Public Interest Environmental Litigation in China

Richard ZHANG Qing

PhD candidate, Faculty of Law, The Chinese University of Hong Kong
zhangqing@link.cuhk.edu.hk

Benoit MAYER

Assistant Professor, Faculty of Law, The Chinese University of Hong Kong
bnt.mayer@gmail.com

Abstract

Since January 2015, China's Environmental Protection Law has allowed Chinese Non-Government Organisations to initiate public interest litigation in relation to activities that harm the environment. This article assesses the implementation of this reform. Based on a variety of primary and secondary sources, it documents almost every case filed in the first two-and-a-half years of the implementation of public interest environmental litigation in China. It demonstrates a rapid development of this new field of litigation which, so far, has almost systematically led to Court decisions favourable to the plaintiffs. Yet, we also recognize some limitations and room for improvement, in particular regarding barriers to access to courts and questions of enforcement of judgments. Therefore, while public interest environmental litigation is a promising opportunity for the protection of the environment in China, some possible refinements of the relevant statutory framework can be identified.

Keywords

China – public interest environmental litigation – Environmental Protection Law – Civil Procedure Law – NGOs – courts

1 Introduction

It is well recognised that China's environment has suffered as a consequence of rapid economic development. The 13th Five-Year Plan for Environmental

Protection acknowledged major environmental concerns, including heavy pollution of the air, water and soils, considerable ecological degradation and high environment risks from by industrial activities. For instance, 78.4% of the cities failed to meet the air quality standards set by the Chinese Government.¹ Although the latest report of the Ministry of Environment Protection on the state of the environment revealed improvements in some areas, many other concerns are only worsening, including the quality of arable lands and ecosystems.² Greater awareness about such issues has given rise to public protests. Many in the Chinese Government and beyond are looking for new, effective ways to improve environmental protection. In this context, public interest litigation has been seen as one way to promote compliance with environmental standards and environmental protection.

This article documents the implementation of a new legal framework opening up environmental public interest litigation (PIEL) to Non-Government Organisation (NGO) plaintiffs from 2015 onwards. Section 1 provides a general overview of this statutory framework. Section 2 documents the implementation of this framework based on an original gathering of information from a variety of primary and secondary sources. On the basis of this information, section 3 assesses the success of environmental public interest litigation.

2 A New Statutory Framework

In 1989, China promulgated a dedicated statute on environmental protection, the Environment Protection Law (hereinafter EPL).³ Since then, however, the enforcement of environmental laws and policies has remained piecemeal. Local governments have often shown greater interest in promoting economic

1 '国务院关于印发“十三五”生态环境保护规划的通知' [Notice of the State Council on Issuing the 13th Five-Year Plan for Environmental Protection], issued by the State Council on 24 November 2016.

2 See GUO Wei, '全国人大常委会听取审议环境状况和环保目标完成情况报告' [Standing Committee of the National People's Congress listened to and reviewed the Report on Environmental Condition and Completion of Environmental Protection Goals] *China Environment News* (25 April 2017) 1.

3 Environmental Protection Law of the PRC (effective on 26 Dec 1989, as revised on 24 April 2014); an Environment Protection Law had been enacted in 1979 for 'trial implementation', which proved largely ineffective; see for example, WANG Xi and Robert BLOMQUIST, 'The Developing Environmental Law and Policy of the People's Republic of China: An Introduction and Appraisal' (1992) 5 *Georgetown International Environmental Law Review* 25, 30.

development than ensuring environmental protection.⁴ As for institutional channels permitting public participation, the 1989 version of EPL contained only a vague ‘right to report or complain.’⁵ Around 2005, a new idea spread in Chinese policy circles: the possibility of a procedure of public interest environmental litigation (PIEL) which would allow civil society organizations to bring claims against harmful environmental practices to courts in pursuit of the public interest. Around that time, several provinces (e.g. Guizhou) and prefecture-level cities (e.g. Kunming, Wuxi) established PIEL procedures on a trial basis.⁶

The concept of public interest litigation has progressively gained ground at the national level. In 2012, proposals with regard to public interest litigation were considered through a revision of the Civil Procedure Law (CPL).⁷ According to the new version of Article 55, public interest litigation can be initiated by any ‘authorities or relevant organizations, as prescribed by the law’ in relation to any ‘conduct that pollutes the environment, infringes the legal rights and interests of groups of consumers or otherwise damages the public interest.’⁸ This provision suggests an exception to the general rule according

- 4 See e.g. Daniel CARPENTER-GOLD, ‘Castle Made of Sand: Public-Interest Litigation and China’s New Environmental Protection Law’ (2015) 39 Harv. Envtl. L. Rev. 241, 241; Erin RYAN, ‘The Elaborate Paper Tiger: Environmental Enforcement and the Rule of Law in China’ (2013) 24 Duke Environmental Law & Policy Forum 183; WANG Canfa, ‘Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reform’ (2007) 8 *Vt J Envtl L* 159; see also MA Yun, ‘Vertical Environmental Management: A Panacea to the Environmental Enforcement Gap in China?’ (2017) 1 *CJEL* 37, 38 and 41.
- 5 Article 6 of the EPL 1989 stipulates that ‘All units and individuals ... shall have the right to report on or complain against units or individuals that cause pollution ...’ See eg DU Qun, ‘Environmental Public Participation in China: A New Force for Environmental Law Compliance and Enforcement?’ in LeRoy Paddock et al (eds), *Compliance and enforcement in environmental law: toward more effective implementation* (Edward Elgar 2011) 607, 609–10.
- 6 For the legislation and the practice of trial regions on PIEL before the EPL 2014, see eg Alex WANG and JIE Gao, ‘Environmental Courts and the Development of Environmental Public Interest Litigation in China’ (2010) 3(1) *Journal of Court Innovation* 37, 38, 44; ZHU Xiaoqin and HE Jinlong, ‘Development and Outlook of Environmental Public Interest Litigation against Source Water Pollution: A New Judicial Practice in China’ (2013) 316–317 *Applied Mechanics and Materials* 649; BIE Tao, ‘环境公益诉讼立法的新起点’ [The starting point for legislation of environmental public interest Litigation] (2013) 1 *Law Review* 101, 102–04; SUN Qian and Jack TUHOLSKE, ‘An Exploration of and Reflection on China’s System of Environmental Public Interest Litigation’ (2017) 47 *ELR* 10497, 10498–99.
- 7 Civil Procedure Law of the People’s Republic of China (effective on 9 April 1991, as revised on 31 August 2012) [hereinafter ‘the CPL 2012’].
- 8 The CPL 2012, article 55.

to which a plaintiff must have a direct interest in the action that he or she institutes,⁹ thus allowing civil society organizations to engage in more active litigation strategies in pursuit of the public interest. However, it is noted that the implementation of article 55 of the CPL was contingent on subsequent legislation that would define the ‘authority or relevant organizations’ to allow the initiation of public interest suits. For instance, a subsequent amendment to the Consumer Rights and Interests Protection Law allowed the China Consumers Association and its local branches to file such suits in order to safeguard the interests of groups of consumers.¹⁰ By contrast, no authority or organisation was immediately authorised to initiate public interest litigation on matters related to environmental protection, and courts rejected all PIEL applications filed in 2013.¹¹

It was only through the reform of the EPL that the legislative framework for PIEL was effectively implemented. The first draft of an ‘amendment’ of the EPL, published in August 2012, did not include provisions on PIEL. Following suggestions from the public, especially environmental law scholars,¹² such a clause was added to the second draft, published in June 2013. However, the second draft would have limited the right to initiate a PIEL to All-China Environment Federation (ACEF) and the environmental protection federations established in provinces, autonomous regions and municipalities, to the exclusion of more independent civil society organizations.¹³ In October 2013, the Standing Committee of the National People’s Congress began to review the third draft of what became known as a fully fledged ‘revision’ of the EPL.¹⁴ This third draft replaced the condition on standing with a provision opening PIEL to all NGOs registered with the Ministry of Civil Affairs, but limited this to the national level. Given the difficulty of registering an NGO at the national level, only a few GONGOS would have qualified.¹⁵

9 See Article 119 of the CPL 2012 and Article 119 of subsequent Civil Procedure Law of the People’s Republic of China (amended in 27 June 2017) [hereinafter ‘the CPL 2017’].

10 Law of the People’s Republic of China on the Protection of Consumer Rights and Interests (effective on 1 Jan 1994, amended on 25 October 2013), Article 47.

11 See LI He, ‘2013 年环境公益诉讼“挂空挡” [No Environmental Public Interest Lawsuits in 2013] *Science and Technology Daily* (1 March 2014) 3.

12 See eg LUI Zhongmei, “环境保护法”的前世今生’ [The Past and Present of Environmental Protection Law] (2014) 5, *Journal of Political Science and Law* 51, 57.

13 ACEF and the established environmental protection federations are all government-organized NGOs (GONGOS). For a definition of GONGOS, see Table 1 below.

14 ‘中华人民共和国环境保护法修订案(草案)’ [Draft of the EPL Revision of PRC].

15 See eg LUI (n 12) 57–58; GONG Gu and AN Ran, ‘Progress and Obstacles in Environmental Public-Interest Litigation under China’s New Environmental Law: An Analysis of Cases

The final version of the EPL reform was adopted in April 2014. It sought to promote public participation as a way to foster environmental protection and to bypass the frequent inertia of local governments. The new Article 58 defines the 'authorities or relevant organizations' that are allowed to file a PIEL. These are: any NGO which, being duly registered with a prescribed civil affairs authority, has been engaged in environmental protection activities of public interest for at least five consecutive years and has no record of violating laws.¹⁶ PIELs are allowed not only against any 'conduct that pollutes the environment' as in the CPL, but also against conduct which 'causes ecological damage.'¹⁷ Following this reform, the Supreme People's Court (SPC) has adopted several 'judicial interpretations' which clarify the modalities of PIEL, in particular with regard to standing and procedural arrangements.¹⁸

The NGOs authorised to initiate a PIEL include Government-organised Non-Governmental Organisations (GONGOS) but also more independent 'grass-roots NGOs' (see Table 1 for definitions). Nevertheless, the condition that an NGO should be duly registered with civil affairs authorities excludes possibly as many as 60% of environmental associations,¹⁹ including all foreign NGOs.

Accepted and Heard in 2015' (2017) 7 *Climate Law* 185, 189–90; CHEN Yang, '环保法三审稿困惑：环境公益诉讼主体反收窄' [Puzzle on the third Review Draft of the Environmental Protection Law: the Scope of Environmental Public Interest Litigation Subject is Narrowed] *China Economic Herald* (29 October 2013) B6.

16 See PENG Bo and MAO Lei, '全国人大常委会办公厅召开新闻发布会' [The General Office of the Standing Committee of National People's Congress held a Press Conference] *People's Daily* (24 April 2014) 6.

17 The EPL 2014, Article 58.1.

18 See in particular '最高人民法院关于审理环境民事公益诉讼案件适用法律若干问题的解释' [The Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation Cases] [hereinafter: Judicial Interpretation on PIEL], which was issued in January 2015 and provided a guideline for trial of PIEL as well as the implementation of Article 58. See also, '最高人民法院关于适用“中华人民共和国民事诉讼法”的解释' [Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China] (effective on February 2015). The SPC's judicial interpretations have binding force by virtue of the application of article 104 of the Legislation Law (revised 2015).

19 See CAO Mingde, '中国环保非政府组织存在和发展的政策法律分析' [An Analysis on the Policy and the Law for the Existence and the Development of the Chinese Environmental NGO] (2013) 3 *Tsinghua Journal of Rule of Law* 17, 19, 26. Even so, the final version of EPL 2014 is much broader than the initial drafts.

TABLE 1 *Definitions and examples of 'NGO' and subcategories*

Chinese concept	Translation	Definition	Examples
社会组织	Non-governmental organisation (NGO)	Non-profit organizations not directly controlled by national authorities and validly registered with civil affairs authorities, including community groups, foundations, and private non-enterprise units. ^a However, some NGOs, including foreign NGOs and student associations, are not recognized as such under Chinese law. Also, currently NGOs in China do not have a tax-deductible advantage for public contributions to them.	Includes all examples below
<i>Subcategories based on relationship with government</i>			
有官方背景的社会组织	Government-organised NGO (GONGO)	NGOs whose organisations were initiated by governments or where governmental officials occupy key functions, but which are not directly controlled by national authorities. ^b	ACEF and China Biodiversity Conservation and Green Development Foundation (CBCGDF)
草根社会组织	Grassroots NGO	In contrast to GONGOS, grassroots NGOs refer to NGOs that do not have a governmental background.	Friends of Nature (FON)
<i>Subcategories based on the geographical scope of activities</i>			
全国性社会组织	National NGO	NGOs registered with prescribed central civil affairs authorities (i.e. the Ministry of Civil Affairs)	
地方性社会组织	Local NGO	NGOs registered with prescribed local civil affairs authorities ^c	FON ^d and Guiyang Public Environmental Education Centre
<i>Subcategories based on the purpose of the organisation</i>			
社会团体	Community Group	Groups of individuals and legal persons (apart from national authorities) established in order to pursue a common objective through non-profit activities ^e	ACEF

TABLE 1 *Definitions and examples of ‘NGO’ and subcategories (cont.)*

Chinese concept	Translation	Definition	Examples
基金会	Foundation	Non-profit entities entrusted with property donated by natural persons, legal persons, or other organizations for the purpose of providing welfare services ^f	CBCGDF
民办非企业	Private non-enterprise Unit	Organisations established by enterprises, institutions, other civic entities or individuals using private assets and conduct non-profit welfare activities ^g	FON and Fujian Green Home Environment-Friendly Centre (Green Home)

- a See eg ‘社会组织评估管理办法’ [Administrative Measures for the Assessment of Social Organizations] (issued by the Ministry of Civil Affairs of PRC, effective on 1 March 2011), article 2.
- b See for instance Reza HASMATH, Timothy HILDEBRANDT and Jennifer Y.F. HSU, ‘Conceptualizing Government-Organized Non-Governmental Organizations’ (paper presented at the Development Studies Association Annual Meeting, Oxford, 12–14 September 2016), at <<https://ssrn.com/abstract=2814215>> accessed 18 November 2017.
- c Registration departments for NGOs could be searched in the website of National Administration for Code Allocation to Organization, at <<http://www.nacao.org.cn/portal/>> accessed 6 November 2017.
- d The registered name of FON is ‘Beijing Chaoyang District Friends of Nature Environment Research Institute.’
- e ‘社会团体登记管理条例’ [Regulation on the Administration of the Registration of Community Groups] (effective on 25 October 1998, revised on 6 February 2016), Article 2.
- f ‘基金会管理条例’ [Regulation on Administration of Foundations] (effective on 1 June 2004), Article 2.
- g ‘民办非企业单位登记管理暂行条例’ [Interim Regulations on Registration Administration of Private Non-enterprise Units] (effective on 25 October 1998), Article 2.

The Communist Party of China has introduced a concept of ‘ecological civilization’ to promote a harmonious relationship between people and nature. In 2007, it first mentioned this idea formally in the report of its 17th National Congress.²⁰

20 See eg ‘胡锦涛在中国共产党第十七次全国代表大会上的报告’ [HU Jintao’s Report Representing the 16th Central Committee of the Communist Party of China (CCP) in

As part of the idea of developing ‘ecological civilization,’²¹ the PIEL procedure established under the EPL 2014 pursues three concurrent functions. Firstly, by extending the role of Courts, it seeks to prevent or minimize environmental harm through the implementation of judgments and, more broadly, through deterrence. Secondly, the involvement of NGOs can be an important complement to the work of Environmental Protection Bureaus (EPBs)—the public agencies in charge of environmental protection at different levels of government—which often lack the resources necessary to perform their work effectively.²² Thirdly, the PIEL procedure fosters public participation and, more broadly, reinforces environmental ownership.²³ As noted by Sun and Tuholske, the concept of ecological civilization

lays the foundation for public interest litigation because, to create an ecological civilization, China must address the root cause of the deterioration of the environment—i.e., pollution—so as to reverse the trend, to ultimately create a sound working and living environment, and to contribute to China’s global ecological security.²⁴

Although ambitious, the legislative framework established by Article 58 of the EPL and relevant judicial interpretations has some obvious limitations. In particular, the legal framework on PIELs does not allow NGOs to file a PIEL against public authorities. According to Article 25 of the Administrative Litigation Law of the PRC as amended in 2017,²⁵ a plaintiff other than a procuratorate must show a direct interest in the administrative action at issue.

the 17th National Congress of the CCP] (October 25 2007) <<http://cpc.people.com.cn/GB/64093/67507/6429846.html>> accessed 6 November 2017.

- 21 See Article 1 of the EPL 2014, ‘This law is developed for the purposes of ... promoting ecological civilization, and enhancing sustainable economic and social development.’
- 22 See eg ‘全国人民代表大会常务委员会执法检查组关于检查“中华人民共和国环境保护法”实施情况的报告’ [The Inspection Report on the Enforcement of the Environmental Protection Law of the PRC by the Enforcement Inspection Group of the Standing Committee of the National People’s Congress], issued on 2 November 2016.
- 23 See eg ‘中国生物多样性保护与绿色发展基金会环境污染责任纠纷审判监督民事裁定书’ [The Civil Ruling of Trial Supervision on Environmental Pollution Liability Dispute of the China Biodiversity Conservation and Green Development Foundation] (28 January 2016).
- 24 SUN and TUHOLSKE (n 6) 10501–02.
- 25 Administrative Litigation Law of the PRC (2017 Amendment), Article 25. On 27 June 2017, a paragraph was added to Article 55 of the CPL 2012 and Article 25 of the Administrative Litigation Law to clarify the standing of procuratorates in civil and administrative PIEL after a two-year national pilot program.

As a result, only procuratorates can initiate administrative PIEL. NGOs can only file normal (Non-PIEL) administrative lawsuits, based on their direct interests. Nevertheless, courts have (wrongly) accepted three PIELs filed by NGOs against EPBs.²⁶ Fortunately, for civil PIEL, NGOs have the priority to file. The CPL allows procuratorates to file PIELs only when NGOs have not taken such an initiative.²⁷

3 Implementation of Article 58 in its First 30 Months

The 2014 revision of EPL entered into force on 1 January 2015. The Ministry of Civil Affairs predicted that there could be as many as 700 organizations qualified to initiate PIELs.²⁸ Dozens of PIELs were filed in the first month of 'Year 1 of China's PIEL Era'.²⁹ Unsurprisingly, profound changes have occurred in the landscape of litigation on environmental protection since the promulgation of the EPL 2014. According to a press release of the Environment and Resources Division of the SPC in March 2017, Chinese Courts accepted 112 PIELs filed by NGOs at first instance in 2015 and 2016—a sharp increase from around eight cases per year before 2015 in the provinces and cities with a trial programme.³⁰ Among the cases filed in 2015 and 2016, 54 cases had been concluded as of early March 2017.³¹ Cases had taken place within 21 of the 31 Chinese provinces, autonomous regions and municipalities where the EPL could be effectively implemented.³² Although they represent a tiny fraction of the caseload

26 See ZHANG Qing, A Database on Environmental Public Interest Litigation Filed by NGOs in China: 2015 to Present (3 November 2017) <<https://ssrn.com/abstract=3065111>> accessed 6 November 2017. Some other PIELs involve administrative organs as civil actors.

27 CPL 2017, Article 55.

28 See '700 多个社会组织可以提起环境民事公益诉讼' [More than 700 Social Organizations Can File Environmental Civil Public Interest Litigation] *China Youth* (14 January 2015) 8.

29 The EPL 2014 took effect on 1 January 2015 (Article 70). As for the wording of 'the First Year of Chinese PIEL', See eg GU Lei, "元年"已到, "春天"在望' [The 'First Year of PIEL' has arrived, its 'Spring' will come soon] *Newspaper of Chinese People's Political Consultative Conference* (31 March 2015) 9.

30 See '最高法院发布十件环境公益诉讼典型案例' [The Supreme People's Court Issues 10 Model Cases of Environmental Public Interest Litigation] *People's Court Daily* (8 March 2017) 1.

31 Ibid.

32 Ibid.

of Chinese courts, PIELs were often cases of much greater impact due to the broad interests at stake.

Several scholars have explored the implementation of the PIEL system under the EPL 2014 and have come up with a few enlightening suggestions on the adjudication and enforcement of PIELs. Nevertheless, some of them only analysed PIEL cases filed before June 2016. Further, their work relied generally on official statistics, such as data briefly summarized in reports of the SPC, which did not provide much information on the detailed features of these cases.³³ These previous studies were also hindered by the lack of comprehensive data on PIEL cases accepted by Chinese courts since 2015.

To overcome these obstacles, this article relies on information gathered through a variety of primary and secondary sources, including authoritative media sources, non-governmental reports and NGO websites. Some 115 PIELs that courts had accepted between January 2015 and June 2017 were thus documented in a database available in supplementary online materials.³⁴ Seventy-three of these cases were ongoing as of June 2017. One-hundred-and-twelve of these cases are civil in nature, while three others were matters of public law; all of these cases were filed by NGOs. This list is likely not to be exhaustive, as a few cases may not have been reported in any of the multiple sources consulted, but it is reasonably consistent with the total number of cases mentioned by the SPC. In other words, this list appears sufficiently complete to support the observations made below, based on a comprehensive analysis of the impact of Article 58 of the EPL in the first two-and-a-half years of its implementation.

3.1 *The Expansion of PIEL Cases*

As mentioned, the number of PIEL cases has grown dramatically under the new EPL. It was only in 2009 that the Wuxi Intermediate People's Court, in Jiangsu Province, accepted a PIEL filed by an NGO for the first time under a trial scheme.³⁵ The SPC estimated that, before 2015, about eight cases of this kind were accepted per year.³⁶ The data compiled by FON suggested, more

33 See eg SUN and TUHOLSKE (n 6); GONG and AN (n 15); Kathryn MCCALLUM, 'Changing Landscapes: Enforcing Environmental Laws in China through Public Interest Litigation' (2017) 20 *Asia Pacific Journal of Environmental Law* 57.

34 A complete list is available online; see ZHANG (n 26).

35 The first PIEL filed by an NGO in China was *ACEF et al. v. Jiangsu Jiangyin Port Containers*, Wuxi Intermediate People's Court (Jiangsu Province), accepted in July 2009. See WANG Shekun, '民间环保组织在环境公益诉讼中的角色及作用' [The Role and Effect of the Environmental NGO in Environmental Public Interest Litigation] (2013) 2 *The Environmental Rule of Law* 157, 192.

36 See note 30.

conservatively, that there could have been as few as 17 PIELs between 2010 and 2014.³⁷ In any case, the implementation of the revised EPL led to a sharp increase to at least 115 cases documented in two-and-a-half-years.

Nevertheless, PIEL remains a very small proportion of the cases on environmental protection brought before Chinese courts. In 2016 alone, an estimated 3,116 cases regarding environmental torts were initiated.³⁸ Many more numerous cases related to environmental and natural resources concerned contracts or ownership—an estimated 195,141 first-instance cases between June 2014 (when the SPC established its Environmental and Resources Division) and June 2016.³⁹ Yet, the small share of environmental litigation does not necessarily reflect the contribution of PIELs to the development of environmental law. Because such cases often concern larger and more systemic issues (e.g. rehabilitating the damaged environment), PIELs may have a greater impact than many other environmental law cases.

The number of new PIEL actions initiated in 2017 receded a little in comparison with the previous two years. By June 2017, only 11 cases filed in 2017 could be identified (see Graph 1), although we cannot totally exclude the possibility that recent cases have been underreported. This decrease was acknowledged by one of the pioneering institutions, the China Biodiversity Conservation and Green Development Foundation (CBCGDF).⁴⁰ This phenomenon seems to be explained by two contributing causes. Firstly, the NGOs which have initiated one or several PIELs are, for the moment, focusing on winning their cases and, then on ensuring that the court's decision is implemented, rather than on filing new cases. Secondly, many other NGOs may be barred from initiating PIELs due to a lack of financial resources or the inability to gather enough evidence in support of potential cases.

37 See WANG Shekun and MA Rongzhen, '环境公益诉讼观察报告: (二) 回顾' [Observation Report for EPIL: (Two) Review] in LI Dun (ed), 环境公益诉讼观察报告 [Review of Public Interest Litigation in Environment Protection] (Law Press China 2016) 255, 257.

38 See ZHENG Xuelin, '中国环境资源审判的新发展' [The New Development of the Trial involving Environment and Resources in China] *People's Court Daily* (7 June 2017) 8.

39 See BAI Yang, '最高法: 已受理上百件环境民事公益诉讼' [The Supreme People's Court: More than 100 Environmental Civil Public Interest Lawsuits Have Been Accepted] *Xinhua Daily Telegraph* (28 July 2016) 2.

40 See SONG Yuanyuan, '2016 年度十大公益诉讼“出炉”' [Top Ten Public Interest Cases of 2016 Come out], at <http://www.legaldaily.com.cn/index/content/2017-04/05/content_7080703.htm> accessed 7 November 2017.

GRAPH 1 *Evolution of the number of new PIEL cases accepted by Courts from January 2015 to June 2017*⁴¹

The introduction of PIEL in Chinese law has proceeded in parallel with the promotion of environmental and resources court divisions since 2014.⁴² According to the SPC, by April 2017 there were 956 environmental divisions in courts at all levels, increasing more than 70% compared with the previous year.⁴³ Yet, only 22 of the documented cases were directed to such specialised court divisions. Most PIEL cases continue to be dealt with in the ordinary courts, by judges who are not necessarily specialised in environmental law.

3.2 *Expansion of Categories of NGOs*

The few NGOs that initiated PIEL in trial regions before the revision of EPL were mostly community groups or private non-enterprise units.⁴⁴ Foundations with more stable financial resources did not participate. Some of them may

41 The date of acceptance by the Court could not be retrieved for nine of the 115 documented cases. Therefore, this graph features a total of 106 cases.

42 See eg ‘最高人民法院关于全面加强环境资源审判工作 为推进生态文明建设提供有力司法保障的意见’ [Opinions of the Supreme People’s Court on Comprehensively Strengthening Environment And Resources Adjudication to Provide Powerful Judicial Assurance for Boosting Development of Ecological Civilization], issued on 23 June 2014.

43 See SPC, ‘环资审判(白皮书)及环境司法发展报告发布’ [The Report on Adjudication of Environment and Resources (the White Paper Book) and the Report on the Development of Environmental Justice Are Released] (13 July 2017), <<http://www.court.gov.cn/zixun-xiangqing-50682.html>> accessed 7 November 2017.

44 For definitions, see Table 1 above.

TABLE 2 *Cases initiated by category of NGO (Jan 2015–Jun 2017)*

Type of NGOs	Number of NGOs involved	Number of cases ^a
Community groups	11	31
Private non-enterprise Units	7	37
Foundations	3	57

a As some cases were initiated by co-plaintiffs of different types, some cases are accounted more than once.

not have realised their ability to initiate PIELs. This situation changed with the entry into force of the revision of EPL and, in particular, the introduction of revised Article 58, which clarified standing for PIEL. In the two-and-a-half years following the entry into force of this provision, 21 NGOs initiated all of the 115 cases that documented here. Among these 21 NGOs, three foundations alone filed almost half of these cases (see Table 2); in particular, the CBCGDF, a well-established government-organized foundation, participated in 46 of the 115 cases.⁴⁵

Another emerging feature of the practice of PIEL is the prevalence of GONGOS over grassroots NGOs. GONGOS participated in at least 80 of the 115 cases that we documented, although sometimes as co-plaintiffs with grassroots organizations.⁴⁶ The prevalence of GONGOS might be due to the support that some of these organizations receive from local governments and, generally, their stronger financial capacity. With a governmental background, GONGOS are more likely to be ‘invited’ and supported by local governments (including procuratorates) to conduct public interest environmental litigation in their regions of registration.⁴⁷ Besides, some GONGOS have stronger

45 CBCGDF was established in 1985. It carries out activities that seek to protect biodiversity in China and to promote green development of China's economy. See ‘绿会介绍’ [Introduction of China Biodiversity Conservation and Green Development Foundation] (13 July 2017), <<http://www.cbcdgdf.org/NewsShow/4846/2598.html>> accessed 6 November 2017.

46 The number of GONGOS involved and the number of cases initiated by GONGOS is approximate because the status of some NGO plaintiffs (e.g. Zhenjiang Society for Environmental Science and Huaian Society of Environmental Sciences) is unclear.

47 See e.g. *Corporate Social Responsibility Promoting Center of Henan v. Guizhou Tongrentongxin Mercury et al*, Luoyang Intermediate People's Court (Henan Province), accepted in August 2016.

financial and human resources. According to a survey in January 2016, CBCGDF has a legal department with about 30 legal professionals, ten of whom are full-time employees.⁴⁸

On the other hand, for grassroots NGOs (e.g. Green Home, China Mangrove Conservation Network), the revision of the EPL has created a new opportunity for legal actions. Some grassroots NGOs with prior experience in this field continue to play an important role in PIEL. FON and Guiyang Public Environmental Education Centre, for example, had initiated cases before 2015 in trial regions;⁴⁹ by June 2017, they had filed 30 new PIELs, 24 of them as sole plaintiffs, under the new Article 58. Cases such as *Green Home et al. v. XIE Zhijin et al.* and the 'Changlong case' (*FON et al. v. Jiangsu Changlong Chemical Co. et al.*) have had an impact on the development of PIEL in China and triggered wide-ranging public discussion.

In addition to national NGOs, local NGOs have also played a role in the development of PIEL since 2015. Within the trial programmes conducted before 2015, only about 10 local NGOs had initiated PIELs.⁵⁰ However, in the two-and-a-half years that followed the revision of EPL, there were 17 local NGOs engaging in this form of litigation in 11 provinces or municipalities. Those local NGOs have filed 46 of the cases that we documented (either as sole or co-plaintiff), often making use of their knowledge of particular local environmental issues and access to the relevant documentation. Some local NGOs, like FON and China Mangrove Conservation Network, registered respectively in Beijing and Fujian provinces, have launched legal actions in other provinces, regions and municipalities. Because no direct interest is required for standing under Article 58, a local NGO can, for the first time, initiate litigation in places other than where it is registered.

The CPL 2012 and the Judicial Interpretation on PIEL published by the Supreme Court⁵¹ have created mechanisms to support organisations that initiate a PIEL. Thus, legal assistance organizations, procuratorates, EPBs, law firms and local NGOs supported the plaintiffs in at least 29 of the cases we documented. Given the resources available to these 'Supporting Litigation Units', assistance is generally provided as direct litigation assistance. Legal assistance

48 According to the results of a questionnaire survey conducted by the first co-author in January 2016.

49 See LI Dun (ed), 环境公益诉讼观察报告 [Review of Public Interest Litigation in Environment Protection] (Law Press China 2016) 244.

50 Ibid.

51 Article 15 of the CPL 2012 and Article 11 of the Judicial Interpretation on PIEL. Supporting parties are called 'Supporting Litigation Units' (支持起诉单位) in judicial practice.

organizations (e.g. Centre for Legal Assistance to Pollution Victims⁵²) and law firms have arranged for pro bono lawyers for NGO plaintiffs. Procuratorates have submitted opinions to courts and attended trials to support NGO plaintiffs, especially concerning cases where they had previously conducted investigations. EPBs and local NGOs have also collaborated on evidence gathering in numerous cases.

Overall, however, the potential of PIEL has not yet been fully exploited. At least 700 NGOs could have standing to initiate PIEL. Most of them have not used this legal avenue yet. Some are interested in ongoing developments and pondering about the new possibilities they offer to them, but many others are still unaware of these developments.⁵³

3.3 *Prevalence of Cases Building on Prior Investigations*

Before 2015, most PIELs targeted private enterprises, often those operating plants or mines. For instance, among the eight PIEL cases that WANG Shekun documented, five related to a plant or a mine managed by a private enterprise; the three others were targeted at governmental agencies or administrative committees.⁵⁴ Since the revision of the EPL came into force, however, the range of defendants has included individuals,⁵⁵ institutions,⁵⁶ self-governing community organizations at the grass-roots level,⁵⁷ as well as local governments

52 Based on China University of Political Science and Law; see <http://www.clapv.org/english_lvshi/> accessed 9 November 2017.

53 See eg GAO Shengke, ‘环境诉讼仍在困途’ [Environmental Public Interest Litigation is Still on a Hard Road] *Caijing* (2015) (in file with authors); GE Feng and WANG Huishihan, ‘环境公益诉讼观察报告：（三）年度述评’ [Observation Report for PIEL: (Three) Annual Comments] in LI (n 49) 262.

54 WANG (n 35) 192.

55 See eg *FON et al. v. XIE Zhijin et al*, Nanping Intermediate People’s Court (Fujian Province), accepted in January 2015 (first instance). For more details see SPC, ‘北京市朝阳区自然之友环境研究所、福建省绿家园环境友好中心诉谢知锦等四人破坏林地民事公益诉讼案’ [A Civil Public Interest Litigation Case on Forest Damage: *Green Home et al. v. XIE Zhijin et al.*] (29 December 2015) <<http://www.chinacourt.org/article/detail/2015/12/id/1777817.shtml>> accessed 7 November 2017.

56 See eg *Guiyang Public Environmental Education Center v. Guizhou University et al*, Ecological Protection Division of Qingzhen People’s court (Guizhou Province), accepted in June 2015.

57 This concept is from Article 111 of Constitution of the PRC. See eg *CBCGDF v. Magu Villagers’ Committee et al*, Zhengzhou Intermediate People’s Court (Henan Province), accepted in October 2015.

and their departments.⁵⁸ Businesses continued to be targeted, including large transnational companies such as Conoco Phillips and Hyundai as well as national state-owned enterprises such as China Resources.⁵⁹ Local governments and their subdivisions became the target due to the damaging consequences of their decisions on the environment.⁶⁰

Most PIELs have been filed against individuals or companies that had already been the object of criminal investigations or prosecutions. These potential defendants are low-hanging fruit for PIEL.⁶¹ Preference for these easy cases appears particularly pronounced on the part of organisations with little or no experience in PIEL. For instance, both Huaian Society of Environmental Sciences and Guangdong Environmental Protection Foundation directed their first legal actions against respondents that had already been prosecuted or sanctioned.⁶²

3.4 *Prevalence of Cases on Air, Water and Soil Pollution*

Article 58 allows PIEL to target not only conduct which pollutes the human environment, but also actions that cause ecological damage. This broad material

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- 58 See eg *Anhui Province Environment Federation v. Tongxiang Company of Fuyang Yonghao Renewable Resources et al.*, Huainan Intermediate People's Court (Anhui Province), acceptance date is uncertain. The People's Government of Wuzhen County, Zhejiang, featured among the defendants.
 - 59 See *CBCGDF v. ConocoPhillips China et al.*, Qingdao Maritime Court (Shandong Province), accepted in July 2015; *FON v. Hyundai Motor Group*, The Fourth Intermediate People's Court of Beijing (Beijing), accepted in June 2016; *FON et al. v. China Resources New Energy Investment*, Qiannan Intermediate People's Court (Guizhou Province), accepted in January 2017.
 - 60 See eg *CBCGDF v. Huazhuang Villagers' Committee et al.*, Environmental Division of Zhengzhou Intermediate People's Court (Henan Province), accepted in May 2016. See generally YU Jiaxi and HAN Qing, '河南新郑数千古枣树被集体"移植死", 村民: 枣树救过我们命' [Thousands of Ancient Jujube Trees were 'Transplanted to Die' Collectively in Xingzhen, Henan. Villagers: These Jujube Trees Saved Our Lives in the Past] *The Paper* (14 January 2017).
 - 61 This trend was noticed early on; see GONG Gu, '2015 年中国环境民事公益诉讼的实证分析' [Empirical Analysis on Chinese Environmental Civil Public Interest Litigation in 2015] (2016) 418 *Law Science* 16, 21.
 - 62 See DING Meiying, '向企业索赔41.6万元' [Claim the Enterprise for a Compensation of RMB 416,000.00] *China Environment News* (16 February 2016) 8; LIU Guannan and HUANG Yuhan, '粤社会组织提首起环境公益诉讼' [A Guangdong Social Organization Files the First Public Interest Environmental Case] *Nanfang Daily* (3 June 2016) A8; Huaian EPB, '淮安首例环境民事公益诉讼案件开审' [The Trial for the First Environmental Civil Public Interest Litigation in Huaian Begins] (10 May 2016).

scope has enabled NGOs to initiate cases related to a large range of environmental issues. In addition to traditional litigation regarding water, air and land pollution, litigation was initiated to promote the protection of forests,⁶³ vegetation,⁶⁴ nature reserves,⁶⁵ endangered species,⁶⁶ wetlands,⁶⁷ farmlands⁶⁸ and even immovable cultural relics.⁶⁹ NGOs have also initiated litigation

63 See note 55.

64 See eg *Green Hunan v. Chixiazoumaxia Quarry et al*, Changsha Intermediate People's Court (Hunan Province), accepted in December 2016. One of the claims is to restore damaged vegetation. For more details, see SHI Weiyan '2016 年湖南首例环境公益诉讼立案' [The First Public Interest Environmental Litigation of Hunan in 2016 was Accepted] at <<http://www.chinacourt.org/article/detail/2016/12/id/2501552.shtml>> accessed 7 November 2017.

65 See eg *FON et al. v. Shenzhen Dongyangguang Industrial Development et al*, Environmental Division of Qingyuan Intermediate People's Court (Guangdong Province), accepted in March 2016 ('Dongyangguang Case'). For more details, see LEI Jian, '清远首例环境公益诉讼案达成调解协议' [The First Public Interest Environmental Litigation of Qingyuan Reached a Mediation Agreement] *Legal Daily* (23 March 2017).

66 See eg *FON et al. v. China Resources New Energy Investment*, Qiannan Intermediate People's Court (Guizhou Province), accepted in January 2017. Endangered Chinese plant *Liriodendron chinense* is the focus. For more details, see Friends of Nature, '立案 | 在中国珍稀濒危植物保护区里干这事? 必须立即停止!' [Acceptance: How Could a Company Do This Thing in a Reserve of Chinese Endangered Plants? It Should Stop Immediately!], at <http://www.sohu.com/a/124084623_403458> accessed 7 November 2017.

67 See eg *FON v. Beijing Dushi Fangyuan Real Estate et al*, The Fourth Intermediate People's Court of Beijing (Beijing), accepted in July 2015. In this case, FON wished to protect a wetland in a residential community. For more details, see ZHANG Yu, '自然之友诉开发商“垃圾填湖”' [Friends of Nature Filed against the Developers for Filling the Lake with Trash] *Xinhua* (24 July 2015).

68 See eg *CBCGDF v. Aluminium Corporation of China et al*, Ecological Protection Division of Qingzhen People's Court (Guizhou Province), accepted in January 2016. One of the claims is to restore the damaged farmland. For more details, see YU Yingbo, '中铝贵州开矿致房屋开裂影响村民近千人, 绿发会提起公益诉讼' [Mining by the Guizhou Branch of Aluminium Corporation of China Limited Causes House Cracking and Affects Nearly One Thousand Villagers; China Biodiversity Conservation and Green Development Foundation Files a Public Interest Case] *The Paper* (21 November 2016).

69 See eg *CBCGDF v. ZHOU Yaohe et al*, Environment and Resources Division of Huaian Intermediate People's Court (Jiangsu Province), accepted in June 2016. This type of case can be accepted because a cultural relic is a component of 'environment' according to Article 2 of the EPL 2014. For more details of this case, see YU Yingbo, '周总理童年读书处多处文物被拆除' [Many Cultural Relics in the Place where Zhou Enlai Went to School in His Childhood Were Removed] *Legal Daily* (27 October 2016) 6.

TABLE 3 *Types of PIEL filed by NGOs and their distribution (January 2015 to June 2017)*

Type of cases	Number of cases
Water Pollution	31
Air Pollution	23
Soil Pollution	8
Water and Air Pollution	6
Water and Soil Pollution	17
Air and Soil Pollution	1
Water, Air and Soil Pollution	9
Other forms of ecological Damage	20

on transregional pollution⁷⁰ and the risks associated with environmental impacts.⁷¹

However, according to the information we gathered, most cases remain concerned with rather classical environmental pollution issues. About four in five cases in our database concern pollution of air, water and/or soils (see Table 3). The prevalence of water pollution (30 cases) could relate to the relatively straightforward assessment of the impact and absence of major obstacles to causation.

3.5 *Regional Distribution*

According to the SPC, the regional distribution of PIELs has improved under the new EPL.⁷² Indeed, the 115 cases we documented took place within the territories of 26 of the 31 provinces, autonomous regions and municipalities of mainland China, with the exception of Shanghai, Tibet, Shaanxi, Qinghai and Heilongjiang. With 25 of the cases, Jiangsu is the most active province to

⁷⁰ 'Transregional pollution' here means pollution which relates to more than two provinces or cities in China. See eg *CBCGDF v. Changzhou Yongtaifeng Chemical et al*, Bozhou Intermediate People's Court (Anhui Province), accepted in October 2015. A Jiangsu company was sued in an Anhui court because of dumping toxic waste that affected these two provinces. For more details of this case, see DING Wei and TANG Huan, '我省首起环境公益诉讼索赔700万' [The First Public Interest Environmental Litigation in Anhui Seeks Damage of RMB Seven Million] *Anhui Legal Newspaper* (27 October 2015) A1.

⁷¹ See eg *CBCGDF v. Yalung River Basin Hydroelectric Development*, Ganzi Autonomous Prefecture Intermediate People's Court (Sichuan Province), accepted in December 2015.

⁷² See note 30.

date, immediately followed by Guizhou (13 cases). Forty-four of the 115 cases we documented were brought before Courts in Eastern China, in contrast to five cases in north-eastern China.

It could be expected that the number of PIEL cases accepted in a given region reflect the state of its environment. Theoretically therefore, most cases should occur in the regions with the greatest environmental concerns. However, our database does not indicate such a correlation between the number of cases and environmental concerns. For instance, although the quality of freshwater resources in eastern China (i.e. mainly the Yangtze River Basin) is better than that of north-eastern China (mainly the Songhua River and Liao River Basins),⁷³ there are far more cases on water pollution in eastern China (29 cases) than in north-eastern China (one case). Likewise, while Guizhou in southwestern China enjoys relatively good air quality when compared with Hebei in Central China,⁷⁴ Courts in the former have accepted more PIELs on air pollution (6 cases) than courts in the latter (2 cases).

This suggests that the regional distribution of PIELs has little to do with the difference of environmental quality. Rather, it appears to relate to elements such as the activism of local courts in exploring PIEL rules and practices⁷⁵ as well as population and economic development. The statistics gathered in Table 4 suggest a rough correlation between the number of cases and population as well as the GDP of particular regions of mainland China. For instance, most PIELs under the EPL 2014 have taken place in eastern China, where the Chinese population and economic activity are concentrated.⁷⁶

3.6 *Prevalence of Agreements and Judgments in Favour of NGO Plaintiffs*

PIEL suits may have important consequences. As of mid-2017, 42 of the 115 documented cases had been concluded. Among those, 24 were documented

73 See MEP, '淡水环境状况' [The condition of the fresh water environment], at <http://www.gov.cn/guoqing/2012-04/10/content_2584112.htm> accessed 7 November 2017.

74 According to the 2016 Report of the State of the Environment in Guizhou, more than 97% of cities in Guizhou have average good air quality in 2016 (i.e. Air Pollution Index is less than or equal to 100). See '2016 年贵州省环境状况公报' [The 2016 Report of the state of environment in Guizhou]. As for Hebei, air quality of its cities was good in 56.6% of the days in 2016 on average. See '2016 年河北省环境状况公报' [The 2016 Report of the State of the Environment in Hebei].

75 For example, as mentioned, Guizhou is one of the earliest provinces to explore PIEL, and has continued to be active with regard to PIEL under the EPL 2014.

76 Statistics of population and GDP in this table are approximate. Their original sources are 2016 data from the official websites of each provincial government or municipal government. For conciseness, detailed individual sources of information are not listed.

TABLE 4 *Regional distribution of PIEL filed by NGOs*

Region	Number of cases documented	Population (million)	Number of cases documented / population (hundred million)	Gross Domestic Product (GDP) (trillion RMB / year)	Number of cases documented / GDP
Eastern China	44	401	11	28.8	1.5
North China	16	159	10	10.0	1.6
Central China	8	222	4	10.4	0.8
Southern China	8	168	5	10.2	0.8
Southwestern China	20	200	10	7.8	2.6
Northwestern China	14	104	13	4.3	3.3
Northeastern China	5	130	4	6.8	0.7
Mainland China (total)	115	1384	8	78.3	1.5

as having been settled through mediation or extra-judicial settlement, while 12 others had been settled through court judgments.⁷⁷ Every final settlement or judgment to date was partly or fully in favour of the claims raised by NGO plaintiffs. In January 2017, for the first time, a judgment dismissed the claims of the plaintiffs in the so-called Changlong Case, but plaintiffs appealed;⁷⁸ the appeal was still pending as of late 2017.

The popularity of mediation as a settlement of PIEL is a unique feature of the practice of PIEL in China. According to the SPC's Judicial Interpretation on PIEL,⁷⁹ when the parties reach a mediation agreement or a settlement agreement, the court is to disclose the content of the agreement within at least 30 days in order to receive possible comments from any stakeholder. Absent any

⁷⁷ The settlement method of six other cases could not be identified.

⁷⁸ See ZHOU Tailai, '常外毒地'天价诉讼费案两原告上诉' [Two Plaintiffs of the "Changlong Toxic Land Case" Appealed], *Caixin* (18 February 2017).

⁷⁹ Article 25 of the Judicial Interpretation on PIEL.

major objections, the court then issues a 'mediation document' which endorses the agreement reached by the parties as conforming with the public interest. Just like judgments, mediation documents are binding and enforceable.⁸⁰

Thanks to their flexibility, mediation documents or settlement agreements may allow NGO plaintiffs to continue to play a role, for instance by participating in operations concerning the restoration of the damaged environment.⁸¹ By contrast to judgments, defendant may be more willing to enforce a mediation document, because it is a result of the parties' consent. Although it is too early to draw general inferences, there is anecdotal evidence that the enforcement of mediation documents appears to be working.⁸²

4 Assessment

All in all, cases brought and decided over the last two-and-a-half years show that the introduction of public interest environmental litigation in Chinese law is having a significant impact. In this section, we seek to assess the overall impact of PIEL on environmental protection before highlighting some areas that may benefit from further attention.

4.1 *A New Role for Civil Society Organizations*

In light of the increasing caseload, the revision of the EPL has certainly led to a more active role of NGOs in bringing problematic practices to court. There are four possible reasons for this improvement of public participation in environmental protection. Firstly, support from third parties has improved the capacity of NGOs to bring cases. In some high-profile cases such as

80 Article 236 of the CPL 2012 and the CPL 2017.

81 For example, according to the mediation agreement of the 'Dongyangguang Case', the plaintiffs can evaluate the condition of ecological restoration in 2019, listen to defendants' report on ecological restoration at the end of every year, supervise the restoration and check it on site. See Qingyuan Intermediate People's Court of Guangdong, '公益诉讼公告' [Announcement of Public Interest Environmental Litigation] *People's Court Daily* (14 January 2017) 8.

82 For example, before mediation agreement was affirmed by the court in April 2017, the defendant of the case of *CBCGDF v. Liusikun Wanxiangxintian Kindergarten of Chaoyang District* (The Fourth Intermediate People's Court of Beijing, accepted in July 2016) had already performed its responsibilities prescribed by this agreement. See WANG Wei and PAN Jiakun, '幼儿园因“毒跑道”被诉调解结案并捐款10万元' [The Case in which a Kindergarten was Sued because of 'Toxic Tracks (i.e. running tracks) Was Settled through Mediation and the Defendant Donated RMB 100,000] *The Beijing News* (11 April 2017) A10.

FON v. Shandong Jingling Chemical Co, the creation of ‘supporting litigation units’ helped to gather relevant evidence. In some recent cases, it was actually third parties which suggested that NGOs initiate a PIEL. Thus, in the Chuangshiji Case,⁸³ the People’s Procuratorate of Fuzhou suggested that Green Home initiate a civil PIEL in relation to ecological damage which did not amount to a criminal offence. When Green Home agreed to conduct the case, the Fuzhou Procuratorate acted as a ‘supporting litigation unit.’⁸⁴

Secondly, pursuant to the procuratorate’s suggestion, some NGOs have subsequently been looking beyond individual cases, setting up funds and cooperative networks to assist further legal actions by NGOs in a snow-balling effect. For instance, in 2014, FON set up a network for advocacy and legal support as well as a fund to assist NGOs to initiate and conduct PIELs.⁸⁵ According to the FON 2016 Annual Report, more than 30 NGOs and 100 lawyers have joined this network and the fund has provided assistance in 20 PIELs.⁸⁶ Using funds received as compensation from a PIEL mediation agreement on a water pollution case in Jiangsu, FON has also initiated a charitable trust to support water protection projects in this province⁸⁷—a way, arguably, to compensate cumulative environmental damage. This and similar initiatives will continue to contribute to building the capacity needed to make full use of the opportunities offered by PIEL.

Thirdly, some courts have been keen to safeguard public participation through a liberal interpretation of the conditions for standing. For example, in the retrial of *CBCGDF v. Ningxia Ruitai Technology Co*, the SPC held that, although the status of some NGOs does not mention common environmental concerns, they may still have a standing on the ground that their usual activities relate to environmental protection.⁸⁸ The SPC has also held that ‘environmental protection activities of public interests’ for the purposes of Article 58

83 *Green Home v. Fuzhou Chuangshiji Agriculture Comprehensive Development*, Ecological Division of Fuzhou Intermediate People’s Court (Fujian Province), accepted in January 2017.

84 See CHEN Wei and LIU Hongxing, ‘福州中院调解一起环境公益诉讼案’ [Fuzhou Intermediate People’s Court Has Mediated an Environmental Public Interest Litigation Case] *China Environment News* (14 June 2017) 8.

85 Introductions of these two projects can be found in FON’s website, at <http://www.fon.org.cn/index.php?option=com_content&view=featured&Itemid=105>.

86 See ‘自然之友2016年度报告’ [Annual Report of Friends of Nature 2016].

87 Detailed information on this trust (Changanci—Charitable Trust on Environmental Protection) can be found in FON’s website, at <http://www.fon.org.cn/index.php?option=com_k2&view=item&id=12270:100&Itemid=176> accessed 7 November 2017.

88 See Civil Ruling cited (n 23).

include activities which seek to protect the environment either directly or indirectly, for instance through the organization of scientific events.⁸⁹ Likewise, the SPC recognised that an NGO would have standing if the allegations of an NGO plaintiff do not precisely conform to the aims and scope of its activities but match the environmental elements and ecosystems that it tries to protect.⁹⁰

Fourthly, another area of important innovation touches on the original agreements reached through mediation. Apart from monetary compensation, defendants have agreed to carry out actions to restore the affected environment and to being monitored jointly by the court, the EPB and the NGO plaintiff.⁹¹ New alliances and enhanced cooperation have thus been initiated. Although particular cases have typically a rather localised impact, it is perhaps this development of a constellation of NGOs and public agencies collaborating on environmental protection that is the most significant outcome of the first two-and-a-half years of implementation of EPL 2014.

4.2 *The Need to Refine the Statutory Framework*

Notwithstanding the positive developments detailed above, there are some general limitations to the statutory framework established by Article 58 of the new EPL. The first of these is that, at the stage of filing a case, the NGO plaintiff is not eligible for supporting mechanisms like legal aid.⁹² Even though the 'supporting litigation units' reinforce NGOs' capacities, court acceptance fees remain a discouraging barrier for many potential NGO plaintiffs. Currently, the determination of PIEL acceptance fees paid to the court relies on a traditional method developed for private litigation in general; it depends on the type of the case and on the value of the claims.⁹³ Accordingly, a PIEL lawsuit on environmental damage can involve extremely high acceptance fees that the NGO

89 Ibid.

90 Ibid; SUN and TUHOLSKE (n 6) 10506.

91 For example, in *Green Home v. Wenfu Lan* (Changting County People's Court in Fujian Province, accepted in May 2015), the plaintiff, court and EPB inspected the mediation enforcement on May 2016. They found the defendant had removed the pigsty and planted cash crops such as grapefruit. Nevertheless, it will take 4 to 5 years for the trees to bear fruit. See '全国首例畜牧养殖水污染调停结案，事隔一年环境都有了哪些改变 [The First PIEL on Water Pollution of Livestock in China Was Settled Through Mediation. What Has Happened to the Environment after One Year?]' at <<http://www.fjgh.org/index.php?case=archive&act=show&aid=37>> accessed 7 November 2017.

92 'Legal Aid' (法律援助) could provide free legal services to plaintiffs such as free consultation, but it is open only to citizens with economic difficulties. See 'Regulation on Legal Aid' [法律援助条例], Article 1 and 2.

93 Article 13 of 'The Measures on the Payment of Litigation Costs' [诉讼费用交纳办法].

plaintiff would need to pay if its claim is rejected (as, at first instance, in the Changlong Case).⁹⁴ NGO plaintiffs can apply for the reduction or exemption of the litigation fee including the acceptance fee if they lose, but the decision remains at the Court's discretion.⁹⁵

This approach may appear unfair given the absence of direct economic benefits from PIEL. For many underfunded Chinese NGOs, acceptance fees are a critical impediment which can only be overcome by raising significant financial support from charitable third parties.⁹⁶ This difficulty explains several of the characteristics of the PIEL practice described above: the limited number of plaintiffs, their focus on low-hanging fruit and the concentration of PIELs in wealthy regions. Discounted court acceptance fees for PIEL or appropriate governmental support could stimulate better use of the existing legislation throughout the country.

Secondly, improvements could also come from clearer cooperation arrangements between judicial power and administrative power at the hearing stage. At present, a possible source of concern is that NGO plaintiffs could substitute for EPBS, whose role is to monitor compliance with environmental standards. For instance, the four cases filed by Guiyang Public Environmental Education Centre in May 2015 claimed that the defendants (chemical enterprises) should enhance environmental protection facilities in order to ensure compliance with environmental standards.⁹⁷ Likewise, many other PIELs have sought to stop emissions exceeding relevant standards or to address damage thus caused.⁹⁸ Unlike EPBS, PIELs are unlikely to achieve a systematic monitoring of compliance with environmental standards at a reasonable cost.

94 In that case [*FON et al. v. Jiangsu Changlong Chemical Co. et al*, Changzhou Intermediate People's Court (Jiangsu Province), accepted in May 2016 (first instance)], the court of first instance held that the two plaintiffs should bear an acceptance fee of about RMB 1.89 million. See “常州毒地”环境公益诉讼一审宣判 [First Instance of Environmental Public Interest Litigation on “Changzhou Toxic Land” Pronounces a Judgment] *China Youth* (27 January 2017) 2.

95 See Article 33 of the Judicial Interpretation on PIEL.

96 See WANG and MA (n 37) 260.

97 These mediation agreements can be found in ‘Notice Board’ of ‘Guizhou Court’ website, at <http://www.guizhoucourt.cn/jxjs/index_12.jhtml> accessed 7 November 2017.

98 *FON v. Lianyungang Alkali* (Lianyungang Intermediate People's Court in Jiangsu Province, accepted in August 2016) and *FON v. Jilin Petrochemical of PetroChina* (Environment and Resources Division of Jilin Intermediate People's Court in Jilin Province, accepted in September 2016) are typical cases for this. Defendants were penalized by EPBS before but refused to correct. See XI Jianrong, ‘环保组织状告三家企业污染大气’ [Environmental

Under the existing legal framework, a court must notify relevant EPBs of any accepted legal actions accepted by it.⁹⁹ The court should grant the plaintiff's application to withdraw its claims if the EPB decides to intervene and to pursue all the substantial claims brought forward by the plaintiff.¹⁰⁰ Perhaps greater efficiency could be achieved by requiring NGOs to notify EPBs of their intention to file a PIEL, leaving the possibility for EPBs to pre-empt such action.¹⁰¹

Thirdly, at the stage where a decision is adopted, a difficulty may arise from the interpretation of vague provisions such as the obligation to 'restore'¹⁰² an environmental resource. This, most often, requires a baseline or target whose determination requires professional skills. Therefore, while determining the obligation of the responsible party in the settlement of the dispute, it is best to leave such technical questions to relevant professional organisations.

PIEL dispute settlement typically leads to the imposition of environmental restoration fees or compensation of relevant losses. While it is established that the funds granted by courts should be used for restoring the environment,¹⁰³ the existing statutory regime does not specify the modalities in any greater detail. In the cases we documented, it was often agreed that the funds would be disposed of by setting up a specific account in a governmental financial body or by becoming part of the court's specific enforcement account.¹⁰⁴ The lack of systematic oversight of the use of these funds could raise questions of transparency and even the risk of misappropriation.

In cooperation with local courts, leading NGOs have developed pilot schemes to design better institutional arrangements. Thus, in 2016, Guizhou courts authorized CBCGDF to manage environmental restoration funds from local PIEL cases filed by other NGOs. This NGO set up specific programmes with the environmental division of Qingzhen People's Court to operate and invest this fund for the purpose of environmental restoration in relation to the

NGOs Filed against Three Enterprises because They pollutes the Air] *Legal Daily* (25 August 2016) 6.

99 Judicial Interpretation on PIEL, Article 12, and Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the PRC, Article 286.

100 Article 26 of the Judicial Interpretation on PIEL. Different from general civil cases, courts cannot grant plaintiffs' applications to withdraw claims of PIELs after the end of court debate (Article 27 of the Judicial Interpretation on PIEL), except for this circumstance.

101 See by analogy 42 U.S.C. § 7604 (b) (1970).

102 Article 18 of the Judicial Interpretation on PIEL.

103 Article 24 of the Judicial Interpretation on PIEL.

104 Also see eg YANG Kaiqi and ZHANG Zixuan, '亿元环境公益诉讼赔偿金何去何从?' [How to Deal with Hundred Million of Environmental Public Interest Litigation Compensation?] *Southern Weekly* (31 August 2017).

issues raised by the respective PIELs. Through a systematic disclosure mechanism and methodical administration, this trial proved to be quite successful and spent all the funds effectively.¹⁰⁵ Even so, upscaling this trial could reveal challenges on fund security and a conflict with NGO plaintiffs' role as public interest representatives. A greater involvement of relevant public institutions such as EPBs may be instrumental to the successful disposal of this environmental restoration fund.

Last but not least, when compulsory enforcement is required after a decision is adopted, the existing legal framework is yet to define specific responsibilities.¹⁰⁶ It neither defines, nor even acknowledges the role that NGO plaintiffs and EPBs could or should play to ensure the actual implementation of the decision resulting from the PIEL. This may trigger difficulties in enforcing remedies. Here again, local court decisions should fill the gaps in the national legislation. In some cases that have already been concluded, the courts ensured that the remedies should be controlled jointly by NGO plaintiffs, relevant environmental agencies and the community in general, with relevant agencies and other relevant parties also playing a role.¹⁰⁷ It is likely that this practice will progressively extend to other cases as more PIELs reach the remedy phase.

5 Conclusion

The recent introduction of PIEL in Chinese environmental law has had important consequences. It has empowered certain NGOs to litigate on long-lasting malpractices, thus by-passing the frequent inertia of local authorities. More broadly, it is certainly contributing to raising more awareness of the need to

¹⁰⁵ See *ibid*; CBCGDF, '人大代表建议设立全国统一环境修复基金:绿会也将在两年实践基础上继续推进' [National People's Congress Deputies Recommend the Establishment of a Uniform National Environmental Restoration Fund: CBCGDF will also Continue to Promote It on the Basis of Two Years of Practice] at <<http://www.china-developmentbrief.org.cn/org3499/news-3721-1.html>> accessed 7 November 2017.

¹⁰⁶ Article 32 of the Judicial Interpretation on PIEL.

¹⁰⁷ See eg Dongyangguang case (n 65) and Chuangshiji case (n 83). Restoration work of both cases shall be carried out under supervision of plaintiffs, relevant environmental agencies and the society. According to the mediation documents, in the Dongyangguang Case, the progress of environmental restoration will be evaluated by plaintiffs, defendants, supporting litigation units and experts under the supervision of the court and relevant environmental agencies. For the Chuangshiji Case, the result will be checked by relevant agencies.

ensure that economic development does not come at the expense of environmental protection. Yet, the current legislation on PIEL is certainly not a panacea. Standing is still constrained, and many non-profit organizations cannot initiate PIEL because of registration issues and insufficient capacity. Even if an NGO is eligible, its effective access to court can be hindered by litigation costs. Enforcement may also be challenging. While the 2014 reform of the EPL is certainly a significant step in the right direction, much more remains to be done to ensure that it bears fruit.