherwise seek justice through self-help outside of the legal system can seek justice within the legal system, thus avoiding public unrest among the citizenry.

III. Insights for Creating an Environmental Public Interest Litigation System in China

A. Grasp the Essence of Citizen Suits

The essence of citizen suits is empowering the people to help enforce policy. Citizen suits allow the public to supplement governmental efforts in enforcing policy, including when governmental agencies themselves might not be in compliance with the law. Through the courts, citizen suits act as a "disinfectant" for when governmental agencies fail to fulfill their legal duties.

In establishing an environmental public interest litigation system, it is important to clearly define the role of administrative enforcement and public interest litigation. Plaintiff standing (for citizens and environmental NGOs) should be clarified, while administrative regulatory efforts should be given the chance to enforce the law.

B. Establish Reasonable Restrictions on Plaintiff Standing

In the United States, citizen suits allow any person to raise a complaint. However, plaintiffs standing in such suits are still subject to changes in the definition of legal rights and actual damage.

Plaintiff standing for environmental public interest litigation in China should be limited to those whose legal rights have been or are on the verge of being violated.

C. Clarify the Confines of Litigation

The United States emphasizes the rights of citizens to sue while also placing restrictions on citizen suits to target only those behaviors that are in violation of the relevant law. In practice, this kind of regulation usually includes illegal behavior of "any person" (including businesses and the government), or the government's failure to perform its legal duties.

It is important to likewise place restrictions on citizen suits in China. Citizen suits should be limited to two types: one is targeted toward environmental violations and the other toward government agencies' failure to perform their legal duties.

Chapter Four: Recommendations on Advancing Environmental Public Interest Litigation in China

I. Recommendations on Laws and the Judiciary

In looking at the experience of other countries, the most important aspect of utilizing the judiciary for environmental protection is establishing an environmental public interest litigation system. Since 2006, the Chinese State Council and Supreme People's Court have both issued opinions supporting judicial guarantees for environmental rights and instituted assistance mechanisms for victims of environmental pollution. Guiyang, Wuxi, and Kunming have passed local regulations or issued judicial documents clarifying certain aspects of environmental public interest litigation. However, there are no official laws detailing environmental public interest litigation, thus leaving the local regulations open to challenges. Currently, the main problem with environmental public interest litigation in China is that it is not grounded in the law. As such, this report suggests that the following principles on environmental public interest substantive and procedural law should be established either through decree, legislative amendments, or judicial interpretation:

A. The Nature of Environmental Public Interest Litigation

Environmental public interest litigation is a specific type of public interest litigation, through which, unless otherwise provided by law, individuals without direct interest in the case may litigate on behalf of the public interest.

Therefore, environmental public interest litigation is special. Unlike private interest litigation, public interest litigation is about a shared interest, representing the country's political will in providing civil rights groups and activists a means to seek relief and enforcement.

The current Civil Procedure Law and Administrative Procedure Law were designed for private litigation. Therefore, attempting to establish a public interest litigation system within one designed for private interests will inevitably be flawed.

B. Types of Environmental Public Interest Litigation

Environmental public interest litigation may be categorized based on the kind of defendant, as civil and administrative lawsuits are typically categorized. The first kinds are those in which a challenge is being lodged against an administrative agency for its illegal behavior or failure to perform its legal duties. The second kinds are those in which a civil challenge is made against a business for pollution or environmental destruction and the plaintiff seeks an injunction against the defendant's behavior or restitution.

This is, however, only an interim categorization. As public interest litigation becomes more common, the separation between administrative and civil public interest litigation will lose significance.

C. Plaintiff Standing

According to the Chinese Constitution and provisions of the Organic Law of the People's Procuratorate, the People's Procuratorate is an agency that enforces the law and is tasked with protecting the country and public environmental interests while curbing environmental violations. Therefore, the People's Procuratorate possesses the standing to raise civil environmental public interest lawsuits. According to China's Environmental Protection Law, Land Management Law and other similar laws, public administrative agencies exercise authority through the executive power of the State. Thus, administrative agencies also have the standing to raise civil environmental public interest lawsuits. According to the theories of "public environmental rights" and "litigation trust," all entities (e.g. legal persons, social groups) and citizens have the right to raise civil environmental public interest lawsuits.

In order to overcome cross regional environmental protection and the lack of independent local environmental protection enforcement, the former State Environmental Protection Administration began setting up six environmental supervision centers nationwide in 2006 in the east, south, northwest, southwest, northeast, and north. This led to the gradual creation of the regional environmental supervision and management system. On June 29, 2010, the Supreme People's Court issued the "Opinion on Judicial Guarantee and Service in Order to Speed Up the Transformation of the Mode of Economic Development," notifying courts nationwide to "accept all cases grounded in the law raised by administrative agencies litigating environmental pollution and damage violations and crack down on any environmentally damaging behavior." Therefore, to advance environmental public interest litigation, the environmental supervision centers should exercise cross regional jurisdiction, especially in representing the State to litigate cross regional pollution and environmental damage cases. Additionally, the Ministry of Environmental Protection and provincial environmental protection departments should actively undertake litigating symbolic cases to create precedence for environmental public interest litigation.

With regard to standing for administrative environmental public interest litigation, any administrative agency may be the defendant, while the People's Procuratorate, any entity or citizen should have standing as the plaintiff.

In order to prevent the misuse of litigation and to reserve the primary role of enforcement for administrative agencies, notice should be required. Prior to filing a lawsuit in court, the plaintiff should notify the relevant administrative agency first. Only if the administrative agency fails to act should the plaintiff be allowed to proceed with filing an environmental public interest lawsuit.

Because the number of environmental public interest lawsuits is still currently very low, a consideration can be made for not requiring the exhaustion of remedies. Thus, any person with plaintiff standing should directly be able to raise an environmental public interest lawsuit. In order to avoid the repetition of lawsuits over the same set of facts and achieve efficiency, other plaintiffs with complaints arising from the same dispute should be notified to join as third parties.

D. Jurisdiction

Jurisdiction over environmental public interest litigation should be concentrated due to the expertise and technical knowledge required to adjudicate such cases. Within the current judicial structure, the intermediate people's courts can appoint some basic people's courts to accept environmental public interest cases. Given the wide reaching interest involved in many environmental public interest lawsuits, first instance trials should be conducted in the intermediate people's courts.

With regard to forum, the location should be based on where the defendant is located, where the environmental pollution occurred, or where the environmental damage occurred. Cross regional water pollution cases should be within the jurisdiction of maritime courts. The high people's courts should appoint the maritime courts with special jurisdiction over such cases.

E. Injunctions

In current civil actions, injunctions are issued prior to a thorough review of the facts of the case. Therefore, it is crucial that the applicability of injunctions is clearly delineated.

Generally speaking, the issuance of an injunction should require the meeting of two criteria: first, the plaintiff must provide preliminary evidence that the defendant's polluting or environmentally damaging behavior is ongoing and that this behavior will cause significant or irreversible environmental damage; second, the plaintiff must provide preliminary evidence that the defendant's behavior is illegal.

Because an environmental public interest lawsuit is raised on behalf of the public interest, there should be no need for the plaintiff to post a bond.

F. Burden of Proof

The burden of proof is inverted in environmental public interest litigation, with the defendant having the burden to disprove causation between the defendant's acts and the environmental damage. In filing a plea for the cessation of the defendant's noncompliance, the plaintiff need only prove that the defendant's act is illegal and not that there was resulting damage. In environmental administrative public interest litigation, the plaintiff must prove the administrative agency's illegal conduct.

Environmental public interest litigation involves two aspects of evidence that must be verified by expert testimony: causation and damage. The defendant has the responsibility of applying for the expert testimony required to disprove causation, while the plaintiff has the burden of applying for the expert testimony needed to prove damage. The cost of applying for the expert testimony is borne by the defendant.

Because of the specialized nature of evidence required for environmental public interest lawsuits, the environmental protection and judicial administrative governmental departments should establish professional expert authentication institutions. If such expert authentication institutions are not available, then a party may request a relevant research institution to provide a written

expert testimony that the court can evaluate and decide on its admissibility. The administrative agency has the responsibility to provide assessment reports, monitoring reports, environmental inspection records, and other such administrative enforcement documentation, when requested by the plaintiff. After evaluation and approval by the court, the evidence will be considered provided by the plaintiff.

In the process of verifying the facts of the case, the court should be able to initiate its own investigation, evidence collection, preservation and verification, and other administrative actions.

G. Judgment and Sentencing

In cases challenging an administrative agency's inaction or failure to fulfill its duty, the court may order the administrative agency to fulfill its duty within a specified amount of time; in cases challenging an administrative agency's illegal act, the court my rule to revoke the illegal act.

In cases in which the defendant's acts may make irreversible damage to the environment, the plaintiff should be allowed to ask the court to issue a ruling prohibiting the acts.

Plaintiffs in environmental public interest litigation should not be allowed to claim personal damages, only damages made to the environment. The court should also be able to sentence the defendant to pay punitive damages. All damages paid should be placed in a public fund used for environmental administration or restoration.

In order to encourage environmental organizations and citizens to bring forth environmental public interest lawsuits and reward them for acting on behalf of the public welfare, a system with measured monetary incentives paid to the winning plaintiff, such as a percentage of the damages collected or litigation fees, should be considered.

Additionally, an avid exploration of environmental public interest litigation is needed, especially the potential role of citizens and environmental groups in monitoring the enforcement of judgments. The courts should make public the process and result of enforcement.

H. Litigation Cost Sharing

Environmental public interest litigation is done on behalf of the public interest. Therefore, the cost should be borne by the public. The plaintiff should be allowed to postpone payment of court fees at the inception of filing an action. If the plaintiff loses the lawsuit, the plaintiff's court fees should be waived. If the defendant loses the lawsuit, the court should be allowed to order the defendant to pay for the court fees as well as the plaintiff's attorney fees and expert testimony fees.

I. The Public Interest Litigation Fund

The objective of environmental public interest litigation is to protect the public interest and restore the state's losses. Such litigation involves expert testimony, attorney, court, and other litigation costs, which should be borne by the public. According to China's Trust Law, art. 60, a

public welfare trust may be created for "developing undertakings for the protection of the environment and maintaining ecological environment."

The environmental public interest litigation fund should consist of payments from each level of government, donations from the public, and damages collected from losing defendants in environmental public interest lawsuits. The environmental public interest litigation fund should be used to restore the environment and reimburse the plaintiff for costs incurred from litigating the lawsuit on behalf of the public.

II. Supporting Measures to Promote the Development of Environmental Public Interest Litigation

In addition to improving the substantive and procedural laws on environmental public interest litigation, supporting measures are also needed.

First, it is necessary to promote the public's awareness of environmental protection and nurture a culture of caring for the environment.

Second, it is necessary to raise the public's awareness of the environmental protection law. In particular, it is important to provide environmental organizations with legal training to increase their understanding of the law and help improve their litigation skills.

Third, public participation must be allowed to partake in the process of governmental decision-making, legislation, and enforcement. The government should take measures to create mechanisms that ensure unobstructed public participation and promote environmental information disclosure.

Fourth, training in environmental public interest litigation should be increased for judges and lawyers.

Fifth, training for administrative personnel should be reinforced so that the personnel have a better understanding of the law and procedures. Administrative personnel should focus on standardizing enforcement procedures and documentation to increase the strength of their evidentiary weight.

III. The Macro Strategy to Advancing Environmental Public Interest Litigation

The emergence of public interest litigation is a new stage in the development of the Chinese civilization and rule of law. The development of environmental public interest litigation cannot be accomplished overnight. Promoting environmental public interest litigation should be done methodically at intervals with targeted objectives.

A. Long-term Goals

The Civil Procedure Law, Administrative Procedure Law, and maritime procedural norms are designed for private litigation. Attempting to apply the existing procedural rules to public interest

litigation will lead to legal contradictions. Therefore, the most effective way to overcome the problem of public interest litigation lacking legal basis or procedural rules is to enact a public interest litigation law with its own set of rules.

B. Mid-term Goals

The first goal is to amend the Environmental Protection Law to incorporate citizen suit provisions similar to those enacted in the United States.

Article 6 may be amended to state:

Citizens have the right to live in a healthy environment.

Any person or unit may report and commence an action against any person or entity who has polluted or damaged the environment and request the Environmental Protection Bureau to investigate and regulate the matter.

Any person or unit may commence an environmental public interest lawsuit, request the environmental protection department to perform its environmental protection duties, including preventing pollution and ceasing administrative acts that may damage the environment, or request any responsible person or entity to immediately cease environmentally damaging acts, remove negative impacts, and provide restitution.

Second, amend the Civil Procedure Law and Administrative Procedure Law to include environmental public interest litigation procedural rules.

Procedural rules should include rules on standing, jurisdiction, evidence, litigation costs, and the use of injunctions.

C. Short-term Goals

Environmental public interest litigation requires a short-term solution for obtaining substantive legal basis. In the short-term, the substantive legal basis can be obtained through legal or judicial interpretation.

First, the legality of environmental public interest litigation must be clarified through legal interpretation.

The Environmental Protection Law, art. 6 states, "All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment." Through legal interpretation, this provision could be interpreted to provide a right of action for citizens to raise environmental public interest lawsuits, which would be one way through which individuals may file a charge against units or individuals that cause environmental damage.

Second, plaintiff standing in environmental public interest litigation can be clarified through legal interpretation or judicial documents.

One approach would be to interpret the "all units and individuals" in article 6 to include the People's Procuratorate, administrative agencies, environmental organizations, and individual citizens. Another approach would be for the Supreme People's Court to issue a judicial interpretation, providing plaintiff standing rules based on article 6.

Third, procedural rules should be clarified through legal interpretation or judicial documents.

In this respect, the Yunnan High People's Court, Kunming Intermediate People's Court, Wuxi Intermediate People's Court, and Guiyang's Intermediate People's Court have already made progress. The Supreme People's Court may issue judicial documents to standardize environmental public interest litigation procedural rules, based on the experiences of the aforementioned courts that have made progress in this area.

Appendix: China's Governmental Structure and Judicial System[1]

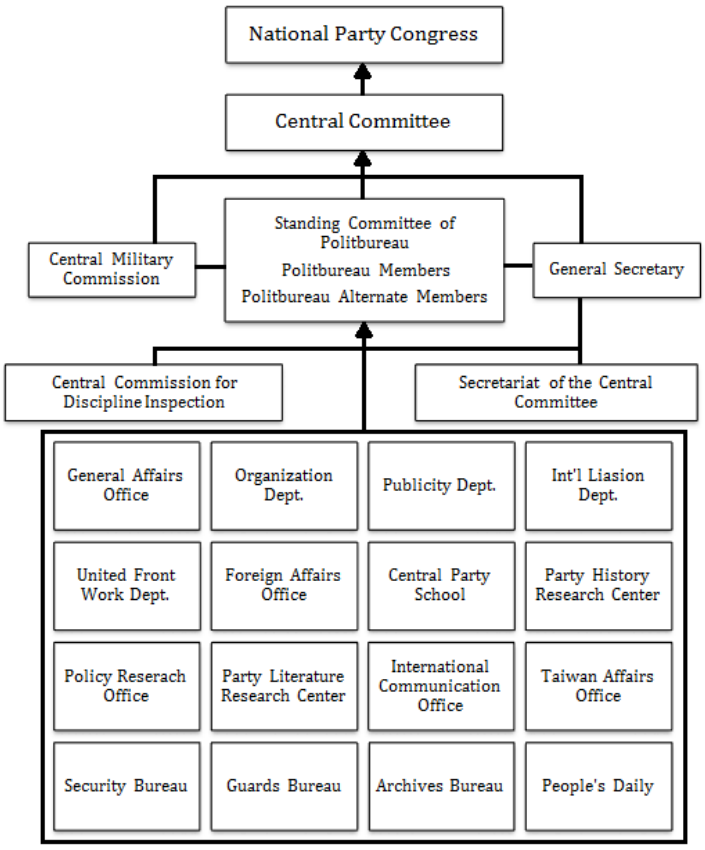
I. The Governmental Structure

A. The Communist Party of China

The Communist Party of China (CPC), consisting of 76 million members,[2] leads and dominates the Chinese government.[3] In exercising selectivity in party membership and keeping the membership size relatively small compared to the overall population, the CPC has been able to remain an elite and coherent body.[4] It maintains control over the legislature, administrative bodies, judiciary, military, strategic economic enterprises, and the media through its power to appoint leadership across the government.[5]

[1] The Appendix was written by Relic Sun from the NYU School of Law during her 2011 summer legal internship at the NRDC Beijing office.
[2] See US Dept. of State, China, Aug. 5, 2010, http://www.state.gov/r/pa/ei/bgn/18902.htm
[3] Chinese Const. Preamble ¶ 10.
[4] See John P. Burns, The People's Republic of China at 50: National Political Reform, 159 The China Quarterly 580, 581 (Sep. 1999)
[5] See id.

Chart 1. Organizational Structure of the Communist Party of China (CPC)



Source: Chinese Government's Official Web Portal, http://english.gov.cn/2005-09/02/content_28612.htm (last viewed July 6, 2011)

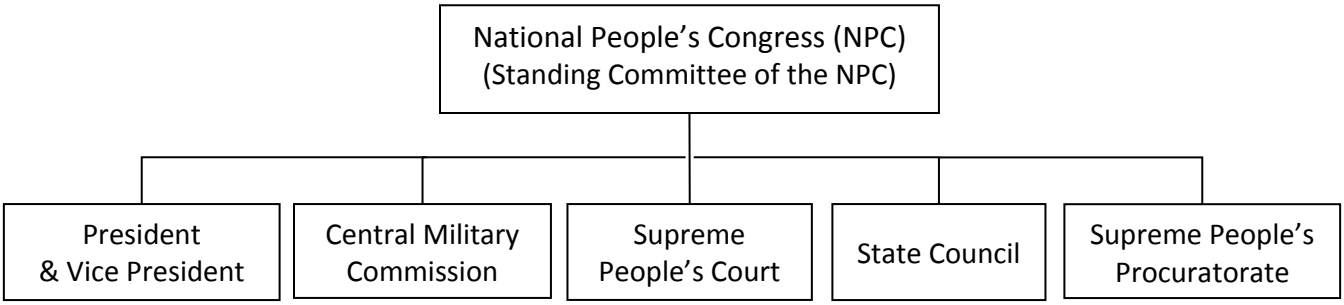
B. The National People's Congress

The highest state government organ is the National People's Congress (NPC), which is charged with the legislative power of the state. Its permanent body is the Standing Committee, which convenes the NPC to meet annually during the Plenary Session to review and approve major policies, laws, budgets, elections and removals, and other functions that the highest State organ should exercise.[6] When the NPC is not in session, the Standing Committee is charged with interpreting the Constitution and other laws, supervising enforcement, enacting and amending laws that are not exclusive to the decision making of the NPC, reviewing and approving budget adjustments, reviewing and approving existing laws, annulling administrative regulations that contravene the Constitution or other laws, deciding appointment and removal issues, and exercising other functions as delegated by the NPC.[7]

[6] Chinese Constitution, art. 62.
[7] Chinese Constitution, art. 67.

Below the NPC, the primary state organs are the President, Central Military Commission, Supreme People's Court, State Council, and Supreme People's Procuratorate. The President acts as head of State while the Premier of the State Council acts as head of government. The State Council is the highest executive body of the state and the supreme organ of state administration (see Chart 2).

Chart 2. Organizational Structure of the National People's Congress



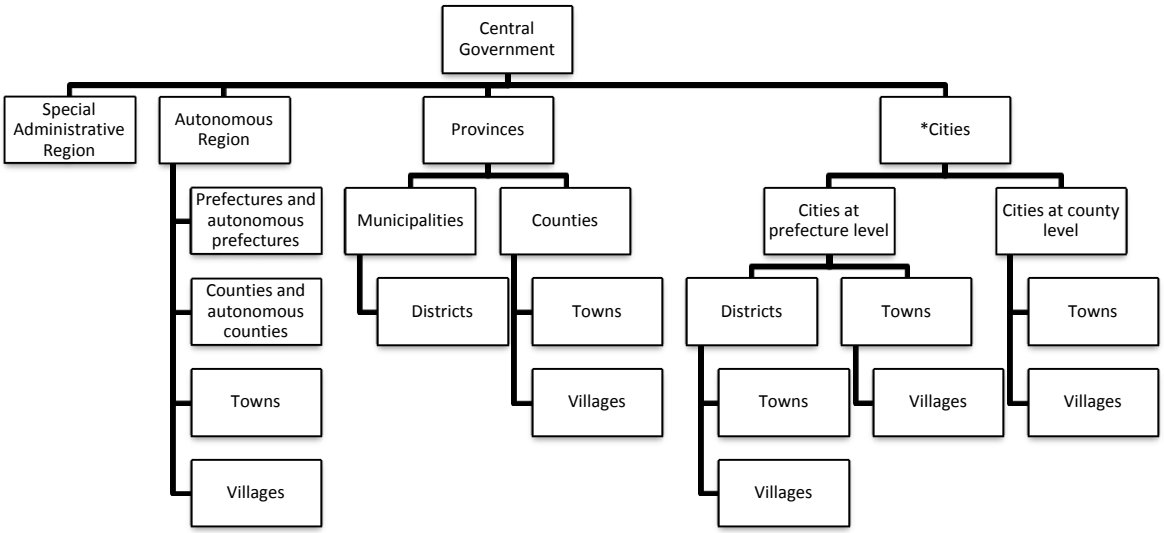
Source: The National People's Congress Official Web Portal, http://www.npc.gov.cn/englishnpc/stateStructure/node_3826.htm (last visited November 3, 2011)

C. Chinese Regional Government

The Chinese government is established in the provinces, municipalities directly under the central government (Beijing, Chongqing, Shanghai, Tianjin), counties, cities, municipal districts, townships, nationality townships, and towns (see Chart 3).

Organs of self-government are established in the autonomous regions, autonomous prefectures, and autonomous counties.

Chart 3. Government Structure



Source: UNESCAP, http://www.unescap.org/huset/lgstudy/country/china/china.html
*Please note that "Cities" under the "Central Government" in this chart is referred to as "municipalities directly under the central government" in this report. There are currently four of these municipalities: Beijing, Chongqing, Shanghai, and Tianjin. Central People's Government of the People's Republic of China, "Administrative Regions of China," June 15, 2005, http://www.gov.cn/test/2005-06/15/content_18253.htm

II. The Judicial System

The Chinese judiciary, in its broad sense, consists of judicial organs involved in prosecution and organizations involved in non-prosecution cases. In a narrow sense, the judiciary consists of judicial organs involved in prosecuted cases.

At the highest level, the judiciary consists of the Supreme People's Court, as the highest trial organ,[8] and the People's Procuratorate, as the highest procuratorial organ.[9]

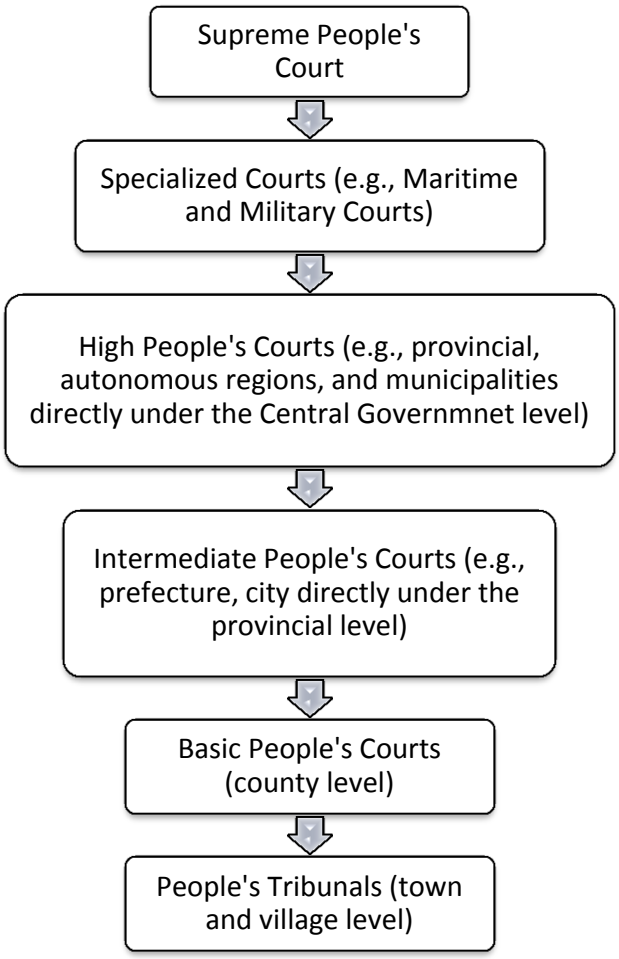
A. The Courts

1) Structure

The people's courts are officially divided into local courts, special courts, and the Supreme Court (see Chart 4). Local courts are set up based on administrative regions and the special courts are

[8] Chinese Constitution, art. 127.
[9] Chinese Constitution, art. 132.

created where necessary. The Supreme Court supervises all of the local and special courts. All courts are composed of, at the very least, a president, vice-presidents, and other judges.



Source: Information derived from the Chinese Government's Official Web Portal, http://english.gov.cn/2005-09/02/content_28489.htm

Local courts are divided into three levels: basic, intermediate, and high. Generally, the basic courts are set up in counties, cities without administrative districts, and administrative districts within cities. They adjudicate first instance criminal, civil, and administrative cases. They also handle non-trial civil disputes and misdemeanors and provide guidance for the People's Arbitration Committees. Basic courts may set up tribunals to handle petitions or misdemeanors and assume other non-trial responsibilities.

The intermediate courts are set up in prefectures, cities directly under provinces, and districts in the four municipalities (Beijing, Chongqing, Shanghai, and Tianjin) directly under the central government. Intermediate courts are responsible for adjudicating a much wider range of first instance criminal, civil, and administrative cases, and cases considered important or complicated, as prescribed by law. For example, cases involving the death penalty or life imprisonment in the

first instance are tried by intermediate courts. The intermediate courts may also conduct the first instance trial of cases referred to them by the basic courts or refer cases deemed to be of a serious nature to superior courts; they also have the power to hear cases appealed from basic courts and to review decisions that have been rendered by basic courts.

The high courts are set up in provinces, autonomous regions, and municipalities. They are responsible for adjudicating major and complicated criminal, civil, and administrative cases and other first instance cases referred by the lower courts. High courts with a maritime court within its jurisdiction may also receive cases appealed from the maritime court. High courts also hear death penalty cases on appeal and can affirm, remand, or certify the case to the Supreme Court for approval. High courts also have the authority to review decisions rendered by lower courts.

Special courts currently consist of military, maritime, forestry and railway transportation courts. Of particular relevance to this report are maritime courts. There are currently ten maritime courts established along the coast and the Yangtze River. Their jurisdiction includes, *inter alia*, pollution disputes arising from maritime activities.[10]

The Supreme People's Court (SPC) is the highest judicial organ. The SPC tries first instance civil cases that have a major impact on the country and cases that the SPC deems it should try. In addition, the SPC adjudicates cases on appeal from the high courts and special courts and cases of protest lodged by the Supreme People's Procuratorate. Finally, the Supreme Court issues legal interpretations of the application of laws and decrees in judicial proceedings.[11]

The SPC reports to the NPC. The NPC has the right of appointment and removal over the president, vice president, and judges of the SPC.[12] According to the Chinese Constitution, the people's courts are to exercise judicial power "independently" and be free from "interference by any administrative organ."[13] In practice, the court's neutrality may be compromised as a result of its heavy political influence. The CCP's influence over the decisions of the courts is not only institutionalized, for example, by its appointment and removal process, but is also openly acknowledged and endorsed by SPC officials.[14]

Similarly, regional courts are subject to the influence of local governments, which are responsible for the appointment and promotion of judges and the budgets of the local courts. Courts being affected by local protectionist interests when rendering decisions has aroused national attention due to the effects this trend may have on the development of the national

[10] Special Maritime Procedure Law of the People's Republic of China, art. 7, promulgated Dec. 25, 1999, effective July 1, 2000.
[11] Organic Law of the People's Courts of the People's Republic of China, art. 33, rev. 2006
[12] Chinese Constitution, art. 67(11).
[13] Chinese Constitution, art. 125.
[14] Ralph Hua, China's Arsenal of Political Persecution – A Double Edged Sword, Pace Intl L. Companion 1, 19-20 (Nov. 2010),

economy.[15] Reforming the judicial system so that the central government assumes responsibility for the budgets of the regional people's courts has become an openly debated issue.[16]

The people's courts at all levels are required to set up judicial committees by law.[17] These committees discuss "important or difficult" cases and other judicial work issues. The standing people's committees of the people's congresses at corresponding levels appoint and remove members of the judicial committees, with the recommendation of the presidents of the courts. Chief procurators are allowed to attend the meetings of the judicial committees.

2) Trial Rules and Procedures Relevant to This Report.

There are three main procedural laws: Civil Procedure Law, Administrative Procedure Law, and Criminal Procedure Law. Select civil procedure rules are explained below to facilitate understanding of certain vocabulary and principles referenced in this report.

First and second instance trials: Cases in the first instance are tried by a collegial panel of judges or of judges and people's assessors; simple or minor cases may be tried by a single judge.[18] Cases being tried in the second instance should be heard by a collegial panel consisting of an odd number of judges.[19] A court of second instance reviews both facts and laws of the case.[20]

The judgment rendered by the second instance trial court is final.[21]

Mediation: The people's courts have the authority to mediate civil disputes. Mediation agreements that are signed by the judge, court clerk, and parties are legally binding.[22]

Mediation is strongly publicly promoted and encouraged by the Supreme People's Court. The Chief Justice has emphasized that mediation should take priority over litigation in civil

[15] Central Political and Legislative Affairs Committee of the Communist Party of China, Opinion of the Central Political and Legislative Affairs Committee on Issues in the Deepening the of Reform of the Judicial System and the Work Mechanism, Nov. 28, 2008, available at http://news.sina.com.cn/c/2008-12-05/015716784999.shtml.
[16] Central Political and Legislative Affairs Committee of the Communist Party of China [中央政法委员会], Opinion of the Central Political and Legislative Affairs Committee on Issues in the Deepening the of Reform of the Judicial System and the Work Mechanism [中央政法委员会关于深化司法体制和工作机制改革若干问题的意见], Nov. 28, 2008, available at http://news.sina.com.cn/c/2008-12-05/015716784999.shtml.
[17] Organic Law of the People's Courts of the People's Republic of China, art. 11, rev. 2006
[18] Civil Procedure Law of the People's Republic of China, art. 40 (2007)
[19] Civil Procedure Law of the People's Republic of China, art. 41 (2007)
[20] Civil Procedure Law of the People's Republic of China, art. 151 (2007)
[21] Civil Procedure Law of the People's Republic of China, art. 158 (2007).
[22] Civil Procedure Law of the People's Republic of China, art. 89 (2007).

disputes.[23] Furthermore, Chinese courts utilize performance assessment targets that often include a set mediation rate for judges and the courts to meet.[24]

Evidence: The people's courts may investigate and collect evidence when it cannot be obtained by the parties or when the courts find it to be necessary. When it deems necessary, a people's court may refer a specialized issue to an authentication department authorized by law for evaluating the issue. In the absence of an authorized authentication department, the court has the power to appoint one. The authentication department is required to provide a certified evaluation and conclusion of the issue and submit it to the court.[25]

B. The Procuratorate

Below the Supreme People's Procuratorate, there are regional procuratorates established at various levels of government from the provincial level down to the counties, cities, autonomous counties, and municipal districts.[26]

The Procuratorates are responsible for the legal supervision of the country. This includes prosecuting treasonous and criminal activity, conducting criminal investigations, supervising judicial activities of the people's courts and supervising the execution of judgments. It also includes supervising and maintaining order in, among many facets of society, the work and life of the people while also safeguarding the unification of the country, the system of proletarian dictatorship, and the socialist legal system.[27]

C. Making Law through Legal Interpretations

There are three kinds of legal interpretations in China: legislative, administrative, and judicial.

1) NPC Standing Committee

As a country based on a civil law system, China does not officially employ the principle of *stare decisis* and does not delegate the power to issue legally binding interpretations of law to the judiciary.[28] Instead, the Constitution grants the power of interpreting laws to the Standing

[23] Xinhua, Chinese chief justice stresses priority of mediation over court rulings in civil cases, updated May 20, 2011 http://www.chinadaily.com.cn/xinhua/2011-05-30/content_2765749.html
[24] Carl Minzner, Judicial Disciplinary Systems for Incorrectly Decided Cases: The Imperial Chinese Heritage Lives on, 39 New Mexico Law Review 63, 67 (Winter 2009).
[25] Civil Procedure Law of the People's Republic of China, art. 72 (2007).
[26] Organic Law of the People's Procuratorate of the PRC, art. 2 (1983).
[27] Organic Law of the People's Procuratorate of the PRC, art. 4 (1983).
[28] *See* Marc Rosenberg, The Chinese Legal System Made Easy: A Survey of the Structure of Government, Creation of Legislation, and the Judicial System under the Constitution and Major Statutes of the People's Republic of China, U. Miami Int'l & Comp. L. Rev. 225, 244 (2000-01); Cao Shibing, The Legal Status of Decisions and Judicial interpretations of the Supreme Court of China, Vol. 1 Issue 3 Frontiers of the Law in China 1, 7 (2008).

Committee of the NPC.[29] In reality, the demarcation of legally binding interpretations is not so clear.[30]

2) Administrative Interpretations

Administrative interpretations follow legislative interpretations in the hierarchy of legal interpretations. Administrative interpretations are issued by the State Council and are used to explain areas of the law that are not related to adjudicative or procedural work.[31]

3) Judicial Interpretations

Judicial interpretations follow administrative interpretations and are the lowest on the hierarchy of legal interpretations. The Constitution grants the power of interpreting laws related to court trials to the Supreme People's Court. However, the SPC has been able to expand its interpretations beyond laws governing the judiciary, as a result of the NPC's limited time in dealing with legal interpretations and statutory review. Therefore, the role of judicial interpretations has grown.[32] Judicial interpretations have expanded, supplemented, limited, amended, or even created new statutory provisions.[33]

The main kinds of judicial interpretations include letters of reply, opinions, notices, measures, provisions, and published model cases.

[29] Constitution, art. 67(1) & (4).
[30] See generally Cao Shibing, The Legal Status of Decisions and Judicial interpretations of the Supreme Court of China, Vol. 1 Issue 3 Frontiers of the Law in China 1, 7 (2008); Li Wei, Judicial Interpretation in China, 5 Williamette J. Int'l L. & Disp. Resol. 87, 100 (1997).
[31] Marc Rosenberg, The Chinese Legal System Made Easy: A Survey of the Structure of Government, Creation of Legislation, and the Judicial System under the Constitution and Major Statutes of the People's Republic of China, U. Miami Int'l & Comp. L. Rev. 225, 244 (2000-01).
[32] Marc Rosenberg, The Chinese Legal System Made Easy: A Survey of the Structure of Government, Creation of Legislation, and the Judicial System under the Constitution and Major Statutes of the People's Republic of China, U. Miami Int'l & Comp. L. Rev. 225, 238 (2000-01).
[33] Li Wei, Judicial Interpretation in China, 5 Williamette J. Int'l L. & Disp. Resol. 87, 101-02 (1997).

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