

ARTICLE

An Unlikely Duet: Public-Private Interaction in China's Environmental Public Interest Litigation

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Abstract

Increasing research has been devoted to examining collaborations between public and private actors in environmental regulation under neoliberal democracies. However, this public-private interaction in authoritarian regimes remains understudied. This article seeks to address this gap in the literature through an empirical examination of the interaction between environmental non-governmental organizations (NGOs) and procuratorates in China's environmental public interest litigation. We find emerging complementarity: NGOs focus on new issues and target high-profile defendants to increase the socio-legal impact of their civil litigation, whereas procuratorates increasingly engage in administrative litigation against government agencies. This complementarity is shaped by the different legal opportunities for Chinese NGOs and procuratorates, as well as their respective institutional objectives and capacities. Their divergent regulatory preferences have also fostered synergy between these two actors, allowing them to collaborate on legal experimentation and innovation.

Keywords: Environmental law, China, Authoritarian environmentalism, Environmental public interest litigation, Public-private collaboration

1. ENVIRONMENTAL LITIGATION AND PUBLIC-PRIVATE INTERACTION UNDER AUTHORITARIANISM

Since the 1960s, public interest litigation (PIL) has evolved as an effective mechanism for responding to societal grievances and protecting collective interests across various

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jurisdictions.¹ Central to the academic discussions on PIL are the representation and enforcement of collective and diffuse interests.² In initiating environmental PIL (EPIL), state and non-state actors both have their own strengths and weaknesses. State institutions, such as the United States (US) Attorney General and Brazil's Ministério Público, have the advantage of democratic accountability and the capacity to make systematic decisions, but may have insufficient political will or issue-specific expertise to react to emerging societal needs.³ Private actors, such as environmental non-governmental organizations (NGOs), can help to fill these resource gaps and facilitate rule innovation by encouraging civic participation, but may lack institutional oversight and their actions may undermine regulatory coherence.⁴ Therefore, many scholars have proposed a pluralist approach that fosters complementarity between state and non-state actors in bringing environmental legal actions while limiting redundancy and inefficient competition.⁵

However, relatively little research has been undertaken on the public-private interaction in EPIL in non-democratic regimes such as China. Environmental governance in China – now increasingly characterized as authoritarian environmentalism⁶ – has been driven by state-dominated, non-participatory public policy processes. Despite its alleged advantages, such as rapid and centralized decision making and effective mobilization of public resources,⁷ authoritarian environmentalism is criticized for its lack of public participation, especially in the rulemaking process.⁸ Civil society actors are depicted as auxiliary players, often service providers to public regulators, rather

¹ A. Chayes, 'The Role of the Judge in Public Law Litigation' (1976) 89(7) *Harvard Law Review*, pp. 1281–316; B.G. Garth & M. Cappelletti, 'Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective' (1978) 27(2) *Buffalo Law Review*, pp. 181–292.

² Garth & Cappelletti, *ibid.*, pp. 209–27.

³ L.P. Norris, 'The Promise and Perils of Private Enforcement' (2022) 108(7) *Virginia Law Review*, pp. 1483–545; S.B. Burbank, S. Farhang & H.M. Kritzer, 'Private Enforcement' (2013) 17(3) *Lewis & Clark Law Review*, pp. 637–722.

⁴ Norris, *ibid.*

⁵ S. Bornstein, 'Public-Private Co-Enforcement Litigation' (2019) 104(2) *Minnesota Law Review*, pp. 811–88, at 865–8; Z.D. Clopton, 'Redundant Public-Private Enforcement' (2016) 69(2) *Vanderbilt Law Review*, pp. 285–332, at 295–9; D.F. Engstrom, 'Agencies as Litigation Gatekeepers' (2013) 123(3) *Yale Law Journal*, pp. 616–712, at 657–9; M. Zinn, 'Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizen Suits' (2002) 21(1) *Stanford Journal of Environmental Law*, pp. 131–40; S.V. Coslovsky, 'Relational Regulation in the Brazilian Ministério Público: The Organizational Basis of Regulatory Responsiveness' (2011) 5(1) *Regulation & Governance*, pp. 70–89.

⁶ B. Gilley, 'Authoritarian Environmentalism and China's Response to Climate Change' (2012) 21(2) *Environmental Politics*, pp. 287–307, at 288; S. Eaton & G. Kostka, 'Authoritarian Environmentalism Undermined? Local Leaders' Time Horizons and Environmental Policy Implementation in China' (2014) 218 *The China Quarterly*, pp. 359–80, at 360–1; G. Kostka & C. Zhang, 'Tightening the Grip: Environmental Governance under Xi Jinping' (2018) 27(5) *Environmental Politics*, pp. 769–81, at 772.

⁷ M. Beeson, 'The Coming of Environmental Authoritarianism' (2010) 19(2) *Environmental Politics*, pp. 276–94; Gilley, *ibid.*, p. 292.

⁸ A.L. Ahlers & Y. Shen, 'Breathe Easy? Local Nuances of Authoritarian Environmentalism in China's Battle against Air Pollution' (2018) 234 *The China Quarterly*, pp. 299–319, at 301; V. Arantes, C. Zou & Y. Che, 'Coping with Waste: A Government-NGO Collaborative Governance Approach in Shanghai' (2020) 259 *Journal of Environmental Management*, pp. 109653–61, at 109656.

than stand-alone representatives and enforcers of environmental public interest.⁹ Consequently, a pressing issue perceived by many is how to empower non-state actors and avoid their marginalization by well-resourced procuratorates.¹⁰ This stands in contrast to the widespread concern that private environmental legal actions will crowd out state enforcement and sidetrack public policy and regulation.¹¹

This article seeks to enrich the PIL literature by using EPIL as a window to investigate (i) local conditions for public-private collaboration, and (ii) the motivations and strategies of public and private actors to influence environmental rulemaking in authoritarian contexts.

As a recent breakthrough in China's environmental governance, EPIL has attracted increasing attention. In 2015, the revised Environmental Protection Law authorized qualifying environmental NGOs to bring civil EPIL against environmental pollution and destruction of ecosystems.¹² In 2017, both the Civil Procedure Law and Administrative Litigation Law¹³ were updated to allow procuratorates to file civil and administrative litigation for public interest purposes, such as environmental protection. However, so far, most scholars discuss NGO- and procurator-led EPIL as separate processes. For example, those examining the role of NGOs in EPIL underscore the legal and extralegal constraints facing NGOs, such as restrictive standing rules and inadequate funding.¹⁴ Meanwhile, research on procurator-led EPIL focuses on

⁹ T. Hildebrandt, *Social Organizations and the Authoritarian State in China* (Cambridge University Press, 2013); J. Teets, *Civil Society under Authoritarianism: The China Model* (Cambridge University Press, 2014); R. Hasmath & Y.J. Hsu, 'Isomorphic Pressures, Epistemic Communities and State-NGO Collaboration in China' (2014) 220 *The China Quarterly*, pp. 936–54, at 937–8; W. Shen & D. Jiang, 'Making Authoritarian Environmentalism Accountable? Understanding China's New Reforms on Environmental Governance' (2021) 30(1) *Journal of Environment & Development: A Review of International Policy*, pp. 41–67, at 61–2.

¹⁰ In other jurisdictions where state institutions play a dominant role in enforcing public interest, scholars have pointed out that encouraging social participation is difficult because of competition from the state; see K.D.G. de Mattos, 'We the Prosecutors: Challenges to Social Participation in Brazilian Public Law Litigation' (2021) 19(3) *International Journal of Constitutional Law*, pp. 1084–101.

¹¹ For examples of criticisms of environmental citizen suits in the US, see J. Rossi, 'Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decision-Making' (1997) 92(1) *Northwestern University Law Review*, pp. 173–249; J.H. Adler, 'Stand or Deliver: Citizen Suits, Standing, and Environmental Protection' (2001) 12(1) *Duke Environmental Law & Policy Forum*, pp. 39–83; M.C. Stephenson, 'Public Regulation of Private Enforcement: The Case for Expanding the Role of Administrative Agencies' (2005) 91(1) *Virginia Law Review*, pp. 93–173.

¹² Since 2012, China's Civil Procedure Law has allowed 'social organizations as prescribed by law' to bring EPIL cases. However, because of a lack of clarity about what constitutes 'as prescribed by law', much NGO-led EPIL has been rejected by courts for lack of standing. Art. 58 of the revised Environmental Protection Law specifies the legal requirements for an NGO to become an eligible EPIL plaintiff and has since been frequently cited by Chinese courts to determine environmental NGOs' standing: Environmental Protection Law of the People's Republic of China, Order 9, 24 Apr. 2014.

¹³ Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China and the Administrative Litigation Law of the People's Republic of China, Order 71, 27 June 2017.

¹⁴ Y. Ma, 'Vindicating Environmental Public Interests in China: A Balanced Approach to Institutional Interaction in Public Interest Litigation System' (2019) 21(4) *Environmental Law Review*, pp. 269–91, at 276–9; H. Zhuang & S.A. Wolf, 'Environmental Public Interest Litigation: New Roles for Civil Society Organizations in Environmental Governance in China' (2021) 7(4) *Environmental Sociology*, pp. 393–406, at 404–5. In addition, some scholars have questioned the opportunistic behaviour of NGOs in EPIL and highlighted the risk of duplicative enforcement; see, e.g., L. Xie & L. Xu,

procuratorates' lack of incentives and institutional independence.¹⁵ While some have touched upon the relationship between the two actors, arguing that competition from the politically and financially strong procuratorates will crowd out NGO-led EPIL over time, such discussion focuses on civil litigation and lacks an empirical foundation.¹⁶

One exception is a recent study by Xie and Xu, which examined 549 EPIL court decisions and found that, in some cases, NGO-procuratorate collaboration fostered state support for EPIL in the form of financial resources and technical expertise.¹⁷ However, the authors also observed that such collaboration seemed to have subsided, as NGOs tended to take on high-value cases while procuratorates focused on run-of-the-mill cases. While this research provides valuable empirical insights into the dynamic of NGOs and procuratorates, it analyzed only court judgments, which often reveal only partial information on the decision-making process in the Chinese context. More qualitative research is needed to understand the underlying motivations and constraints – especially those of an extralegal nature – of NGOs and procuratorates, or the interaction between these two actors during the pre- and post-litigation stages.

Building on these previous efforts, this article takes a relational and process-based approach to examining the evolution of EPIL in China, using in-depth interviews with Chinese procurators and staff from environmental NGOs. We investigate how authoritarian environmentalism has shaped the institutional capacities and objectives of Chinese environmental NGOs and procuratorates as well as the conditions under which these two kinds of actor may complement, collaborate with, or compete against each other. We find an emerging division of labour or complementarity between environmental NGOs and procuratorates in terms of their organizational preferences and targeted EPIL defendants. Moreover, there exists a space for their collaboration and synergy in the process of local experimentation and innovation of EPIL rules. This study thus contributes to understanding the opportunities and challenges of public-private collaboration on environmental enforcement through PIL in the Chinese context.

We argue that the extent of complementarity between NGOs and procuratorates is shaped by the political and legal conditions for China's environmental governance.

'Environmental Public Interest Litigation in China: A Critical Examination' (2021) 10(3) *Transnational Environmental Law*, pp. 441–65, at 458–60.

¹⁵ Y. Shi & B. van Rooij, 'Prosecutorial Regulation in the Global South: Environmental Civil Litigation by Prosecutors in China Compared to Brazil' (2016) 10(1) *Regulation & Governance*, pp. 44–57, at 46–7; Q. Gao, "'Public Interest Litigation" in China: Panacea or Placebo for Environmental Protection?' (2018) 16(4) *China: An International Journal*, pp. 47–75, at 59–63; T. Zhai & Y.C. Chang, 'Standing of Environmental Public-Interest Litigants in China: Evolution, Obstacles and Solutions' (2018) 30(3) *Journal of Environmental Law*, pp. 369–97, at 387–8; C. Ding & H. Xiao, 'A Paper Tiger? Prosecutorial Regulators in China's Civil Environmental Public Interest Litigations' (2020) 32(3) *Fordham Environmental Law Review*, pp. 323–78, at 366–7.

¹⁶ Q. Gao & S. Whittaker, 'Standing to Sue Beyond Individual Rights: Who Should Be Eligible to Bring Environmental Public Interest Litigation in China?' (2019) 8(2) *Transnational Environmental Law*, pp. 327–47, at 346.

¹⁷ L. Xie & L. Xu, 'The Successes and Obstacles of Environmental Public Interest Litigation in China: Findings from 570 Court Cases Brought by NGOs, Public Prosecutors and Local Government' (2022) 34(1) *Journal of Environmental Law*, pp. 53–81.

Pro-environmental authoritarian leaders face a persistent dilemma: maintaining the state's dominance over society while collaborating with social actors to improve regulatory effectiveness.¹⁸ Consequently, while many authoritarian states, including China, have increasingly relied on courts as instruments of governance, they have also employed various strategies to contain judicial activism and pre-empt synergy between courts and civil society.¹⁹ This dilemma may also explain the differing attitudes of the Chinese state towards NGO- and procurator-led EPIL. We find that the different legal opportunities of Chinese environmental NGOs and procuratorates have shaped their divergent organizational objectives and priorities, which are further reinforced by organizational factors, such as resource strategies and incentive structures. This has fostered complementarity between procurator- and NGO-led EPIL in strengthening environmental governance in China. Organizational autonomy and the goal of increasing the socio-legal impact of EPIL both enable and motivate NGOs to focus on new issues and target national or local champions, whereas procuratorates target small enterprises and individuals in run-of-the-mill cases to minimize the political risk of losing in court. Meanwhile, driven by the need to strengthen their institutional legitimacy and gain more political support and resources from the national party-state, procuratorates have increasingly emphasized administrative EPIL against local government agencies.

In addition, the different roles and organizational preferences of NGOs and procuratorates create space for their collaboration and synergy in legal experimentation and innovation. Policy and institutional experimentation have contributed to the resilience and adaptiveness of its authoritarian system.²⁰ However, political risk and uncertainty have hindered local experimentation and innovation, especially given the current administration's push to recentralize power over policymaking, implementation, and oversight in areas such as environmental governance.²¹ One potential coping strategy for local governments is to delegate policy experimentation to non-state actors such as NGOs, which helps to limit the social and political risks of innovation.²² In this study we observe that interactions between NGOs and procuratorates have fostered synergy by tapping into the former's entrepreneurial energy and the latter's political strength. Such NGO-procuratorate synergy is evidenced in reforms of the EPIL remedy rules,

¹⁸ D. Stockman, *Media Commercialization and Authoritarian Rule in China* (Cambridge University Press, 2013), pp. 23–8; B. Dickson, *The Dictator's Dilemma: The Chinese Communist Party's Strategy for Survival* (Oxford University Press, 2016), pp. 45–50; B. van Rooij, R.E. Stern & K. Furst, 'The Authoritarian Logic of Regulatory Pluralism: Understanding China's New Environmental Actors' (2016) 10(1) *Regulation & Governance*, pp. 3–13, at 4–7.

¹⁹ T. Moustafa, 'Law and Courts in Authoritarian Regimes' (2014) 10 *Annual Review of Law and Social Science*, pp. 281–99, at 289–92. For further discussion on this issue, see Section 4.1 below.

²⁰ For the general evolution of policy experimentation in China, see S. Heilman, 'From Local Experiments to National Policy: The Origins of China's Distinctive Policy Process' (2008) 59 *The China Journal*, pp. 1–30; J. Teets & R. Hasmath, 'The Evolution of Policy Experimentation in China' (2020) 13(1) *Journal of Asian Public Policy*, pp. 49–59.

²¹ J. Teets, R. Hasmath & O. Lewis, 'The Incentive to Innovate? The Behavior of Local Policymakers in China' (2017) 22(4) *Journal of Chinese Political Science*, pp. 509–10; G. Kostka & J. Nahm, 'Central–Local Relations: Recentralization and Environmental Governance in China' (2017) 231 *The China Quarterly*, pp. 575–8.

²² C.L. Hsu & Y. Jiang, 'An Institutional Approach to Chinese NGOs: State Alliance versus State Avoidance Resource Strategies' (2015) 221 *The China Quarterly*, pp. 100–22, at 112–3.

through which NGOs initiate local experiments while procurators facilitate the institutionalization of rule innovation. However, challenges remain, as more systematic collaboration between state and non-state actors has been impeded by their competition for case leads and social legitimacy.

The remainder of the article is structured as follows. Section 2 reviews the legislative and policy background for NGO- and procurator-led EPIL, respectively, in China. Section 3 explains the methodology used for and data obtained from empirical research. Sections 4 and 5 examine the emerging complementarity and synergy of NGOs and procuratorates in litigation practices as well as rule experimentation and innovation. Section 6 evaluates the potential and challenges for expanding NGO-procuratorate interaction in the Chinese EPIL system and concludes.

2. EPIL IN CHINA:

A BRIEF HISTORY OF POLICY AND LEGISLATION

During the past decade, China has extended standing laws in environmental litigation to include three types of ‘public interest’ actor. Since 2012, eligible NGOs have been allowed to bring civil EPIL.²³ In 2015, procuratorates were authorized to experiment with EPIL, an approach later scaled to the national level.²⁴ Since 2015, government agencies involved in environmental management have also started to use litigation to enforce the environmental liability of private parties as part of an effort to develop the ecological and environmental damage compensation (EEDC) mechanism.²⁵ Table 1 shows the number of EPIL and EEDC cases registered by Chinese courts between 2015 and 2021. We provide a brief history in this section of the policy and legislation related to NGO- and procurator-led EPIL.

Although both NGOs and procuratorates are new players in China’s EPIL system, the developmental trajectories of their EPIL systems have been vastly different. NGO-led EPIL was established through an incremental process driven by NGO advocacy, media campaigns, and alliance with pro-environmental officials. In contrast, procurator-led EPIL has developed via centrally planned reforms and relies on top-down implementation mechanisms. Understanding the distinct drivers, legislative designs, and policy intentions of the two systems is crucial for evaluating the efficacy of these two new regulatory actors.

²³ Art. 55 of the revised Civil Procedure Law allows social organizations and responsible state agencies to initiate PIL relating to violations of environmental protection and consumer rights: Civil Procedure Law of the People’s Republic of China (2012 Amendment), Order 59, 31 Aug. 2012.

²⁴ In China, local experimentation is frequently used to gather information and mitigate potential risk for future rule making at the national level. In 2015, the National People’s Congress authorized procuratorates in 13 provinces and municipalities to conduct experiments on bringing PIL. In 2017, the Civil Procedure Law and Administrative Litigation Law were revised to provide official standing for procurator-led PIL.

²⁵ For detailed discussion of the EEDC system and its relationship with the EPIL system in China, see Xie & Xu, n. 14 above and Xie & Xu, n. 17 above.

Table 1 Number of EPIL and EEDC Cases Registered by Chinese Courts

	Jan. 2015 to June 2016	July 2016 to June 2017*	2018	2019	2020**	2021
NGO-led EPIL	93	153	65	179	103	299
Procurator-led EPIL	23	791	1,737	2,309	3,454	5,610
Ecological and environmental damage compensation***			20	21	62	86

Source Data compiled by the authors based on the SPC Annual Reports entitled ‘China’s Environmental Resources Adjudication’, 2017–2021, and ‘Development of Environmental Adjudication in China’, 2017–2021.

Notes

* Official statistics do not provide a breakdown for the years 2015, 2016, and 2017. In addition, the number of EPIL cases brought during the second half of 2017 is unreported.

** The 2020 statistics reflect the numbers of cases decided by Chinese courts, as the numbers of registered cases were not reported.

*** The number of registered EEDC cases does not include the number of settlement agreements confirmed by courts.

2.1. NGO-Led EPIL

In 2005, 28 members of the Chinese People’s Political Consultative Conference (CPPCC) submitted a proposal to adopt an EPIL system, bringing it into formal policy discussion for the first time.²⁶ Later that year, the first EPIL lawsuit was filed to seek remedies for the Songhua River benzene spill. Although the case was eventually rejected in court for lack of legal standing, it prompted widespread media coverage.²⁷ In December 2005, the State Council issued a decision to strengthen environmental governance, highlighting the importance of NGO participation in EPIL.²⁸

Against the backdrop of this national endorsement, several local jurisdictions engaged in innovative rulemaking. In 2008, the court and procuratorate of Wuxi Municipality issued a decision to recognize the standing of NGOs, procuratorates, and environmental authorities to initiate EPIL, and lay down procedural rules for adjudicating EPIL cases.²⁹ Similar rules were passed in Guiyang, Kunming, and Guangzhou.³⁰ In 2012, the revised Civil Procedure Law became the first national legislation to provide standing for NGOs to bring EPIL. In practice, however, many courts

²⁶ ‘CCPCC member Liang Congjie, ‘Public Interest Litigation is Needed to Protect the Environment’, *Sina*, 2005, available (in Chinese) at: <http://finance.sina.com.cn/chanjing/b/20050307/10061408480.shtml>.

²⁷ For examples see ‘Six Law Professors and Students Sued CNPC for 10 Billion Yuan on behalf of Songhua River; Court Refused to Hear the Case’, *Sina*, 22 Dec. 2005, available (in Chinese) at: <http://news.sina.com.cn/o/2005-12-22/05307769580s.shtml>; S. Jiangto, ‘Residents Vow to Take Toxic Spill Suit to Top Court’, *South China Morning Post*, 17 Dec. 2005, available at: <https://www.scmp.com/article/529691/residents-vow-toxic-spill-suit-top-court>; A. Wang, ‘Environmental Protection in China: The Role of Law’, *China Dialogue*, 5 Feb. 2007, available at: <https://chinadialogue.net/en/pollution/745-environmental-protection-in-china-the-role-of-law>.

²⁸ State Council, Decision on Implementing the Scientific Development Outlook and Strengthening Environmental Protection (2015).

²⁹ A.L. Wang & J. Gao, ‘Environmental Courts and the Development of Environmental Public Interest Litigation in China’ (2010) 3(1) *Journal of Court Innovation*, pp. 37–50, at 45–7.

³⁰ *Ibid.*

remained reluctant to hear NGO-led EPIL, citing lack of authorization by specific laws.³¹

In 2014, Article 58 of the revised Environmental Protection Law recognized an expanded standing provision for NGO-led EPIL.³² The new law gives standing to nearly 700 environmental NGOs, a significant increase over previous drafts, which limited standing to a handful of government-organized NGOs. Moreover, the Supreme People's Court (SPC) established its own environmental tribunal to hear appeals or retrials, which has proven crucial in helping NGOs to overcome the legal and extralegal barriers they encounter in lower courts.³³ By 2021, NGOs had successfully brought about 800 EPIL cases before Chinese courts.

That being said, the current rules include several limitations. Firstly, NGOs are not allowed to bring administrative EPIL, as the 2017 revision of the Administrative Litigation Law gave standing to bring administrative PIL only to procuratorates.³⁴ Secondly, some scholars argue that, in practice, many courts have adopted a narrow interpretation of standing to restrict the scope of qualifying NGOs.³⁵ Such restriction is most evident in the Tengger Desert pollution case,³⁶ in which the High Court of the Ningxia Autonomous Region rejected the standing of the China Green Development Foundation (CGDF). However, the SPC retrial ruled in favour of the CGDF's standing and published the decision as a guiding case to clarify NGO standing requirements. Such SPC support has reportedly diminished informal barriers to NGO standing, although some local courts have resorted to more subtle tactics of resistance, such as procrastination.³⁷

2.2. Procurator-Led EPIL

Unlike NGO-led EPIL, the establishment of procurator-led EPIL was primarily a centrally planned reform. In 2014, following President Xi's call to build a law-based government, the National People's Congress (NPC) authorized local procuratorates to experiment with bringing PIL, of which environmental protection is a main focus.³⁸ Procuratorates were encouraged to file civil EPIL, incidental civil EPIL collateral to

³¹ Zhai & Chang, n. 15 above, p. 376.

³² L. Zhang et al., 'Power Politics in the Revision of China's Environmental Protection Law' (2013) 22(6) *Environmental Politics*, pp. 1029–35, at 1032–3; X. Zhu & K. Wu, 'Public Participation in China's Environmental Lawmaking: In Pursuit of Better Environmental Democracy' (2017) 29(3) *Journal of Environmental Law*, pp. 389–416, at 400–2.

³³ Interviews NCLAPV02; NCGDF02; NFON01.

³⁴ E.g., Zhongmei Lv, an environmental law professor who has served as a member of the National People's Congress (NPC) and CPPCC, has been advocating the right of NGOs to bring EPIL against government agencies since the mid-2000s: Z. Lv, 'More Precise Policy-Making is Needed to Promote NGO-led EPIL', *China Environment News*, 14 Mar. 2018, available (in Chinese) at: <http://gongyi.people.com.cn/n1/2018/0314/c151132-29866362.html>.

³⁵ Gao & Whittaker, n. 16 above, pp. 342–3.

³⁶ *China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Science and Technology Co. Ltd*, 28 Jan. 2016, (2016) Zui Gao Fa Min Zai No. 47, Supreme People's Court.

³⁷ Interviews NCLAPV01; NCGDF02; NFON03.

³⁸ NPC, Decision to Authorize SPP to Undertake Pilot Projects on Procurator-Led Public Interest Litigation Work (2015).

criminal proceedings, and administrative EPIL. When government agencies are the defendants, procuratorates need to issue a prosecutorial recommendation and can resort to litigation only when the agencies fail to comply with such a recommendation.³⁹ During the two-year experimentation period, the procuratorate was under paramount pressure to ‘break through’ in its litigation practice and, by 2017, procuratorates had brought over 900 EPIL suits.⁴⁰

Since 2017, procurator-led PIL has gained significant traction as a result of formal legislative authorization and a shift in procuratorates’ work priorities. Both the Administrative Litigation Law and Civil Procedure Law were revised to facilitate the scaling of procurator-led PIL to the national level. The 2018 transfer of the Anti-Corruption Bureau from the Supreme People’s Procuratorate (SPP) to the National Supervisory Commission provided additional incentives for procuratorates to increase their institutional legitimacy by strengthening their newly acquired EPIL function.⁴¹ Between 2017 and 2019, Chinese procuratorates brought 6,353 PIL cases, of which 995 were administrative, 413 were civil, and the rest were incidental civil claims.⁴² EPIL accounted for about 60% of those cases.

It is noteworthy that national legislation differentiates between civil and administrative EPIL. The Administrative Litigation Law established the exclusive right of procuratorates to sue government agencies. By comparison, the Civil Procedure Law provides procuratorates with only a secondary role in civil EPIL, by requiring them to announce publicly their intention to bring a civil case.⁴³ If an environmental NGO decides to bring a lawsuit, the procuratorate may act as a litigation supporter, which is analogous to an *amicus curiae*. Since 2018, the right to bring civil EPIL has become further concentrated at intermediate- or higher-level procuratorates.⁴⁴ Figures 1 and 2 present the breakdown of types of procurator-led EPIL and the pre-litigation procuratorial recommendation ratio, respectively.

To ensure swift implementation of procurator-led PIL, the central party-state has been enlisting support from local legislatures and governments. Since 2019, more than 20 provincial People’s Congresses and Party Committees have issued decisions that call for government support for procurator-led PIL. For example, the provincial legislatures in Zhejiang, Guangdong, and Hebei encouraged procuratorates to maintain records of responses of local government agencies to procuratorial recommendations and administrative PIL, and proposed to incorporate such records into local officials’ performance evaluations. Similarly, in Shanghai and Guangdong, the legislatures have authorized procuratorates to explore ‘preventive’ PIL when public interest is threatened by certain activities.

³⁹ Administrative Litigation Law (2017 Revision), Art. 25.

⁴⁰ ‘Procurator-Led PIL To Be Scaled up Nationally upon the Expiration of Trial in Thirteen Provinces’, *Beijing News*, 23 June 2017, available (in Chinese) at: http://www.xinhuanet.com/politics/2017-06/23/c_1121195696.htm.

⁴¹ Ding & Xiao, n. 15 above, p. 372.

⁴² SPP, Report on the Implementation of Procurator-led Public Interest Litigation (2019).

⁴³ SPC & SPP, Interpretation of the Application of Law in Public Interest Litigation (2018).

⁴⁴ SPP, Interim Guidelines on Procurator-led Civil Public Interest Litigation Work (2018).

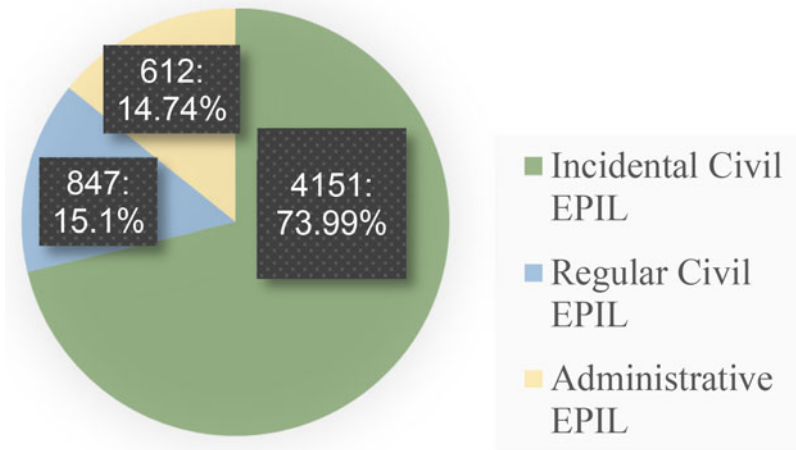


Figure 1 Breakdown of Procurator-Led EPIL (2021)

Source Data compiled based on the SPC Annual Reports of China’s Environmental Resources Adjudication.

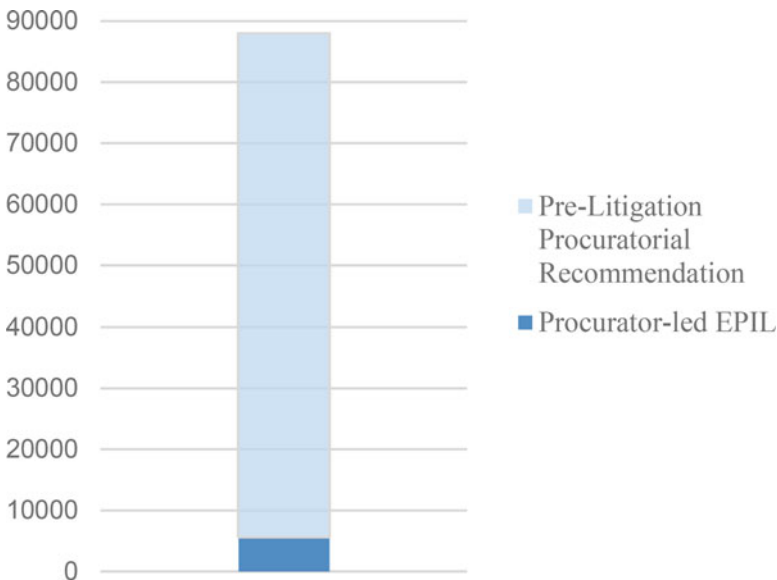


Figure 2 Litigation Actions and Recommendations in Procuratorate EPIL Work (2021)

Source Data compiled based on the SPP Annual Work Report (2021).

To summarize, although both NGOs and procuratorates have become active players in the EPIL system, they face distinct legal opportunities. Since 2014, an increasing number of environmental NGOs have brought more lawsuits than ever before. Yet,

the role of NGOs as private enforcers remains considerably restricted by law. The state's cautious approach to NGO-led EPIL is shaped by the paradox of a shrinking political space for civil society alongside favourable environmental policies. Meanwhile, procurator-led EPIL was established through a centralized reform backed by national leadership and an incentive to strengthen procuratorates' institutional legitimacy. The efficacy and potential of EPIL in China must be examined against the backdrop of the contexts within which it operates and judged in relation to available alternatives. In the next sections, we discuss the conditions under which NGOs and procuratorates can be complementary and collaborative forces in promoting EPIL in China.

3. METHODOLOGY AND DATA

This study is based primarily on data collected by the authors through 49 semi-structured interviews conducted across China between 2020 and 2022. Interviewees include 31 procurators from 12 procuratorates and 18 employees of 9 environmental NGOs. All interviewed procuratorates participated in the procurator-led EPIL pilot scheme between 2015 and 2017,⁴⁵ which allowed them to gain more EPIL experience and news coverage of their practice. All interviewed NGOs were also active players in the EPIL system in terms of the total number of cases brought and the social impact of high-profile cases. Together, these NGOs stated to have lodged nearly 400 EPIL cases by 2020 – about three quarters of the NGO-led EPIL cases registered in Chinese courts.⁴⁶ Most procurator interviews were facilitated by scholars with long-term connections with the Chinese procuratorate system, while interviews with NGO staff were set through purposive sampling, using the snowball technique. To supplement and corroborate our interviews, we examined secondary sources on China's EPIL practice, which included legislation, work reports from courts and procuratorates, judgments, and media reports.

To improve the representativeness and geographical diversity of our sample, we contacted procuratorates at multiple levels and NGOs of varying sizes and status.⁴⁷ As basic-level procuratorates (i.e., county level) are responsible for handling most of the on-the-ground EPIL work, half of the interviewed procurators were from district and county units and the other half from municipal and provincial units. The scattered distribution of our sample – 31 interviewees from 12 procuratorates – is explained by the fact that many basic-level procuratorates have only one or two procurators dedicated to EPIL-related work. The selected procuratorates are in five provincial-level administrative divisions with vastly different socio-economic conditions: Beijing, Hubei,

⁴⁵ 13 (out of 31) provincial-level administrative jurisdictions in mainland China participated in the pilot scheme.

⁴⁶ Based on official Chinese statistics, the authors estimate that by 2020, Chinese courts had registered about 520 NGO-led EPIL cases. Official statistics are available (in Chinese) at: <http://politics.people.com.cn/n1/2015/12/30/c1001-27992631.html>; <http://jzlsfy.chinacourt.gov.cn/article/detail/2019/06/id/4003211.shtml>; <http://www.court.gov.cn/zixun-xiangqing-228351.html>; and <http://www.gongyishibao.com/html/yanjiubaogao/2021/06/17749.html>.

⁴⁷ Because of limited access, however, we were unable to corroborate all statements made by interviewees.

Shandong, Jilin, and Guizhou. Four of the nine NGOs are based in Beijing and have engaged in EPIL activities across China. The remaining five NGOs are local environmental groups from Anhui (2), Zhejiang (1), Guizhou (1), and Yunnan (1). The political and legal status of these NGOs varied significantly. Two were government-organized, two were non-profit legal clinics affiliated with universities, and the rest were grassroots organizations.

Interviews typically lasted from one to three hours and were focused on the number of personnel case load, organizational goals, incentive structure, interaction between procuratorates and NGOs, and perceived EPIL challenges. Typical interview questions for procurators and NGO staff are listed in the [Appendix](#) at the end of the article. Beyond answering these typical questions, interviewees were encouraged to elaborate on the influence of broader institutional changes (such as judicial reforms, environmental inspections, and anti-corruption campaigns) on EPIL.

4. AN EMERGING DIVISION OF LABOUR: COMPLEMENTARITY BETWEEN NGOs AND PROCURATORATES

As the overview of EPIL legislation and policy shows, the Chinese state has encouraged NGOs to play a greater role in civil EPIL, while reserving the right to bring administrative EPIL exclusively for procurators. In this section we examine how this distinction is further strengthened by the differing organizational goals, resource strategies, and incentive structures of NGOs and procuratorates. NGOs tend to focus on high-profile corporate defendants in civil EPIL, whereas procuratorates have increasingly shifted towards administrative PIL against local government agencies. This has increased the complementarity between NGOs and procurators as emerging actors in China's environmental governance. We further suggest that this division of labour seems to be more politically feasible than alternative approaches to improving government environmental accountability in China. That being said, without fundamental administrative law reforms and broader political participation, the efficacy of procurator-led administrative EPIL remains limited.

4.1. *NGOs and Impact Litigation in China*

Despite the lack of binding effects of Chinese court decisions on later adjudications, NGOs pursue strategic litigation to catalyze broader legal and social changes. Through civil EPIL, Chinese NGOs pursue three interrelated goals. The first is to punish polluters and resolve specific environmental problems. Several of the interviewed environmental groups use EPIL to target polluting enterprises that have already received administrative penalties.⁴⁸ They consider EPIL an important supplement to government enforcement because China's pollution fines are too low to deter polluters or compensate for the environmental damage they cause. Therefore, EPIL plays a role in improving enforcement measures and enhancing deterrence by signalling potential

⁴⁸ Interviews NFOG01; NACEF01; NFON02; NCGDF02.

costs to other businesses. As the head of a Beijing-based NGO noted, ‘by manifesting the legal and economic liabilities through EPIL, we can reach more corporate decision-makers and impact their future behavior. This rippling effect is the real strength of litigation’.⁴⁹

Secondly, NGOs, especially large organizations headquartered in Beijing, use EPIL as a mechanism for legislative advocacy. Before the 2014 revision of the Environmental Protection Law, the All-China Environmental Federation (ACEF) and Friends of Nature (FON) brought a few EPIL cases before environmental tribunals in Guizhou and Yunnan, which built momentum for legislative authorization of NGO-led EPIL.⁵⁰ Since the new law came into effect, NGOs have shifted their focus of advocacy to the development of rules that are more favourable to EPIL plaintiffs. In one case brought by ACEF in Guizhou, for example, the plaintiff requested attorney fee-shifting and the use of expert opinions instead of formal environmental appraisals to lower litigation costs, both of which were supported by the local environmental court.⁵¹ Not only was the case published by the SPC as a model case, but the rules were also incorporated into the judicial interpretation on civil EPIL.⁵²

Thirdly, NGOs consider EPIL to be a crucial channel for raising environmental and legal awareness in China. Many NGOs list cultivating environmental citizenship among their main missions.⁵³ Litigation provides vivid examples that facilitate the trickling down of general policies and norms, such as ecological civilization and the ‘green principle’ in the newly adopted Civil Code.⁵⁴ Public education is also a means for mobilizing social support for litigation. Staff from the CGDF consider public opinion ‘a decisive factor’ in several case outcomes.⁵⁵ For example, in *CGDF v. Yalong Hydro*,⁵⁶ in which the plaintiff tried to block a hydropower development project to protect the endangered plant *acer pentaphyllum*, the CGDF launched a media campaign to highlight the importance of prevention in protecting biodiversity. Public support arguably prompted the SPC to select this case as a model before the local court rendered its decision, effectively guaranteeing the plaintiff’s victory.⁵⁷

Some evidence suggests that societal actors seem to enjoy several advantages over procuratorates in bringing civil claims, particularly during the early stage of the development of EPIL in China. Firstly, because NGOs enjoy a higher degree of independence

⁴⁹ Interview NFON02.

⁵⁰ Interviews NCGDF02; NFOC02.

⁵¹ Interviews NACEF01; NCGDF02; CGZ01. The case in question is *ACEF v. Dingba Paper Manufacturers Co.*, 20 Jan. 2011, (2010) Case No. Qing Civil 4, Court of Qingzhen Municipality.

⁵² SPC, Judicial Interpretation on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations (2015), Arts 15, 22.

⁵³ Interviews NFON01; NCGDF01; NLC01.

⁵⁴ Art. 9 of the General Provisions of the 2020 Civil Code states that civil relations shall be conducted in a manner that facilitates conservation of resources and protection of the ecological environment, an approach also known as the ‘green principle’.

⁵⁵ Interviews NCGDF01; NCGDF02.

⁵⁶ *China Biodiversity Conservation and Green Development Foundation v. Yalong River Hydropower Development Co., Ltd.*, Decision of 17 Dec. 2020, (2015) Case No. Gan Civil 45, Intermediate People’s Court of Ganzi Tibetan Autonomous Prefecture, Sichuan Province.

⁵⁷ Interview NCGDF02.

from both government and business, they face fewer constraints in suing incumbent firms. This relative autonomy allows them to target high-profile corporate defendants, such as State Grid and Taobao,⁵⁸ while their objective of maximizing the legal and social impacts of cases incentivizes them to do so. By contrast, procuratorates have focused largely on incidental civil claims against individual or small-enterprise defendants, most probably because they aim to lower investigation costs and avoid conflict with local governments.⁵⁹ Secondly, as a result of their early entry into EPIL practice, NGOs have arguably developed better legal skills and support networks than those of procurators. Large environmental groups, such as the ACEF and FON, began working on EPIL-related research and advocacy in the mid-2000s. Since 2014, these front-runners have organized several capacity-building programmes to empower local environmental groups.⁶⁰ In some cases, national and local NGOs have partnered to bring EPIL, with the former providing legal and financial support and the latter taking charge of on-the-ground investigation and evidence collection.⁶¹ Moreover, NGOs have actively engaged public interest lawyers, environmental scientists, journalists, and volunteers, who have provided technological expertise, legal experience, and public support to NGO-led EPIL to counter the political and economic influence of corporate defendants.⁶² Nevertheless, this advantage may gradually decline as procuratorates build their own expertise through the vast amount of EPIL work they undertake every year.

Chinese NGOs have been less successful in bringing administrative EPIL than civil EPIL. Before 2017, environmental NGOs were active in filing administrative EPIL. As an environmental lawyer from Guiyang noted, '[m]any civil EPIL cases brought by NGOs are associated with government inaction or irresponsible action, such as a failure to enforce environmental licensing or permitting requirements for local enterprises'.⁶³

However, the revised Administrative Litigation Law and the related SPC judicial interpretation leaves little, if any, space for Chinese NGOs to initiate administrative EPIL. Since 2017, the CGDF is the only environmental group interviewed that is still trying to use EPIL to target government agencies. In two recently concluded cases, the CGDF sued a county government and a provincial bureau of land and resources for joint liability for the ecological damage caused by illegal mining and water pollution by private companies. The first case was dismissed by the court based on the CGDF's lack of standing, and the second was settled when the local government and companies concerned promised to rectify the pollution problem.⁶⁴ Given the legislative obstacles to bringing administrative EPIL, the CGDF has recently shifted to a milder strategy

⁵⁸ Interviews NFON01; NCGDF02.

⁵⁹ Ding & Xiao, n. 15 above, p. 342.

⁶⁰ Interview NFON02.

⁶¹ Interview NDB01.

⁶² Interviews NCGDF02; NFON03.

⁶³ Interview LGZ01.

⁶⁴ Interviews NCGDF01; NCGDF02.

of listing government agencies as third parties in civil EPIL. According to the CGDF, this still exerts some public pressure on government agencies, as their heads are required to appear before the court and respond to plaintiff claims.⁶⁵ While the effectiveness of this new strategy is yet to be determined, the leader of the CGDF's litigation team acknowledged that it is likely to have limited impact on public agencies, as courts have full discretion in deciding whether to add a third party to litigation.⁶⁶

4.2. *The Rise of Procurator-Led Administrative EPIL*

Many observers are sceptical of the efficacy of procurator-led EPIL, pointing out that, unlike NGOs, procurators have inadequate incentives to pursue industrial polluters and/or institutional autonomy from local governments.⁶⁷ As shown in [Figure 1](#), in 2021, civil and administrative suits accounted for 15.1% and 14.7% of all procurator-led PIL cases respectively, meaning that more than 70% of the procurator-led EPIL cases brought by procuratorates have been incidental civil claims targeting defendants already subject to criminal prosecution.⁶⁸ Given the high percentage of incidental civil claims and their relatively small economic value, scholars have criticized procurators for going after low-hanging fruit, thus diverting limited public enforcement resources from large industrial polluters.⁶⁹

While not entirely disputing this line of thinking, this article offers more nuanced perspectives for assessing the dynamics of NGO- and procurator-led EPIL. Firstly, the regulatory value of incidental civil EPIL – much of which has targeted rural environmental pollution – should not be neglected, as it could help to mitigate the rural-urban gap in China's environmental enforcement.⁷⁰ The ability of procuratorates to pursue a large number of 'mundane' cases also contrasts with NGO-led EPIL, which has focused on a few high-profile cases based on its organizational preferences and limited financial resources. Secondly, and more importantly, ongoing trends in the procuratorate emphasize administrative EPIL over civil and incidental civil cases, which may mitigate the low-hanging fruit problem over time.

The driving force behind this trend is the SPP's concern over its own institutional legitimacy. Since 2019, the SPP has acknowledged that focusing on incidental civil claims is problematic and highlights the imbalance in the distribution of PIL cases, and has called upon lower procuratorates to 'crack more tough nuts'.⁷¹ In addition,

⁶⁵ Administrative Litigation Law, Art. 3: 'The person in charge of the sued government agency should appear before court and respond to the claims'. In practice, the SPC has interpreted this article to include situations in which a government agency is listed as a third party: SPC, 'Provisions on the Requirement for Head of Government Agencies to Appear before Court', 23 June 2020, available (in Chinese) at: <https://www.court.gov.cn/zixun-xiangqing-238121.html>.

⁶⁶ Interview NCGDF02.

⁶⁷ Shi & van Rooij, n. 15 above, pp. 54–5; Ding & Xiao, n. 15 above, pp. 375–8.

⁶⁸ SPP, Report on the Implementation of Procurator-Led Public Interest Litigation, n. 42 above.

⁶⁹ For examples of this critique, see Shi & van Rooij, n. 15 above, p. 52; Ding & Xiao, n. 15 above, p. 342; R. Zhang & B. Mayer, 'Public Interest Environmental Litigation in China' (2017) 1(2) *Chinese Journal of Environmental Law*, pp. 202–28, at 217.

⁷⁰ A. Lora-Wainwright et al., 'Learning to Live with Pollution: The Making of Environmental Subjects in a Chinese Industrialized Village' (2012) 68 *The China Journal*, pp. 106–24.

⁷¹ SPP, Report on the Implementation of Procurator-Led Public Interest Litigation, n. 42 above.

civil suits involving complex factual and legal issues require considerable time and resources, which is incompatible with procurators' performance targets, such as completion of a specified number of cases per year.⁷² Another contributing factor is the SPP's loss in 2018 of its anti-corruption functions, which gives it a strong motivation to use administrative PIL to strengthen the authority and institutional legitimacy of procuratorates vis-à-vis other party-state organs.⁷³ As a provincial-level procurator put it, 'the institutional reform in 2018 closed a door [the removal of the anti-corruption function from the procuratorial system] but opened a window [the establishment of a procurator-led PIL system] for the procuratorates, and we now need to open this window wider'.⁷⁴

The SPP relies on several mechanisms to implement shifting priorities, the first and foremost of which is target evaluation. In response to the SPP's call to bring more administrative PIL, several provincial procuratorates have increased the relative weight of administrative PIL in their evaluation systems. For example, the Jilin Provincial Procuratorate raised the point value for administrative suits to double that of incidental civil suits.⁷⁵ This has proven to be quite effective, as Jilin's administrative PIL accounted for more than half of its total PIL cases in 2020, placing the province way ahead of the national average of 20%.⁷⁶

Secondly, the SPP actively solicits political support for PIL from national and provincial party leadership. To motivate lower procuratorates to undertake more administrative PIL, the SPP highlights the importance of party committee support and the links between PIL and the national campaign for law-based governance:

Administrative public interest litigation is not a zero-sum game. Despite the division of labor between the procuratorates and government agencies, we share the same objectives. Procuratorates at all levels should mobilize their political acumen, legal expertise, and authority of judicial supervision to facilitate administrative PIL. [As long as we] act as a diligent advisor for the party committee on improving law-based governance, we will gain sufficient understanding, trust, and support.⁷⁷

Support from local party committees and legislatures gives procuratorates an edge over NGOs in supervising government actions. For example, in 2019, the SPP published a model PIL case in which a local procuratorate successfully put pressure on the government to revoke a controversial normative document by issuing a post-litigation procuratorial recommendation.⁷⁸ Subsequently, several provincial and municipal people's congresses – including those in Shanghai, Shaanxi, and Ningbo – officially confirmed the procuratorates' power to issue recommendations on the legality of normative

⁷² Interview NCDGF02.

⁷³ Interviews PLJ04; PHB02; PBJ01.

⁷⁴ Interview PJJ02.

⁷⁵ Interview PJJ04.

⁷⁶ Interviews PJJ01; PSD01.

⁷⁷ SPP, Report on the Implementation of Procurator-led Public Interest Litigation, n. 42 above.

⁷⁸ SPP, Model Cases from the First Two Years' Implementation of Procurator-Led Public Interest Litigation, 10 Oct. 2019, available (in Chinese) at: https://www.spp.gov.cn/spp/xwfbh/wsfbh/201910/t20191010_434047.shtml.

documents, which are the most commonly used policy documents in China but have rarely been subject to formal judicial review.⁷⁹

Finally, lower procuratorates rely on intervention from higher-level procuratorates to overcome local resistance. The SPP encourages higher procuratorates to reassign administrative PIL cases to other jurisdictions or take matters into their own hands when there are concerns about local protectionism.⁸⁰ If a local agency is uncooperative, a higher procuratorate may also negotiate with the agency's superior to encourage cooperation. As a provincial-level procurator noted:

Historically, our anti-corruption bureau often used cross-regional jurisdiction to counter-balance the self-preservation tendency of local governments. Unlike many government agencies, which have the power to provide only 'soft' guidance to lower-level agencies, the procuratorates have a strong hierarchical leadership. It helps shield political pressure from the same level of government.⁸¹

In the Chinese context, procuratorates are arguably better positioned than NGOs to bring administrative EPIL. Unlike NGOs, which are private parties without legal authority, procuratorates enjoy official powers to investigate PIL case leads. In addition, support from provincial legislatures and party committees has also strengthened procuratorates' access to internal government information. Moreover, pre-litigation procuratorial recommendations set the stage for negotiation, which is unavailable to NGOs. As a procurator from Hubei noted:

We don't have to actually go to court, but we need litigation as a *credible threat* so that they are willing to talk things out. After we sued three agencies, other agencies saw our resolve and began to take our recommendations more seriously.⁸²

On the other hand, procuratorial recommendations can be used to avoid direct confrontation with government agencies, especially in places where procuratorates are more politically embedded in the local party-state. For instance, procurators from Shandong have acknowledged their hesitation to sue government agencies because of the local party-state's ambivalence towards administrative EPIL, and much of their ongoing administrative EPIL was targeting basic-level governments, such as township governments and subdistrict units.⁸³

Given that many Chinese government failures in environmental regulation result from unclear division of power among agencies, as part of the party-state institution procuratorates can play a coordinating role in resolving this collective action problem. Pre-litigation negotiation gathers multiple stakeholders to facilitate collaboration and problem solving, and procuratorates employ various strategies to increase the effectiveness of these negotiations. One procurator from Hubei Province pointed out:

⁷⁹ H. He, 'Concurrent Review of Normative Documents by Chinese Courts' (in Chinese) (2021) 3 *China Legal Science*, pp. 139–63, at 149–52.

⁸⁰ SPP, Rules for the Handling of Public Interest Litigation Cases by People's Procuratorates (2021).

⁸¹ Interview PJL04.

⁸² Interview PHB08.

⁸³ Interviews PSD01; PSD02.

Government agencies like to dodge their responsibilities through buck passing, and multi-party meetings are the most efficient way to induce compliance. To exert political and reputational pressure on uncooperative agencies, we have hosted semi-public hearings, inviting members of the People's Congress and People's Political Consultative Conference as well as journalists from state media to witness the negotiation process. This has also elevated procurator-led EPIL in the eyes of the local party-state and the public.⁸⁴

The overlap of administrative authority also allows procuratorates some discretion in choosing which agencies to target. Several procurators from Jilin admitted that they prefer 'letting the environmental bureau off the hook' if other agencies can be held responsible.⁸⁵ The head of the PIL division from a municipal procuratorate stated the following as a reason for the 'selective enforcement' strategy:

The authority of [the] environmental bureau is limited to issuing fines, often in moderate amounts, but industrial regulatory authorities like the bureaus of animal husbandry or health commissions have various disciplinary measures at hand. They can threaten to revoke business licences. Therefore, suing them is simply more effective in resolving environmental issues. Besides, there is also a practical reason for us to avoid confrontation with the environmental bureau. As procurators, we don't have the enforcement power, nor do we have the technical capacity to collect evidence or conduct environmental appraisal. So, we rely on cooperation with the environmental bureau to facilitate our communication with polluting firms. The work of art for us EPIL procurators is to balance the public interest goal and the institutional reality within the state bureaucracy.⁸⁶

Besides the above, professional pride is emerging among some procurators to supplement the top-down control mechanism of target evaluation. As the PIL division head of an intermediate procuratorate commented:

PIL is the most exciting and difficult work in the procuratorial system. We need to develop field investigation skills, litigation expertise, and enthusiasm for learning a vast number of administrative regulations and normative documents. It takes at least three years to train a good PIL procurator.⁸⁷

Our fieldwork finds that, overall, procurators in the PIL division – particularly those at the basic level – are young and relatively competent. Many reported being motivated by the moral satisfaction of promoting public interest and the sense of accomplishment in building a new career field.⁸⁸

To conclude, the division of labour between NGOs and procuratorates is a consequence of the legislative distinction between civil and administrative EPIL, and reinforced by their differing organizational goals and resource strategies. Driven by their objective to maximize social and legislative impact, environmental NGOs target high-profile companies in civil litigation. While some evidence suggests that NGOs have been initially successful in using impact litigation to influence judicial rules and

⁸⁴ Interview PHB01.

⁸⁵ Interview PJJ08.

⁸⁶ Interview PJJ02.

⁸⁷ Interview PJJ08.

⁸⁸ Interviews PGZ01; PJJ05.

environmental legislation, they face various legal and political restrictions that prohibit them from engaging in administrative EPIL. In addition, the limited geographical distribution and financial resources of Chinese NGOs prevent them from bringing as many EPIL cases as brought by procuratorates.

By contrast, procuratorates have increasingly emphasized administrative EPIL to strengthen their institutional legitimacy within the party-state apparatus. Under China's political conditions, procuratorates arguably enjoy several advantages over NGOs in monitoring the government's environmental accountability. This is evidenced by the procuratorates' better access to evidence and more flexible venues for resolving collective action problems through interagency negotiation at the pre-litigation stage. Moreover, the rise of procurator-led EPIL may also contribute to reducing local protectionism, which is considered a main challenge to China's authoritarian environmentalism.⁸⁹ Unlike the environmental bureaucracy, which is extensively embedded in the local party-state,⁹⁰ the procuratorate has historically been more centralized and hierarchical.⁹¹ This top-down nature has empowered procuratorates to 'coerce' compliance through the threat of litigation. Therefore, the expansion of procurator-led EPIL, combined with ongoing efforts to strengthen Chinese judicial institutions,⁹² has the potential to mitigate local enforcement gaps in China's environmental governance.

5. COOPERATION AND SYNERGY

In addition to their division of labour, direct engagements between NGOs and procuratorates may also facilitate EPIL practice and institutional construction. This section focuses on (i) NGO-procurator cooperation in litigation practices, (ii) the synergy of the two in fostering new remedy rules for EPIL, and (iii) obstacles to such cooperation and synergy.

5.1. *Cooperation and Competition*

The most common form of procuratorate-NGO cooperation during EPIL is the litigation supporter mechanism under the Civil Procedure Law. Official statistics show that by late 2019 Chinese procuratorates had acted as litigation supporters in 87 NGO-led EPIL cases, which accounted for about 25% of all civil EPIL brought by NGOs at that

⁸⁹ G. Kostka, 'Command Without Control: The Case of China's Environmental Target System' (2016) 10(1) *Regulation & Governance*, pp. 58–74, at 64–5.

⁹⁰ A. Mertha, 'China's "Soft" Centralization: Shifting Tiao/Kuai Authority Relations' (2005) 184 *The China Quarterly*, pp. 791–810, at 802–5; B. Wen, 'Old Problems and New Dilemmas: The Conundrum of Environmental Management Reform in China' (2020) 22(2) *Journal of Environmental Policy & Planning*, pp. 281–99, at 293–4.

⁹¹ Y. Wang & Y. Xia, 'Judicializing Environmental Politics? China's Prosecutor-Led Public Interest Litigation against the Government' (2023) 253 *The China Quarterly*, pp. 90–106.

⁹² Y. Sun & H. Fu, 'Of Judge Quota and Judicial Autonomy: An Enduring Professionalization Project in China' (2022) 251 *The China Quarterly*, pp. 1–22, at 13–7; Y. Wang, 'Overcoming Embeddedness: How China's Judicial Accountability Reforms Make Its Judges More Autonomous' (2019) 43(3) *Fordham International Law Journal*, pp. 737–66, at 754–60.

time.⁹³ Procuratorates can initiate support for NGO-led civil EPIL or respond to an NGO's request for assistance. For NGOs, the greatest benefit of having procuratorates as litigation supporters is facilitation of evidence collection, as procurators have official power to investigate EPIL cases.⁹⁴ Some procuratorates have even established data-sharing platforms with government agencies, which gives them easy access to government enforcement decisions. Cooperation with procuratorates has greatly increased investigation efficiency, as it saves NGOs the time and trouble of obtaining government information disclosure through requests or filing administrative lawsuits. At least three NGOs also reported having gained better access to environmental appraisal services.⁹⁵ Through the collaborative effort of the SPP and the Ministry of Justice to lower the cost of environmental appraisal, 58 judicial authentication institutions agreed to forgo advance payment for services used in procurator-led EPIL, a benefit unavailable to NGOs.

Many procurators acknowledge that cooperation with NGOs has contributed to building their capacity to bring EPIL. During the experimentation period, procuratorates organized various roundtable discussions with environmental NGOs to assess case leads. For example, procuratorates in Beijing have signed cooperation agreements with NGOs to strengthen long-term cooperation on investigation and case transfer.⁹⁶ Moreover, since 2017, Renmin University and China University of Political Science and Law have organized multi-stakeholder conferences gathering procurators and NGO staff to select 'outstanding PIL cases' and exchange ideas on complex legal issues. While the cases selected during these events have no formal binding effect, they have facilitated diffusion of local innovative practices.⁹⁷

In Qingzhen (Guizhou), procuratorates and NGOs have established more regularized cooperation mechanisms. Since 2018, the local environmental group Guiyang Public Environmental Education Center (GPEEC) has been managing a collaborative work group consisting of judges, PIL procurators, and environmental officers from 33 key industrial enterprises. The GPEEC is responsible for collecting information on pollutant discharge and coordinating enterprises on everyday problem solving. Procurators become involved when more complex governance issues arise, such as collective action and regulatory overlap. Progress on procuratorial recommendation and litigation is shared with the NGO, which could then assist the procuratorate in monitoring implementation of the decisions. Procurators from Qingzhen described NGO-procurator cooperation as a 'win-win' scenario, as NGOs supplement the limited capacity of procurators to investigate and monitor, while the possibility of procuratorial intervention increases NGOs' regulatory power when engaging with enterprises. The most important factor in the Qingzhen practice seems to be the interlocutor role of the local environmental tribunal, which capitalizes on its symbolic value as the

⁹³ SPP, Report on the Implementation of Procurator-Led Public Interest Litigation, n. 42 above.

⁹⁴ Interviews NCGDF02; NACEF01; NFON01.

⁹⁵ Interview NACEF01; NFON02; NCGDF03.

⁹⁶ Interviews NFON02; NACEF01.

⁹⁷ Interviews NFON03; PJJ05.

first environmental tribunal in China actively to mediate cooperation between party-state regulators, businesses, and NGOs.

Nevertheless, more systematic cooperation between procuratorates and NGOs faces serious challenges. Many interviewed NGOs reported that procurators were more interested in cooperation during the experimentation period as a result of their lack of experience and the political pressure to meet litigation targets. However, as procurators have developed the legal skills to undertake PIL independently, their incentive to cooperate has declined.⁹⁸ Some NGOs have reported increasing competition with procurators in civil EPIL as the SPP continues to increase the annual case number target for procurator-led EPIL.⁹⁹ In addition, government-organized, or large Beijing-based, NGOs are more likely to obtain support from procuratorates than grassroots NGOs, as they are often more willing to align their operations with government priorities.¹⁰⁰ Last but not least, there is significant regional variation in the willingness of procuratorates to cooperate with NGOs and the extent of their support. In coastal and economically affluent regions, such as Guangdong and Beijing, procurators are used to working with civil society actors and have been involved in on-site investigation, environmental appraisal, and delivering supporting opinions during court hearings.¹⁰¹ In contrast, procurators from Northeast China, where there are few local environmental groups, are generally sceptical of the capacity and motivation of NGOs to bring EPIL.¹⁰² One procurator from Jilin explicitly expressed her distrust of NGOs:

Those Beijing-based NGOs are unwilling to litigate in our province because the stakes are too small. They are more interested in bigger cases in which they can earn high lawyers' fees through settlement. When we visited Brazil to examine its public interest litigation system, we found that Brazilian NGOs need to register their intention to sue with the procuratorate and that procurators have the power to supervise litigation proceedings. In China, we have ceded too much power to NGOs!¹⁰³

To summarize, evidence suggests that their complementary strengths and weaknesses may drive cooperation between NGOs and procuratorates in EPIL practice. Nevertheless, systematic cooperation has been limited by a lack of mutual trust and by competition for case leads as the procuratorates work to meet increasing EPIL case number targets.

5.2. Synergy

In addition to cooperation, there is also the potential for synergy – intended or unintended – to arise between procuratorates and NGOs, owing to their different institutional objectives and capacities. As rising regulatory actors in China's environmental governance, procuratorates and NGOs share the objective of strengthening the EPIL

⁹⁸ Interviews NFOG01; NLC01; NDB02.

⁹⁹ Interviews NFON02; NGYEEC02; NLC02.

¹⁰⁰ Interviews NCGDF02; NCLAPV02.

¹⁰¹ Interviews NCLAPV02; PBJ01.

¹⁰² Interviews PJJ01; PJJ06.

¹⁰³ Interview PJJ04.

system by exploring new actionable issues and facilitating the adoption of plaintiff-friendly procedural rules. However, procuratorates as state institutions are more risk-averse than NGOs in venturing into frontier legal issues. On the other hand, despite their entrepreneurial spirit, NGOs face various obstacles in effecting broader law and policy changes. This study's findings suggest a pattern of NGO-procuratorate synergy in which NGOs act as initiators of local experimentation while procurators function as diffusers that help to institutionalize such rule innovations.

Innovation has become a priority in procurator-led EPIL. Procurators engage in innovative litigation not only because innovation boosts their performance evaluations,¹⁰⁴ but also to meet the annual target number of EPIL cases through 'boundary-spanning' practices. Several interviewed procurators complained that it has become increasingly difficult to find case leads, as many 'visible' environmental issues have been addressed in the past few years.¹⁰⁵ These local experiments have also received active support from the SPP, which views innovation as crucial in enhancing the procuratorates' power and institutional legitimacy within the party-state apparatus.¹⁰⁶

Nevertheless, procuratorial experimentation is restrained by the fear of losing in court. The interviewed procurators reported that success rate is one of the most important factors in their performance evaluations. As the SPP itself put it, procurators 'must make sure all their claims are registered in court'.¹⁰⁷ One basic-level procurator even mentioned that before filing a formal complaint, he would seek the judge's comments through informal communication, and that he had never initiated a court action without a guaranteed victory.¹⁰⁸ Interviewed procurators in some places, including Hubei and Guizhou, confirmed that pre-litigation communication was used in their institutions to ensure successful litigation.¹⁰⁹ A procurator from an intermediate-level unit further elaborated on the dilemma that procurators face when exploring new cases or legal arguments:

We have many case leads that are potentially valuable, but we have to be very careful because the negative social effects of failed procurator-led PIL can be significant. Plus, many judges in local courts are conservative and unwilling to entertain innovative arguments. For example, one case we are currently researching concerns wildlife products that were smuggled into China, but it is unclear whether our EPIL system has legal authority to protect wildlife resources outside of China. We'd have more confidence to sue if other courts had supported similar cases, but then we could not take credit for innovation.¹¹⁰

NGO-led EPIL, on the other hand, is free from such constraints. The organizational autonomy of NGOs and their goal of increasing the socio-legal impact of EPIL enable

¹⁰⁴ Van Rooij, Stern & Furst, n. 18 above, p. 5.

¹⁰⁵ Interviews PSD01; PHB04; PBJ02; PGZ03.

¹⁰⁶ Interviews PBI02; PHB01; PJJ03; PGZ01.

¹⁰⁷ S. Lv, 'Facilitate the Construction of an Accessible Environment with Procurator-Led Public Interest Litigation', available (in Chinese) at: <http://www.npc.gov.cn/npc/c30834/202105/5545e1bdf3bf4aeea2-b3e402e2279791.shtml>.

¹⁰⁸ Interview PHB08.

¹⁰⁹ Interviews PHB02; PSD01; PSD02

¹¹⁰ Interview PBJ01.

and motivate them to expand their EPIL activity across more areas and catalyze innovation in environmental legal rules. Between 2011 and 2020, for example, FON filed 49 EPIL lawsuits in various areas, which included industrial pollution, biodiversity, climate change, chemical waste management, and marine environmental protection. As FON's general director stated, 'NGO-led EPIL can provide valuable lessons for procurators by testing the waters to gauge public opinion and the political acceptability of innovative lawsuits and legal arguments'.¹¹¹ Another FON employee further explained:

We work as allies of procuratorates because our focuses and strengths differ. Procurators want to minimize their political risk while we seek to innovate. Some local procurators have referred case leads to us because they feel they are too risky or immature to litigate themselves. These cases usually involve complex technical issues and/or uncertain legal rules, such as pollution that crosses provincial boundaries.¹¹²

Nonetheless, under authoritarian environmentalism, the ability of NGOs to effect law and policy change is more limited than that of procuratorates. As scholars point out, NGO influence on environmental policies in China is restricted to lower-level governments and downstream policy implementation.¹¹³ Moreover, local environmental NGOs in many parts of China, especially in the hinterland regions, lack the legal, technical, and financial capacities to participate actively in EPIL, creating a further obstacle to diffusing innovation among societal actors. Procuratorates have greater institutional capacity to spread local experiences, owing to their nationwide geographical reach and top-down leadership. Procuratorates are also more likely to obtain political support from other state institutions, including courts and people's congresses, both of which are crucial allies in formalizing innovative legal practices. The comparative advantages of NGOs and procuratorates have enabled them to play synergistic roles in the process of legal innovation, with NGOs initiating local experiments and procuratorates scaling up the resulting innovations.

One example is the evolution of rules concerning EPIL punitive damages. The 2015 judicial interpretation on environmental civil PIL does not specify standards for amounts, eligibility, or usage of pecuniary compensation for environmental damage.¹¹⁴ To increase EPIL's deterrence effects, the ACEF and several other NGOs brought punitive damages claims to court. Most, however, were rejected for lacking legislative support.¹¹⁵ In 2020, a basic procuratorate in Jiangxi Province brought the

¹¹¹ Interview NFON02.

¹¹² Interview NFON03.

¹¹³ Gilley, n. 6 above, pp. 289–91; X. Gao & J. Teets, 'Civil Society Organizations in China: Navigating the Local Government for More Inclusive Environmental Governance' (2021) 35(1) *China Information*, pp. 46–66, at 50–1.

¹¹⁴ SPC, Judicial Interpretation on Several Issues concerning the Application of Law in the Conduct of Environmental Civil Public Interest Litigations (2015).

¹¹⁵ Although the 2020 Civil Code provides punitive damages as a remedy for environmental tort claims, whether this rule can be applied to EPIL remains debated. Professor W. Liming, a prominent scholar in the drafting of the Civil Code, is among those opposed to expanding the application of punitive damages; see W. Liming, 'Punitive Damages Cannot Be Applied in Civil EPIL' (2021), available (in Chinese) at: <http://www.lawsky.org/show.asp?id=739>. Others, however, have expressed support for

first procurator-led EPIL with punitive damages claims and eventually prevailed over the defendant, a private company that contaminated drinking water through improper disposal of hazardous waste. In mid-2021, the SPP's Implementation Rules of Procurator-led PIL officially recognized punitive damages claims as a remedy in EPIL. Support from the SPP is also likely to have contributed to the adoption of an SPC judicial interpretation on punitive damages in environmental adjudication, which took effect in January 2022.¹¹⁶

Rules concerning the use of compensation funds have followed a similar developmental trajectory. Despite the lack of national rules to clarify how funds recovered through EPIL should be used, NGO-led EPIL has explored various solutions, including charitable trusts and co-management by litigating parties.¹¹⁷ Initially, the Qingzhen environmental tribunal took a liberal approach to supporting these experiments but, after the Guizhou High Court expressed concern about giving NGOs too much power, local innovation stagnated.¹¹⁸ However, the experiments in Qingzhen reportedly inspired procuratorates in Jiangxi Province to experiment with a quasi-official charitable trust managed by a subsidiary fund of Minjian, one of the eight minority political parties in China.¹¹⁹ Adopting an open tender system for environmental restoration projects, this fund engages procuratorate representatives, environmental authorities, and local residents in the monitoring process. In 2020, the Jiangxi High People's Court formally endorsed this practice, which reportedly facilitated diffusion to other courts within and beyond Jiangxi.¹²⁰

The findings reported above demonstrate the potential for NGO-procuratorate cooperation and synergy to facilitate civil EPIL practice and promote legal innovation.¹²¹ Whereas conventional work on authoritarian environmentalism argues that non-state actor participation has focused largely on downstream policy implementation and that innovation is often limited to local levels,¹²² our research shows that in some cases Chinese environmental NGOs have managed to leverage the procurators' legal authority and policy capacity to extend their influence in the rule-making process. Meanwhile, some procuratorates have also benefited from interaction with NGOs, which encourages innovation that strengthens the procuratorate's institutional legitimacy with minimal political risk.

applying punitive damages in EPIL; see Z. Lv et al., 'How Punitive Damages Rules Can Be Applied in EPIL', *China Civil and Commercial Law*, 2 Sept. 2021, available (in Chinese) at: <https://www.civillaw.com.cn/bo/zlwz/?id=37956>.

¹¹⁶ SPC, Interpretation concerning the Application of Punitive Damages in Ecological and Environmental Tort Dispute Litigation (2022).

¹¹⁷ Interview CGZ01.

¹¹⁸ *ibid.*

¹¹⁹ Interviews CGZ01; PBJ02.

¹²⁰ 'Jiangxi Explores a New Model of Judicial Protection of Ecological Environment', available (in Chinese) at: http://rmfyb.chinacourt.org/paper/html/2022-01/13/content_212997.htm?div=-1.

¹²¹ So far, such cooperation and synergy is observed mainly in civil EPIL because of the legislative and political constraints on NGO engagement in administrative EPIL. Though our interviews did find some examples in which NGOs referred case leads on administrative EPIL to procurators and urged the latter to bring administrative litigation, there is no consistent evidence to suggest that procurators had responded to or complied with such requests.

¹²² Gilley, n. 6 above, p. 289; Teets & Hasmath, n. 20 above, pp. 51–3; Gao & Teets, n. 113 above, p. 59.

6. DISCUSSION AND CONCLUSION

The expansion of EPIL standing to NGOs and procuratorates is a recent breakthrough in China's authoritarian approach to environmentalism. Built on in-depth interviews, this article examines the interactive dynamics of these emerging regulatory actors, and highlights the potential and constraints for their complementarity and synergy under China's socio-political conditions.

6.1. Complementarity

Environmental NGOs have become an active force in bringing civil EPIL lawsuits, many of which have generated significant social and legal impact. Meanwhile, procurators, driven by the need to strengthen their institutional legitimacy, have increasingly emphasized their function of upholding government environmental accountability through pre-litigation negotiation and administrative lawsuits. The emerging division of labour is consistent with the legislative intent and the respective goals and resources of NGOs and procuratorates.

This article also argues that the emerging division of labour is a pragmatic response to the tension between social participation and state domination under China's authoritarian environmentalism. Many commentators consider NGOs' lack of standing in administrative litigation as a major shortcoming of the current EPIL system. However, our research suggests that resolving China's environmental accountability issues will require more substantial administrative law reforms than merely expanding NGOs' standing. Beyond this standing restriction, NGOs face challenges in accessing government information when initiating administrative EPIL. Notwithstanding legislative progress on environmental and government information disclosure, considerable implementation gaps remain at local levels owing to concerns about social stability and the propensities of local governments to protect local enterprises and shield themselves from political liability.¹²³ When NGOs have filed separate administrative litigation to request information disclosure, they have faced various restrictions, such as disclosure exemptions for state secrets and confidential commercial information.¹²⁴

Moreover, political constraints on Chinese NGOs to sue the government are greater than is acknowledged by many EPIL advocates. Over the past few decades, many authoritarian regimes, including China, have promoted the use of courts to facilitate economic development, improve administrative efficiency, and strengthen the regime's socio-political legitimacy.¹²⁵ However, authoritarian rulers have also employed various strategies to constrain judicial activism, aiming to pre-empt synergy between courts and activists.¹²⁶ One example is the judicial pushback against China's open

¹²³ A. Wang, 'Explaining Environmental Information Disclosure in China' (2018) 44(4) *Ecology Law Quarterly*, pp. 865–924, at 886–9.

¹²⁴ Interviews NACEF01; NCGDF01.

¹²⁵ J. Rajah, *Authoritarian Rule of Law: Legislation, Discourse and Legitimacy in Singapore* (Cambridge University Press, 2012), pp. 7–13; T. Zhang & T. Ginsburg, 'China's Turn Towards Law' (2019) 59(2) *Virginia Journal of International Law*, pp. 306–89, at 313–4.

¹²⁶ Moustafa, n. 19 above, pp. 289–92.

government information litigation, which included creating flexible labels like ‘abusive litigation’ to filter repeat players who use litigation to amplify public pressure on governments.¹²⁷ In other circumstances, extralegal coercion was used to eliminate perceived threats arising from legal activism, as evidenced by China’s recent crackdown on rights lawyers.¹²⁸ Therefore, we argue that it is politically unfeasible, at least in the short term, for Chinese NGOs to use the courts to hold Chinese governments environmentally accountable, as this would create an uncontrollable risk of negative publicity for the government.

On the other hand, procurator-led administrative EPIL is unlikely to be a panacea for resolving China’s issues with governmental environmental accountability. Despite the reported success of pre-litigation negotiation, the widespread use of procuratorial recommendations has raised concerns, including that it emphasizes quantity over quality.¹²⁹ So far, procurator-led administrative EPIL seems to focus on mundane issues, such as improper waste disposal by basic-level governments, rather than issues considered important by environmental NGOs, such as failing to implement environmental licensing procedures in urban development projects. As one NGO staff member put it, ‘in civil EPIL cases procurators tend to avoid all the “tough nuts” because they are time and resource consuming, and in some cases may even implicate political and legal risks’.¹³⁰ Another interviewed NGO noted that they used to refer case leads on administrative EPIL to procurators in Beijing and Jiangsu, but the latter was reluctant to act upon these leads as it would require challenging powerful local agencies.¹³¹ In addition, a lack of judicial power to review laws and regulations and the procedural rules which set ambiguous review standards have also constrained the efficacy of administrative litigation. In most cases, for example, Chinese courts can review only the procedural legality of administrative actions, not their substantive reasonableness or appropriateness.¹³² Without more fundamental reform of the administrative law system, procurator-led administrative EPIL seems just one step on a long journey towards enforcing public accountability in China.

6.2. Cooperation and Synergy

This research also found various forms of cooperation between Chinese procuratorates and environmental NGOs. Procuratorates have used their investigative authority, financial resources, and political connections to facilitate NGO-led EPIL, while NGOs have contributed their subject-matter expertise to building the capacity of

¹²⁷ J. Kim, R.E. Stern & B.L. Liebman, ‘Closing Open Government: Grassroots Policy Conversion of China’s Open Government Information Regulation and Its Aftermath’ (2022) 50(2) *Comparative Political Studies*, pp. 319–47, at 334–6.

¹²⁸ H. Fu, ‘The July 9th (709) Crackdown on Human Rights Lawyers: Legal Advocacy in an Authoritarian State’ (2018) 27(112) *Journal of Contemporary China*, pp. 554–68.

¹²⁹ Interviews NCLAPV02; NGYEP03.

¹³⁰ Interview NCGDF02.

¹³¹ Interview NFON02.

¹³² W. Cui, J. Cheng & D. Wiesner, ‘Judicial Review of Government Actions in China’ (2019) 1 *China Perspectives*, pp. 35–44, at 40.

procurator-led PIL. More importantly, the differing focuses and strategies of the two actors allow room for synergy. Procuratorates have benefited from NGOs' pioneering ideas for identifying frontier legal issues, which reduce their need to engage in risky experimentation. Simultaneously, NGOs capitalize on procuratorial engagement to overcome political barriers to liberalizing EPIL rules.

The cooperation and synergy between Chinese environmental NGOs and procuratorates seem to have been conditioned by several factors. Firstly, regional diversity has shaped the level and scope of procuratorate-NGO cooperation. In general, procurators in coastal and economically more affluent regions showed more willingness to cooperate with NGOs, probably because of their relatively open political environment for public participation. Besides, in some hinterland regions (such as Guizhou) there is likewise frequent interaction between NGOs and procuratorates, mainly because the local party-state supports EPIL and the local environmental courts actively facilitate such cooperation. In addition, the institutional objectives and resources of NGOs may also affect their willingness and capacity to cooperate and synergize with procuratorates. For instance, most interviewed NGOs that have ventured into frontier legal issues, such as innovative remedies and preventive lawsuits, are large, Beijing-based environmental groups that enjoy strong political connections and financial resources. In addition, as scholars have pointed out, NGOs and procuratorates compete in civil EPIL because procurators face increasing political pressure to meet the yearly target of litigation actions.¹³³ Competition for case leads makes some procuratorates reluctant to announce publicly their intended civil actions or share case materials with NGOs, as provided by law. Although some local legislatures and environmental tribunals have encouraged procuratorates to cooperate with NGOs, more systematic cooperation between state and non-state actors has yet to develop.

A more fundamental challenge to China's EPIL lies in the respective institutional constraints of NGOs and procuratorates. Many Chinese environmental NGOs, especially at the local level, face increasing financial difficulty as a result of restrictions on overseas funding.¹³⁴ This, in turn, impedes the development of legal expertise and diffusion of local experiences. In addition, there continues to be a disconnect between national NGO impact litigation strategies and local demands for prompt resolution and continuous oversight, thus suggesting a need for more systematic collaboration between national NGOs and local actors, including procuratorates, in finding sustainable solutions for local environmental protection.¹³⁵ As for procurator-led EPIL, a key issue for policymakers is improving the incentive structure to encourage procurators to build capacity and innovate.¹³⁶ So far, the evaluation system greatly emphasizes the number of cases registered and concluded and the litigation success rate, which encourages procurators to focus on quantity rather than quality. While some local party-states have introduced rules to incentivize procurators to undertake more

¹³³ Gao, n. 15 above, pp. 59–63; Ding & Xiao, n. 15, p. 361–2; Gao & Whittaker, n. 16 above, p. 346.

¹³⁴ Interviews NDB01; NDB02; NCLAPV02.

¹³⁵ Interviews CGZ01; PGZ01; NGYEP03.

¹³⁶ Shi & van Rooij, n. 15 above, pp. 56–7.

administrative lawsuits or collaborate with environmental NGOs, clearer guidance from the SPP is required to promote such practices on a broader scale.

This article sheds light on the implications of the rise of authoritarian environmentalism. The liberalization of standing and the promotion of EPIL in China was driven by the state's desire to strengthen its political legitimacy by incorporating imperatives such as ecological civilization and law-based governance.¹³⁷ While previous studies on authoritarian environmentalism have highlighted the lack of public participation as a major weakness,¹³⁸ this article shows an expansion of channels for social participation in remedying environmental problems and advancing environmental law.¹³⁹ Compared with administrative measures, courts provide a relatively transparent and professional venue for enforcing the environmental accountability of governments and businesses. However, the central role of the Chinese state is a prerequisite for the proliferation of EPIL amid the generally shrinking political space for civic activism. As others have pointed out, the current environmental reforms in China ultimately rely on the political commitment of top leadership to address environmental problems, making their long-term effectiveness uncertain.¹⁴⁰ Moreover, social participation is conditioned by the willingness of environmental NGOs to stay within state-drawn boundaries, such as by avoiding confrontation with government agencies in administrative EPIL. This may increase the risk of cooptation and undermine the effectiveness of social mobilization by non-state actors over time.

APPENDIX 1

Interview questions for procurators:

1. What is the ratio of civil to administrative EPIL cases?
2. How are procurators in the EPIL division evaluated?
3. To what extent has concern over relationships with local governments prevented you from pursuing administrative EPIL?
4. What forms of collaboration, if any, exist between procuratorates and NGOs?

Interview questions for NGO staff:

1. How do you fund your EPIL work?
2. What criteria are used to assess potential case leads?
3. What objective(s) do you seek to achieve through EPIL?
4. How do you evaluate procurator-led and NGO-led EPIL?

¹³⁷ Zhang & Ginsburg, n. 125 above; S. Geall & A. Ely, 'Narratives and Pathways Towards an Ecological Civilization in Contemporary China' (2018) 236 *The China Quarterly*, pp. 1175–96, at 1194–5.

¹³⁸ Gilley, n. 6 above, pp. 289–92.

¹³⁹ Zhu & Wu, n. 32 above; L. Xie, 'Environmental Governance and Public Participation in Rural China' (2016) 30(2) *China Information*, pp. 188–208.

¹⁴⁰ Shen & Jiang, n. 9 above, pp. 61–2; Wang & Xia, n. 91 above.