MASTERARBEIT / MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

„'Taking to the Court': Public Interest Litigation by Environmental NGOs in the People's Republic of China"

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of

Master of Arts (MA)

Wien, 2023 / Vienna 2023

Studienkennzahl lt. Studienblatt / degree programme code as it appears on the student record sheet:	A 066 811
Studienrichtung lt. Studienblatt / degree programme as it appears on the student record sheet:	Masterstudium Sinologie
Betreut von / Supervisor:	Assoz.-Prof. Dipl.-Sozialwiss. Dr. Heinz Christoph Steinhardt

Abstract

In 2015, the revised Environmental Protection Law in the People´s Republic of China enabled Chinese non-governmental organizations (NGOs) to sue polluters nationwide on behalf of the public. Yet only few have seized this new opportunity to initiate environmental public interest lawsuits (EPIL). Previous studies have mostly attributed the low participation solely to the strict legal requirements for standing. The present thesis aims to revisit this argument. Treating EPIL as a case of judicialization of politics, the thesis conceptualizes the legal tactics for NGOs as legal opportunity structure that is seized by participants drawing on various resources. The focus therefore lies on the organizational background of the NGOs and the conditions that influence their success rate in this type of litigation. The thesis poses three questions: first, what kind of environmental NGOs engage in EPIL? Second, how successful are they? Third, which factors are likely to influence the outcome of the case? To answer these questions this research draws upon 118 cases filed between 2014 and 2019, court judgments, mediation agreements, as well as online and media sources regarding the organizational background of the plaintiff. The analysis outlines the resources used in litigation and shows that organizations most active in EPIL have cultivated the necessary legal resources, are either close to the government or have other political resources. They increasingly frame judicial channels and legal avenues as a preferred model for conflict resolution without directly challenging the state legitimacy. Based on judicial documents from 57 concluded cases, the analysis outlines and examines success conditions in these lawsuits such as the dominant aim of the lawsuit, the institutional support provided to the organization and the attitude of the court. The findings of this thesis contribute to a better understanding of the environment in which plaintiffs in environmental lawsuits navigate. It illustrates the extent and limits of possibilities for NGOs when it comes to creation of and participation in the legal opportunities operated by the state. The thesis also contributes to a better understanding of judicialization that puts courts as problem-solving institutions to the forefront and illuminates the pressures and institutional arrangements that affect their decision-making.

Acknowledgments

I am very grateful to the Chiang Ching Kuo Foundation for the library travel grant via the European Association of Chinese Studies. The material made available by original Chinese textbooks and monographs accumulated during the one week spent in Leiden in October 2019 has directly contributed to some chapters contained in this thesis.

I am deeply indebted to Assoz.-Prof. Christoph Steinhardt for his continuous support and feedback. If it weren't for him, I would not have been able to finish what I have started. Further, I would particularly like to express my thanks to Prof. Agnes Schick-Chen and Dr. Li Ling for helping me to get acquainted with the world of Chinese law and society. Special thanks go to Prof. Christian Göbel, not just for teaching me to appreciate good coffee, but foremost for giving me the once-in-a-lifetime opportunity of participating in his project and letting me put everything I have learned into practice, deepen my horizons, and for many inspiring ideas. In this sense, I would also like to thank the whole project team – you know who you are and thank you all for all the exciting moments spent together! Many thanks to my friend Wen Chao Chen for his help with visualizing the NGO networks in this thesis.

My final thank you goes to my mother and father, my whole family, and their lifelong support in making my choices. Thank you Ludmila and Jiří! Děkuji vám oběma za všechno, co jste pro mě udělali a obětovali.

Dedicated to Herbert, his family, and his memory.

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Selected organizations and abbreviations

ALL	Administrative Litigation Law of the PRC	中华人民共和国行政诉讼法
ACEF	All-China Environment Federation	中华环保联合会
ACFIC	All-China Federation of Industry and Commerce	中华全国工商业联合会
BJ Yuantou	Beijing Fengtai District Yuantou Volunteer Research Institute	北京市丰台区源头爱好者环境研究所
CCP	Chinese Communist Party	
CMCN	China Mangrove Conservation Network	中国红树林保育联盟
CEPF	China Environmental Protection Foundation	中华环境保护基金会
CBCGDF	China Biodiversity Conservation and Green Development Foundation	中国生物多样性保护与绿色发展基金会
CLAPV	Center for Legal Assistance to Pollution Victims	中国政法大学环境资源法研究和服务中心
CQLJ	Chongqing Liangjiang Voluntary Service Center	重庆两江志愿服务发展中心
CSO	civil society organization	used synonymously to social organization incorporating NGO and GONGO (see the resp.entry)
CSRPCH	Corporate Social Responsibility Promoting Center of Henan	河南省企业社会责任促进中心
CPL	Civil Procedure Law of the PRC	中华人民共和国民事诉讼法
CPPCC	Chinese People´s Political Consultative Conference	中国人民政治协商会议
Dalian EPVA	Dalian Environmental Protection Volunteers Association	大连市环保志愿者协会
EPB	Environmental Protection Bureau	环保局
ECA	Ecological Culture Association	生态文化协会
ECPA	Ecological Culture Promotion Association	生态文明促进会
EcP Federation	Ecological Protection Federation	生态保护联合会
EIA	Environmental Impact Assessment	环境影响评估
ENGO	Environmental non-governmental organization	
EP	Environmental Protection	环境保护
EP Foundation	Environmental Protection Foundation	环境保护基金会

EPIL	Environmental Public Interest Litigation	环境公益诉讼
EPL	Environmental Protection Law of the PRC	中华人民共和国环境保护法
EPRCC	Environmental Protection and Resources Conservation Committee of the NPC	全国人民代表大会环境与资源保护委员会
FON	Beijing Chaoyang Institute of Environmental Research Friends of Nature	北京市朝阳区自然之友环境研究所
Fujian EPVA	Fujian Environmental Protection Volunteers Association	福建省环保志愿者协会
GEPF	Guangdong Environmental Protection Foundation	广东省环境保护基金会
GONGO	Government-organized non-governmental organization	see also CSO
Green Home	Fujian Green Home Environment Friendly Center	福建省绿家园环境友好中心
Green Hunan	Green Hunan	长沙绿色潇湘环保科普中心
GPEEC	Guiyang Public Environmental Education Center	贵阳公众环境教育中心
Guizhou Youth Law Society	Guizhou Youth Law Society	贵州省青年法学会
GVLCQ	The Green Volunteer League of Chongqing	重庆市绿色志愿者联合会
HYKJ	Beijing Chaoyang Huanyou (Environment-friendly) Research Institute of Technology and Science	北京市朝阳区环友科学技术研究中心（环友科技）
IPEA	Institute of Public and Environmental Affairs	北京市朝阳区公众环境研究中心
MEE	Ministry of Ecology and Environment of the PRC	中华人民共和国生态环境部[1]
MOCA	Ministry of Civil Affairs of the PRC	中华人民共和国民政部
NGO	Non-governmental organization	see also CSO
NDRC	National Development and Reform Commission	中华人民共和国国家发展和改革委员会
NPC	National People´s Congress	全国人民代表大会
NPCSC	Standing Committee of the National People´s Congress	全国人民代表大会常务委员会

[1] Note that in the course of 2018 reforms the MEE changed its name from the Ministry of Environmental Protection of the PRC 环境保护部 (2008-2018) to the Ministry of Ecology and Environment of the PRC 中华人民共和国生态环境部 on the central level and 环境生态局 on the local levels. I use MEE to refer to the central-level ministry and EPB to refer to the local level bureaus including "ting" 厅 on the provincial-level and "ju" 局 on the municipal level. The predecessor of the MEE prior to 2008 *on the ministerial level* was called State Environmental Protection Administration 国家环境保护总局 (SEPA; 1998-2008), which had replaced the National Environmental Protection Agency 国家环境保护局 (NEPA, 1987-1998). The word "guojia" (国家) follows the English naming convention of these agencies, both translated as "state" (SEPA) and "national" (NEPA) in the respective context.

PRC	People´s Republic of China	中华人民共和国
RMB	Renminbi (Chinese Yuan, CNY)	
SPC	Supreme People´s Court of the PRC	中华人民共和国最高人民法院
SPP	Supreme People´s Procuratorate of the PRC	中华人民共和国最高人民检察院
UFWD	United Front Work Department of the Central Committee of the CCP	中共中央统一战线工作部
Yiyang RPVA	Resource Protection Volunteers' Association of Yiyang City	益阳市环境与资源保护志愿者协会
Zhenjiang Society for Environmental Science		镇江市环境科学学会

1 Introduction[2]

> Laws and commands are the authoritative principle for the people that forms the basis of ruling the country (法令者，民之命也，为治之本也).
>
> — Excerpt from *The Book of Lord Shang*, quoted in People's Daily with the photo of Xi Jinping, 2020.

> Clear water and green mountains are as valuable as gold and silver mountains (绿水青山就是金山银山).
>
> — Xi Jinping in a speech held at the Nazarbayev University, September 2013.

Environmental protests ride on a wide range of complex issues. Identifying the source of pollution is often difficult and the handling of such issues requires higher authority so that the protesters often have nowhere else to turn but to the government. Crowds of people who have marched onto the streets of the City X in East China to oppose the construction of a paraxylene (PX) petrochemical plant could say a lot about some of the difficulties associated with combatting pollution. As evidenced in texts, posts, and images from the protest site, the protesters put up red-color-white-character-banners, organized large sit-ins, engaged in petitioning, circulated leaflets and official documents, launched an online referendum, brought their *elders and children*[3] with them to the protest site and collectively drafted monumental

[2] All references to Weibo users, precise location of related events from the so-called "Wickedonna blog" discussed and used in this chapter were pseudonymized (user_1, user_2 etc). Despite the efforts to protect the identity behind the Weibo account due to the sensitive nature of the tweet content, it cannot be completely avoided that tweets are, albeit only with considerable effort, traced back to a specific user by searching the database available online and comparing the translated parts together with some basic facts with the entry contained in the database. Unless indicated otherwise all posts were translated from the Chinese original. A complete list of users, the reference to the event and selected Chinese language tweets used in the thesis that span between 2014 and 2016 can be provided upon request. I use the term "netizen" synonymously to refer to a user who has expressed some view related to a specific event via online means. For more on the data source see below.

[3] This was a frame that occurred multiple times and evolved around the health and safety risks but also the public interest character of the protest used as a justification for the demonstrations. As one netizen put it: "If we don't protest now, there will be an indefinite number of such projects. Our children and parents and future generations will all suffer from this poison!" (@user_1 Wickedonna, n.d. [url withheld]). For more on the data sources, the so-called "Wickedonna blog" with 200,000 posts covering some 67,000 protests, see Göbel (2019), Göbel and Steinhardt (2021).

'big-character-posters' right in front of the government offices to express their discontent with the proposed project.

This urban protest has also incited an online debate on environmental values with broader implications also beyond the immediate PX project.[4] Netizens have reviewed parts of the environmental history of the city often bringing up nostalgic childhood memories of times spent at a beautiful coastal town – and so coined a frame of memories related to this place – a constructed virtual lieu de mémoire that was irrevocably swept away by severe water, air pollution and in an attempt to reclaim more land by intense land fill in recent years, as many have described it (Wickedonna, n.d. [url withheld]).[5] They also drew examples from environmental incidents in other nearby cities in China and reflected on the course of the environmental and economic policy to justify their course of action.[6] Here are a few examples of City X protest tweets embedded in the form of "rightful resistance" (OBrien & Li, 2006) with occasional references to the official policy and slogans like the one by Xi Jinping cited at the beginning of this thesis being turned upside down:

[4] Environmentalist and nimbyist arguments frequently overlap. One of the arguments closer to nimbyism (not-in-my-backyard) in the sense of more immediate self-interest (Johnson, 2010) is for example that property value was declining in certain parts of the city as a result of the overall worsening environmental quality that has caused weird smell as argued in the context of this protest event (Wickedonna, n.d. [url withheld]). However, the nimby (private goods) arguments can easily be translated into broader environmentalist concerns for public goods (Steinhardt & Wu, 2016), e.g., when it would be argued that nobody will want to live in those parts of the cities, a frame of this and similar places becoming "ghost towns" (死城) (@user_6 Wickedonna, n.d. [url withheld]), which in turn could be interpreted as a self-interest immediate concern of someone whose income depends, for example, on tourism or real estate.

[5] Netizens have also reposted quantitative evidence such as calculations of the amount of environmental pollution produced per year by PX plants elsewhere.

[6] As a reaction to the state's official framing of the protests as being disruptive and the protesters framed as rioters charged with criminal offenses, one netizen tried to rebut these arguments by relying on a strong public interest frame, taking the Party at its word (parts of the official discourse and legal offences highlighted in italics) with Xi Jinping referred to as "Uncle Xi" (Xi Dada) mentioned at the end of the tweet. One part of the Weibo tweet reads as follows: "We are not *illegally assembling* (非法集会). Neither is this some *gathering crowds and creating disturbances* (聚众闹事), nor are we really putting up a *demonstration* (示威) against anyone. We as *disadvantaged ordinary people* (弱势的老百姓) just beg the government: '*Awaken peoples' conscience* (唤醒人的良知), protect the environment, *protect our home*. The action that has been recently taken by us, [City X] residents, is *spreading positive energy* (传播正能量), this is a *public interest activity* (公益活动)' [parts of the text highlighted in italics]" (@user_5 Wickedonna, n.d. [url withheld]). Strong basis for opposition to the project might have also resulted from the perception of the residents that they were misled by the government. The plant construction was a joint venture between entities from China and abroad. The opinion reflected in the online discussion was that the PX plant was first planned in City Y but later relocated to City X because of low acceptance among the population in City Y (unverified). These messages and the prospects for success, no matter how real (both official and unofficial accounts of earlier PX protests in China were generally available and made the headlines), might have affirmed the protesters in their resolution to oppose the plant at all costs.

> "We want no 'gold and silver mountains'(金山银山), just the 'green hills and clear waters' (青山绿水)!!!"[7] (@user_2 Wickedonna, n.d. [url withheld])
>
> "Our living environment cannot become leaders political achievement (*zhengji*) or be a victim for the benefit of few (少数人利益)." (@user_3 Wickedonna, n.d. [url withheld])
>
> "The so-called 'high GDP' of [City X] is a poisoned and suppurating GDP!" (@user_4 Wickedonna, n.d. [url withheld])

Despite environmental and participatory rights being at the center of the debate, legal avenues - their potential for and limits of action – have not received much attention in the excerpts of the online debate made available[8].

In an atmosphere quite different from the "strategic dramaturgy" (McAdam et al., 1996) of heated arguments of the environmental protests, a group of Chinese NGOs have instead of the street 'taken to the court' in their solo attempts to melt uneasy pollution issues into legal battles mainly fought in a courtroom. These environmental NGOs-plaintiffs, together with other stakeholders from the Party, the state, judiciary, and academia, have spent decades mobilizing the law in a coordinated effort to explore and incorporate various legal channels into their tactical repertoire. Finally, in 2014, after pushing for a legislative change to be able to hold polluters and the administrative accountable at court in the name of larger unspecified public, they got at least partly what they were after. This thesis is about these NGOs, the public interest lawsuits they file, and the political-legal environment they occupy.

There is a rich account of scholarship on environmental protection, environmental policy and environmental NGOs in China of nearly two decades (Ho, 2001; Schwartz, 2004; G. Yang, 2005; Hildebrandt, 2015; Hasmath et al., 2019) and a complete summary of the literature would jump the scope of this thesis. Steinhardt (2019) refers to the environment as "China's perhaps most dynamic domain of state-society relations" (p. 248). Zhan and Tang (2013) in their study on policy advocacy by environmental non-governmental organizations (ENGOs)

[7] Refer to the introductory CCP sustainable development narrative used by Xi Jinping at the beginning of this thesis that the netizen here takes as a reference point to express discontent. There is also some evidence of earlier appropriation of this same phrase not only by netizens but also *by other officials.* Different appropriations of this exact phrase by Party Secretaries from two localities are discussed by Wang and Liang (2019, pp. 638–639).

[8] The status of the environmental impact assessment (环境评价/环境评估; so-called EIA) is mentioned a few times throughout the debate. EIA was featured as one of the questions features in a manifesto addressed to the mayor. Showing great mistrust towards the leaders who have rushed to the crowd and issued a few official statements, netizens have doubted whether these attempts (including EIA) are genuine or the authorities have only temporarily ceased the construction of the project as a tactics aimed at dispersing the crowds (Wickedonna, n.d. [url withheld]).

highlight the "unique window to examine dynamics between political changes and civil society development in China" (p. 382). So, what makes the environment and environmental NGOs in China such an interesting object of study and why still study them?

Chinese ENGOs provide rare insights into the changing political environment, opportunities, and strategic adaptations for civil society actors. They strive to maximize their impact while securing their survival despite political environment often hostile towards civil society organizations. Therefore, environmental NGOs are often situated at the forefront of new developments with the ability to cultivate resources and effectively push for new opportunities and utilize the newly opened modes of participation that resonate well with the elites. This phenomenon is well-documented with the ENGOs' capacity to secure international funding and partnerships (Turner & Hildebrandt, 2009), to act as service providers for businesses or local governments (J. Y. J. Hsu & Hasmath, 2014; Schwartz, 2004)[9], form epistemic communities (J. Y. J. Hsu & Hasmath, 2017), engage in policy advocacy (Dai & Spires, 2017), and more recently observed even in the ENGOs' inclusion into lawmaking (Froissart, 2019). Some of these developments and areas are deemed unavailable to many civil society organizations active in other issue areas and from a larger perspective ENGOs often constitute a unique outlier compared to other NGOs.

Although there is a growing amount of scholarship on environmental activism and ENGOs in China, very little is known about how activists make use of judicial channels in authoritarian systems of government and how authoritarian courts rule on these cases. Here ENGOs again provide a fruitful ground for study. Until recently, representative legal action such as environmental litigation without a direct interest has been unthinkable and for many years remained merely a distant vision for Chinese environmentalists. In 2014, after 25 years since its promulgation in 1989, the amended Environmental Protection Law (EPL) has made public interest litigation for Chinese ENGOs possible, albeit only constrained to civil law and coupled with quite severe legal requirements placed on plaintiffs.[10] A relatively stable authoritarian government faces the uneasy task of how to increase participation and institutional

[9] Delivery of public goods like health care and education also seems to be a thriving space for Chinese NGOs (J. Y. J. Hsu & Hasmath, 2017; Teets & Jagusztyn, 2015). On the other hand, aside the official state-induced organizations, organizations active in areas deemed contentious per se such as advocation of labor rights, religious or political organizations are thought to be more constrained and completed to act behind the scenes.

[10] I discuss the development of the standing rules in greater detail in the subsequent chapters. Seen against the background of earlier drafts of the law, the degree of openness varied throughout the law-making phases. The final version is a compromise between earlier drafts that were more open to wider participation and other much more restricted proposals. Seen against the backdrop of the continental (civil law) tradition, the requirements do not seem comparatively that strict. Limitations to representative action undertaken by intermediaries are the norm in civil law jurisdictions and the limits placed on participation by formal requirements are generally thought to be stricter than for example in the United States (common law country).

capacity needed for better goods provision and implementation of state policies but simultaneously reduce its contentious potential. This dilemma forms the institutional design of environmental public interest litigation for NGOs. To navigate between these priorities, NGOs need to mobilize certain resources to realize, utilize or challenge this opportunity and make necessary adaptations.

Public interest litigation in civil law constitutes a case in the larger judicialization of politics, in which courts emerge globally as increasingly active forces in shaping public policy outcomes. From the perspective of civil society, civil litigation creates a yet unexplored item on the otherwise mapped "menu" (Teets, 2014) in the current framework of action space available for civil society organizations in China. In China, this legal opportunity of litigating on behalf is unlikely to spread beyond the "state-endorsed area of environmental protection" (Wilson, 2015) into other areas deemed more contentious or to create a significant number of lawsuits to fundamentally challenge the course of development. Nevertheless, it holds future promise for similar action and tests in other issue areas should the state be pushed to encourage such action and social organizations willing and capable to channel their activism through courts.

The step of allowing entities other than state organs to defend public goods signifies a move away from individual rights protection towards the protection of collective rights (public interest) and constitutes a case of limited pluralization of representation of such interests. From a comparative perspective discussed below in the context of "representation without authorization", such representation and its practical administration remain contested issues in many jurisdictions globally. Given the sensitive nature of the issue of representation of interests of larger constituencies by non-state actors in China, such action remains highly contested as already illustrated at the beginning of this thesis in the case of protests.

From the Chinese state perspective, public interest litigation as a tool is a useful legal innovation that places emphasis on a limited number of intermediaries rather than collective actors themselves and permits some free zones in which ENGO-plaintiffs can act, exploit and in some cases choose to challenge the boundaries of formal legal opportunities. At the same time, the ENGO-plaintiffs are subjected to a manageable degree of state and self-oversight, their actions are also bound by the formal institutions (e.g., judicial branch, court, law) to whose legitimacy they add. They do so by engaging in these formal channels of participation but also by actively shaping and promoting them.

For the ENGOs this type of engagement is not without practical obstacles, but it is backed by the virtue of law and central institutions behind. The issue of representation is much

less contested here than in the case of direct (self-)representation of affected pollution victims. As I will show in subsequent chapters, the public interest in these lawsuits transcends the immediate interests of pollution victims.

The result of the broad but constrained opportunity opening is thus reflected in the reality of the environmental public interest litigation: despite formally unlocking the door to the courtroom, seeking justice via environmental law remains a daunting task for ENGOs. Instead of flooding the courts with this type of lawsuit, a small community of social-organizations-as-plaintiffs with various organizational backgrounds has mobilized the law and 'taken to the courts' together with other state organs and institutions directly following suit as well.

The present thesis poses three main research questions:

- what kind of NGOs engage in EPIL?
- how successful are they?
- which factors are likely to influence the outcome of the lawsuit?

The plaintiffs include experienced and established long-term players in the environmental area. While some of them stand closer to the Chinese state, others are characterized as more "grassroot". While some can be considered more of "lone wolfs" when it comes to litigation, others exhibit a high degree of involvement in the plaintiffs' community with strong linkages among each other. Little is known about the background and characteristics of these organizations, their capacities, the networks they form, and the strategies they use when it comes to litigation. This knowledge is important as by extracting the key characteristics it is possible to arrive at some preconception of the necessary "haves" (Galanter, 1974) for the plaintiffs to take part in and likely succeed in litigation.

This thesis centers around the analysis of civil judgments and other court documents. These pieces of information were largely inaccessible to previous research on environmental litigation in China (Stern, 2013) and only become available in the sweep of broader judicial reforms centered on the openness of information. The present thesis utilizes judicial decisions and other court documents made publicly available to arrive at insights on judicial reasoning, goals of, and the result of litigation. Apart from the focus on the background of the plaintiffs, the thesis utilizes this material and outlines further conditions such as explicit state support provided by the local administration or procuratorates in the lawsuits that span beyond the (plaintiffs') resources inherent to the organization. Plaintiffs sometimes sue away from the place of registration or challenge powerful defendants at the place of their registration.

Therefore, they enter a web of interrelated interests between businesses and local governments. Apart from having a solid legal case they need to count on additional support. Courts need to balance these intersected interests against each other, and organizations rely on the support of the locality in holding polluters accountable. These additional pressures and their impact are also examined in the thesis. Taken together these conditions influence the degree of success in litigation.

2 History of EPIL

Environmental protection was formally included in the 1978 Constitution. Even more importantly the passing of the first Environmental Protection Law (EPL) in 1979 (For Trial Implementation) and its formal promulgation in 1989 (Economy, 2010) marked the willingness of the central government to recognize environmental concerns and address them via legislation. Additionally, China had joined and ratified numerous international treaties on climate and environment such as the United Nations Framework Convention on Climate Change in 1992 signed by the Chinese government in the same year, and ratified in 1993 (United Nations, 1992).

The ideas of the sustainable economic model began to emerge with such concepts as circular economy (Steuer, 2018) and the green GDP (Weigelin-Schwiedrzik, 2018) taking hold in China, notably projects where there was little room for the inclusion of the public in environmental governance. It was also in the 1990s when important preventive mechanisms such as the Environmental Impact Assessment (环境影响评价, EIA)[11] and the corresponding system of "Three Simultaneous" (三同时)[12] was laid down, yet it left a lot of legal issues such as the sanctions in case of non-compliance and the issue of legal responsibility unaddressed (Jin et al., 2002), further the decentralized enforcement and fragmented bureaucracy (Lieberthal & Lampton, 1992) and the strong prioritization of economic growth over environmental

[11] EIA serves the purpose to anticipate potential effects of projects to the environment and reject/approve/amend them accordingly. The EPL in 1989 mentioned the EIA in Art. 6 and Art. 7 as a compulsory requirement (EPL, 1989) and later EIA made it into a separate law (EIA, 2002). "Three Simultaneous" refers to the system of "simultaneously design, carry out and put into operation" (同时设计、同时施工、同时投产) (Jin et al., 2002, p. 103). However, the practice known as "build first, assess later" lead to many construction projects being completed it the first place without the necessary procedure. The gradual inclusion of public in these processes started much later, around 2006, mostly fueled by the ministerial agency SEPA (K. Xu et al., 2009).

[12] See footnote 11 above.

protection[13] lead to a significant enforcement gap with many rules existing merely on a paper that were "pleasant to look at but of no use" (中看不中用) (H. Liu, 2015, p. 128).

The primary focus of the policymakers in the mid and late 1990s was not aimed at increasing public participation. This observation is in line with both the (trial) EPL (1979) and the EPL (1989) which do not contain any mention whatsoever of public participation[14]. To show the extent of the position of public participation in environmental affairs, an article in People's Daily from 1996 written by a high-ranking official, for example, discussed at great length the importance of "construction of environmental legal system" (加强环境法制建设) as a support for the economic transition and socialist market economy and only briefly acknowledged that "public participation in environmental affairs cannot be omitted"[15]. This episode showcases that the inclusion of the public was given some discussion room but was secondary to the development of institutions, policies, and economy.

The observation that the inclusion of the larger public was not on the top of the list of initial environmental reforms but rather took time to get noticed by leaders is less surprising. The environmental NGO scene slowly began to emerge with some early organizations being formed. Some of the oldest organizations examined in this thesis started evolving in the late 1980s and especially throughout the 1990s largely supported by foreign donors who had just set foot in China (J. Chen, 2010). The public lacked the capacities and structures necessary for civil society organizations to emerge and the policymakers in the early 1990s were not ready to include the public, regardless of whether NGOs or citizens, into the environmental governance model just yet. The situation changed with the emergence of legal discourse around the 2000s and many events, some of which had reversed some earlier developments, until the passing of

[13] As mentioned before, this is characterized through the viewpoint of "Development First" (经济发展优先) and "Pollute first, clean up later" (先污染后治理) and, as described elsewhere, incentivized through the Cadre Performance Evaluation System (Ran, 2013).

[14] There is a whole chapter in the EPL (2014) that deals with this topic (Chapter 5, 信息公开和公众参与 Open Information and Public Partication) (EPL, 2014).

[15] 公众参与是环境和资源保护工作中不可缺少的重要手段 (B. Wang, 1996). This is a very different understanding from understanding participation such as forming alliances, actively participating in policy implementation providing feedback for policymakers or even participating in the process of policy formulation at an early stage. Wang Bingqian's understanding (former Minister of Finance and Vice Chairperson the Standing Commitee of the NPC at the time of writing this article) understanding in 1996 echoes the much less controversial and state-led way of participation through top-down environmental protection campaigns and state-induced environmental organizations as known in other former Communist countries with little room to act beyond waste clean-ups and conservation activities in their official capacities (Carmin & Jehlička, 2010). Such top-down activities typically included campaigns to increase environmental awareness, organized the public into brigades that participate in environmental clean-ups with strong propaganda work afterwards or designed as celebration of an official day – an example still until today is the International Arbor Day known in contemporary China as 12.3 (植树节), a day also used to commemorate the death of Sun Yatsen. The positive effects of such educational mobilization activities were far outmatched by the extent of state-induced societal mobilization that lead to the environmental destruction in the first place (Shapiro, 2001).

the Environmental Protection Law in 2014 with the first genuine nationwide legal basis for social organizations to file environmental public interest litigation lawsuits.

The origins and growing acceptance of EPIL originate in the scholarly inquiry into environmental law. The discourse has not stopped until the present day and is especially flourishing in concerning standing requirements concerning administrative public interest litigation that is not permitted for NGOs (Tong, 2015, pp. 133–139). According to my understanding and the research based on the Chinese language sources I present in the following subchapters, this legal discourse, and the debate it produced has played a crucial role in the formation of environmental public interest litigation. It was especially relevant for the introduction of the idea and concept of environmental public interest litigation to Chinese audiences. It also played a central role in producing specialists that became elites or were able to gain support from the state elites for this course of action they were unfamiliar with.

The discourse and its interaction with the state produced a favorable environment for the EPIL to develop. Parallel to the rather slow developments at the central level, various institutional designs were curbed and probed by local experiments in the form of certain environmental courts that started to emerge from 2007 onwards, much earlier than the first tangible legislative outcomes at the central level (CPL in 2012 and the EPL in 2014). The idea of EPIL rose to prominence after 2005, yet it took roughly another ten years to reach the level of consensus at the central-level leadership needed for its nationwide standardization.

Below I will first discuss the definition of environmental public interest litigation, and its conceptual characteristics, situate it in the larger context of the Chinese official conception of state and public interests and discuss its similarities and notable differences with other common usages of public interest, especially regarding the *weiquan* movement. After outlining the definition, I briefly review the history of EPIL in the PRC and each section to explain how EPIL grew from a marginal issue discussed mainly in comparative legal scholarship to a nationwide codified procedure. Finally, the Chapter outlines further trends that have occurred after the passing of the Environmental Protection Law in 2014: These post-EPL legislative development include procuratorates' and local governments' comeback into the arena of the environmental public interest case filing. The inclusion of these direct state actors has further complicated the nature of EPIL offering new opportunities for cooperation with NGO-plaintiffs but also increasing competition among plaintiffs that has led to problems associated with practical coordination and case filing hierarchy among various types of public interest plaintiffs.

2.1 Environmental public interest and litigation

Wang and Cheng (2016) define "environmental public interest" broadly as follows:

> Environmental public interest (环境公益) can be understood as the ecological service functions (生态系统服务功能) meeting the needs of an unspecified majority of people. Ecological service functions can be divided into four functions, namely provisioning, regulating, cultural and supporting functions[16]. Environmental public interest is a sort of overall interest (整体利益), *common interest* (共同利益)[17] [emphasis added] that is enjoyed by every individual in a non-specified number majority of people but *transcends the individual* and has *inseparable public character* [emp.add.]. (p. 40)

The public interest, therefore, rests on the assumption of benefiting the society at large, *transcends* the individual interest, and centers around the environment as a legal object. The focus of environmental public interest litigation is *not* the affected persons or communities suffering harm such as in health or property with victims vindicating their rights. The defining characteristic of EPIL is that it moves away from the affected victims' communities towards larger imagined communities whose public goods are safeguarded and represented by plaintiffs (such as ENGOs). The plaintiffs try to prevent or mitigate the larger harm in the name of the public without the need for the public to get involved.

The public interest litigation as examined in this thesis is tied to a legal procedure that has established boundaries with defined standing requirements and limitations on vindicable rights. I focus on the litigation filed by ENGOs, therefore the lawsuits I examine can be

[16] Here the authors implicitly echo the understanding of the ecosystem and four ecological service functions as outlined in the Millennium Ecosystem Assessment of the United Nations (UN): "Ecosystem services are the benefits people obtain from ecosystems. These include *provisioning* services such as food, water, timber, and fiber; *regulating* services that affect climate, floods, disease, wastes, and water quality; *cultural* services that provide recreational, aesthetic, and spiritual benefits; and *supporting* services such as soil formation, photosynthesis, and nutrient cycling [emphasis added]" (Millennium Ecosystem Assessment, 2005, Preface). The term "environment", therefore, follows a definition that not only encompasses ecology and ecological resources, but also cultural relics, natural and human-made historical sites. A similarly wide definition of the "environment" was outlined in the Article 3 of PCR's early (provisional) EPL (1979) with a list of examples that were exhaustive in nature. Besides some minor additions and making the list non-exhaustive, an abstract definition was added to the list with the term "environment" now being referred to as "the entirety of all natural elements and artificially transformed natural elements that affect the survival and development of human beings including [影响人类生存和发展的各种天然的和经过人工改造的自然因素的总体] including but not limited to […the list of examples follows]". The broad understanding of "environment" already found in 1979, therefore, remained and was further expanded in the version of the afore-cited Article 2 of this Law (EPL, 1989, 2014).

[17] Note that the Chinese word "interest" (*liyi*) also means benefit.

precisely identified as "environmental public interest litigation" with certain type of plaintiffs authorized by law. This type of plaintiff institutes a certain type of legal action specified by law (see 2.4 National legislation, p. 29) without any material benefit for the plaintiff as a result of the outcome.

The term "public interest" has a certain ambiguity and carries a special meaning in the Chinese politico-legal context. The cornerstone of the CCP ideology and an important source of legitimacy for the CCP is derived from the commitment to act as a vanguard of the masses, represent societal interests (人民利益) at large, and adopt policies to achieve developmental goals. This commitment to widening the representation beyond the formerly historically privileged proletariat was famously first incorporated in the 1982 Party Constitution that defined the CCP as "a faithful representation of the interests of all people and all nationalities in China" (中国各族人民利益的忠实代表) (CCP Constitution, 1982). It was also further theorized in the representation of the "fundamental interests of the majority of people" in Jiang Zemin's "Three Represents" incorporated into the Party Constitution in 2002 and alongside Mao Zedong Thought and Deng Xiaoping Theory added to the Preamble of the 2004 State Constitution. The 2002 Party Constitution dropped the precise formulation from the 1982 version cited above and in line with Jiang's contribution spoke of representation of the "broadest fundamental interests of Chinese people" (中国最广大人民的根本利益) (CCP Constitution, 2002), a standard formulation that remained unchanged throughout the later amendments including the one in 2017.

The rhetorical framing placed on the CCP as responsive to popular demand is also found in the rhetoric of Xi Jinping. At the 18th Party Congress in November 2012 which marked Xi Jinping's first term as the General Secretary, Xi argued as follows: "We need to draw wisdom and strength from peoples' practice, address the practical matters by following the popular will, solving their worries and benefiting their livelihood and redress behavior harmful to the interests of the masses" (Xi, 2012)[18]. Xi makes an obvious reference to the concept of the "mass line" (群众路线) here - engaging with and learning from the masses. While the mass line has been the ideological cornerstone of mass mobilization since the Mao era, Xi puts greater emphasis in his speeches on guarding and solving problems in relation to interests, an approach characteristic to the Chinese leadership positioning towards addressing the domestic problems of China's population as well as international development issues embedded in China's foreign policy. The frame of public interest or national interest (国家利益) also serves as a legitimation

[18] 要从人民伟大实践中汲取智慧和力量，办好顺民意、解民忧、惠民生的实事，纠正损害群众利益的行为

for repressive action or state policies often justified with emphasis on securing the basic needs of the people. This further blurs the society-state divide when it comes to the public interest.[19] The receptivity of this frame so prominently featured in the CCP's ideology might be a key to the understanding of a domestic source for justification of why the Chinese Communist Party is relatively open towards and willing to experiment with the idea of public interest litigation, an idea problematic even to many democracies.[20] Taken together with the abstraction level and focus on collective rather than individual rights, the public interest litigation fits well into the CCP's permissible repertoire of legal empowerment via intermediaries that represent larger interest constituencies.

EPIL should be further differentiated from collective (class) litigation. At first glance, public interest litigation seems quite alike the "rights defense" (*weiquan*) in the sense that "a representative […] acts on behalf of a harmed individual" (Benney, 2013, p. 155). Fu and Cullen (2008) view *weiquanism* (also referred to as "cause lawyering") as part of public interest litigation. Some partly overlap between those two indeed exists. For example collective (class) litigation discussed in the literature on *weiquan* in labor and consumer rights can be considered some form of "socio-legal activism" (H. Fu, 2019a) in the public interest. Although both share some similarities, such action described by scholars focusing on *weiquan* differs from environmental public interest litigation in numerous ways. Rather than defined by legal requirements as in the case of EPIL, the cause lawyering follows different rules, and the term "public interest" in these cases shows a higher degree of flexibility as it rests much more on the intent and how the citizens-plaintiffs or citizen-lawyers "appropriate the term *weiquan* for their own uses and purposes" (Benney, 2013).

On the contrary, environmental public interest litigation is institutionalized and differs greatly from the understanding of public interest litigation by researchers as "subversive use of

[19] It should be noted that in European legal thinking the term "public interest" also has a strong state connotation and is linked to the enforcement of public policy traditionally reserved to states, see Nagy (2019).

[20] For example, the Austrian courts have not granted standing to an ENGO "Protect" in a case challenging a permit issued by a local district authority in Lower Austria due to the lack of standing for such organizations generally not permitted under the Austrian Law. After the case was heard in front of the European Court of Justice (ECJ), the ECJ overturn the verdict and derived the standing of the NGO directly from 1998 Aarhus Convention that Austria had ratified in 2005 (Judgement of 20 December, 2017, *Protect*, C-664/15, ECLI:EU:C:2017:760). This case is in fact only one out of many similar cases where the ECJ affirmed the plaintiffs' to standing based on the Aarhus Convention, for comparison see the 2011 the so-called "Brown Bear Case" in Slovakia (C-240/09) or the "Trianel" case in Germany (C-115/09) during the same year. Nagy (2019) summarizes his observation regarding concerns behind the applicable requirements: "According to European thinking, conferring standing on these public and not-for-profit organizations with the exclusion of group members and for-profit entities mitigates the *risk of abuse* [italics added]. It is argued that because these organizations are not profit-orientated, they are attentive to the public interest, furthermore, *they are registered, regulated and supervised*. [ital. ad.]" (p. 95). For more on Nagy's observation regarding various sources of fear in the Member States of the European Union also see footnote 44, p. 30.

law" (Froissart, 2014, p. 258), and related to that, as "alternative means of political participation that implies a disavowal of existing institutions" (ibid., p. 259). Such fears among policymakers, indeed, were echoed in the anchoring (discourse and subsequent) and lawmaking phases (see Chapters 2.2-2.4). The main difference after the institutionalization of EPIL at the national level after 2014 between collective litigation and EPIL is that the former requires a directly affected victim. Even in litigation undertaken by individual plaintiffs or *weiquan* lawyers, there can be some obvious notion of public interest for example when"[l]awyers make themselves victims and then file PIL litigation" (H. Fu & Cullen, 2009, p. 12), yet without a direct victim these claims are not subject to the judicial process. These lawsuits often aspire to the public interest by addressing a specific problem at hand such as extensive fees[21], false advertising[22], job discrimination[23], environmental harm[24], etc. but do not and cannot channel these issues through the means of public interest litigation as a procedure. The shared similarity between EPIL and these cases is that although they start by addressing a specific issue at hand, they usually aspire for a more systemic change[25]. Summarized it can be said that EPIL is neither bound to a certain (human) victim, nor do the plaintiffs directly represent the aggrieved party, who would opt in or opt out of litigation. EPIL is therefore characterized as "representation without authorization" where broad constituencies are represented as a whole without giving their explicit authorization but also without necessarily having any connection to the lawsuit (for the European context see Nagy, 2019) in line with the definition at the beginning of this chapter of "public interest" transcending the particular individual or a group of such individuals.

In practice, the distinction between EPIL and representative action undertaken in the public interest (in the sense that it benefits larger groups) is important. Otherwise ignoring it could lead to the assumption that with the development and codification of "environmental public interest litigation", individual plaintiffs involved in environmental mass disputes are encouraged to access the courts via this special procedure to vindicate their rights. This

[21] The legal worker Qiu Jiandong famously filed a lawsuit in 1996 against state-owned company for overcharging RMB 1.20 for long-distance phone calls. This case has later gained prominence as a public interest lawsuit (H. Fu & Cullen, 2009).

[22] In 2001, the lawyer Tong Lihua represented the victim in a case in Hubei against China National Tobacco and twenty-four tobacco companies for protection of minors over advertisements, for the discussion of the case see Tong (2015, pp. 133–134).

[23] For more see Fu and Cullen (2009).

[24] For example, CLAPV represented 1,721 villagers in a lawsuit against chemical company in Pingnan in 2005. For the discussion of this and other landmark environmental cases between 2002 and 2007 see Stern (2013).

[25] Another characteristic is that these broader effects beyond the initial aspirations are difficult to evaluate and are not always that clear in the beginning apart from the initial motivation. Some effects could be a policy change but also for example an increased media attention. The assessment of the effect of in-court victories still depends on the enforcement of judgments, which makes it difficult for researchers to evaluate whether the case had "caused a storm" or not and whether this storm was in fact might have been just a storm in a teacup.

assumption is clearly wrong. Based on the codified scope of the litigation, there is no evidence neither in the law nor in practice adding to the hypothesis that this was the intent of the lawmakers and *should* be the case. Nevertheless, some of these signals were (mis-)interpreted by Chinese citizens as an encouragement to bring cases under the label of "environmental public interest" as evidenced by a handful of cases brought to the courts (see ft. 69, p. 49). Collectives willing to use the legal channels have to rely on dispute settlement of collective disputes (Chen & Xu, 2012) or on the very much discouraged collective litigation (Xie & Sun, 2010) or might seek individual justice elsewhere via other means of conflict-solving. Collective disputes involving a large number of plaintiffs are considered contentious. High-profile cases like the melamine milk powder scandal in 2008 (H. Fu, 2019b) or the blood-donation scandal around 1995 (Guan, 2020), were both settled through government intervention.

2.2 Legal discourse

In the late 1980s, distinct "environmental legal studies" (环境法学) began to emerge and proliferated in the mid-1990s. With the emphasis placed on building an "environmental legal system" (环境法制), these studies have laid down a foundation for the debates on strengthening environmental rights and legal protection in environmental matters. Legal scholars and NGO-affiliated researchers began exploring the possibilities of environmental public interest litigation and its adaption to China. This was done through legal comparison with laws in other countries. Legal comparison as a method for introducing new, often groundbreaking concepts and borrowings of institutions and norms transplanted from abroad has a long tradition in China. It gained prominence at its height as an almost institutionalized mechanism that stood at the core of the dynasty-sponsored official project during the legal reforms in the late Qing (1902-1911).[26]

[26] After the launch of *Xinzheng* reforms in 1901, a special commission for law compilation (*falü bianzuan guan* 法律编纂管) was found for the purpose of compiling new laws in 1902 and became active in 1904, later in 1907 the agency was renamed Agency for Law Revision (*xiuding falü guan* 修订法律管) to study foreign law mostly via Japan (via imported Japanese translations, alongside Japanese experts and Chinese graduates from Japan and Hongkong) for the purpose to study, draft and finally introduce new law codifications and incorporate them into the existing legal and political dynastic environment, often drawing on the domestic sources of legitimacy during this process. The official project came to an end with the abdication of the dynasty in 1912 but over the years it had achieved a new Western-inspired conceptual division of law, numerous legal translations, drafts, and legal codes that served as a basis for further legal reforms under subsequent governments. The method of legal comparison remained in use and was frequently employed for example when introducing Soviet-inspired laws and institutions during the Mao era and for borrowings under Deng's flagship project of "building the rule of law" as well, quite prominently for example before PRC's joining the World Trade Organization in 2001. Until present day, legal comparison is still a widely used method and an instrument for discussing and introducing novel legal

Stern (2013) showed that based on the number of newspaper and academic articles the discussion of *public interest litigation* took hold around 2000s when “legal academics and journalists began writing about the possibility of allowing a wider range of groups and individuals to sue” (p. 218), and intensified in the subsequent years. This focus of scholars and NGO-affiliated researchers on expanding environmental rights beyond individuals and directly affected victims is also seen in the Chinese academic discourse that flourished after the 2000s. That is why the German concept of “neighborhood rights” (相邻权 or 相邻诉讼, Nachbarrechte) gained popularity in academic publications and was echoed in some of the early works on environmental law (Lü et al., 2001, p. 133) with a later tendency to move further away from the direct harm of affected communities closer to the direction of EPIL. Graduates from the Wuhan University[27] such as Lü Zhongmei 吕忠梅, professor of environmental law, emphasized in their writings that “environmental resources are shared [public] goods of the present and next generations” (当代人和后代人的共有财产) (Lü et al., 2001, p. 127) and pushed for individual and collective rights by stressing “citizens’ environmental rights” (公民环境权) (Lü et al., 2001, p. 124).

Law professors such as Wang Canfa 王灿发 from the China University of Political Science and Law in Beijing, the director of 2001 founded CLAPV (another NGO that offers support to other NGOs and individual citizens in environmental lawsuits) and Wang Jin 王劲, a law professor at the Beijing University, continued to publish course books and study materials on environmental law (C. Wang & Wang, 2006; J. Wang, 2006). Wang Jin (2006) argued that “China should quickly expand […] the scope of ‘interested parties as defined by law’ ” (p. 610)[28] in cases where the public interest was harmed.

Such calls for a legislative solution did not only remain on the academic soil. Some of the early proponents gathered support for EPIL using their roles as NPC delegates or Consultative Conference (CPPCC) members. Others like Bie Tao 别涛 worked directly with the Regulatory Department at SEPA (国家环境保护总局法规司). Wang Canfa, Liang Congjie

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ideas in the PRC. The process of contestation and appropriation of ideas it triggers has a profound influence on the final version of many laws and regulations.

[27] Wuhan was a pioneer in the environmental law in numerous ways. The Research Institute of Environmental Law was found at the Wuhan University in 1981 (RIEL, n.d.), a specialized environmental tribunal was formed in 1989 already. In 1992, some of the projects were resumed, and a first university based legal-aid center with a wide scope including legal aid to pollution victims in China was founded at the Wuhan University (CPRDC, 2013). Other graduates include Wang Jin, Gao Lihong, Bie Tao and many others who have contributed with research and expertise to a development of environmental law during this phase.

[28] Wang Jin advocated here either the expansion by formal law advancement or judicial interpretation of such scope (通过立法或司法解释扩大“法律上的利害关系”的范围) which hints at the already strong role of the Supreme People’s Court (SPC) in rule-making.

(for more see p. 122) together with other members of the CPPCC brought legislative proposals in 2005 (Bie, 2007, p. 12) aimed at anchoring EPIL in the law. Lü Zhongmei and thirty other delegates used their posts as NPC delegates in 2006 to bring in another such "proposal" (建议案)[29] (Bie, 2007, p. 12).

These developments were, of course, not isolated from what was happening in the Party leadership and the central government. The State Council mentioned EPIL first time by its name in 2006 and called for an investigation of the procedure (Bie, 2007, p. 11). The above-cited edited volume (see Bie & Jin Wang, 2007) was published in May 2007 just before the endorsement of eco-civilization by Hu Jintao in October 2007 at the 17th Party Congress. In this edited book various authors compared the United States, India, Russia, Indonesia, Philippines, South Africa, and many other country-specific models of public interest litigation. The relevance of the EPIL in the introduction of the book was framed as "advancing societal equality" (促进社会公平, Wen Jiabao [WJB], 2005) and "justice" (正义), "establishing Harmonious Society" (构建[社会主义]和谐社会, emph. added, Hu Jintao [HJT] 2005; WJB 2005), "advancing the democratization of environmental policy-making" (推进环境决策的民主化, [共谋发展的法治环境、政策环境] HJT 2005; Pan, 2004), "increasing the societal level of legalization" (提高社会的法治化水平) and "implementing the […] sustainable Scientific Development" [全面、协调、可持续的科学发展, emph. added, HJT 2004, 2005; WJB 2005] with "People at the Core" [以人为本, emph. added, HJT 2004, 2005; WJB 2005]" (Bie, 2007, p. 1). As I show here by referencing the political slogans in the square brackets this relevance was framed alongside the exact phrases and keywords put forward by Hu Jintao and Wen Jiabao in their speeches. This space reflected in the broader environmental turn of the top Party echelons provided a new opportunity for the scholarly community and the SEPA[30] to adapt their rhetoric and fit the practical utility of EPIL into the new official frames and spur further legislative developments in this area at the central level.

Public interest litigation was put in the context of overcoming difficulties associated with the administration of individual justice: individual or collective victims unable to file or unwilling to sue, cases rejected by courts, and the problem of the remaining unsolved pollution even in cases where victims did receive some form of compensation leaving the public interest unsatisfied (Qi & Zheng, 2007, p. 236). Unlike in the earlier works where non-governmental

[29] 吕忠梅等三十名全国人大代表 2006 年第 691 号建议案 ("Lü Zhongmei and thirty other delegates of the National People's Congress bring in a motion 2006, No. 691"), cited in Bie (2007).

[30] Note that SEPA already was a proponent of EPIL as explicitly articulated by Pan Yue (see Pan, 2004).

organizations did not receive much attention, NGOs were regarded as crucial forces in EPIL. In the volume introduction, Bie regretted that these had not been authorized by the law to file EPIL[31] (Bie, 2007, p. 2). Bie argued that the most important aim of EPIL was to stop pollution and restore the environment rather than seek compensation (Bie, 2007). Bie argued that NGOs should not be eligible to request compensation on their behalf and should closely work with the administration, only when the problem could not be solved the NGOs should sue the polluters or government departments (see Bie, 2007, pp. 18–19)[32]. Bie also called for improving the participation against administrative wrongdoings and argued that citizens should be able to sue the administration in cases where the environmental administrative authority remains inactive (Bie, 2007, p. 16).

As some local courts have started to experiment with environmental public interest litigation (see 2.3 Local experiments, p. 26), scholars and researchers active in regulatory bodies continued to identify problems, comment on the legal uncertainty and offer regulatory solutions. As observed by some, the law lagged behind the practice as observed especially in regard to nearly 200 cases filed by procuratorates since 1997[33] (see Bie, 2007, p. 5). Lü Zhongmei strongly opposed the idea of procuratorates (who were the dominant plaintiff at the time and are again today based on a number of cases) activity in environmental public interest lawsuits as their filing was not explicitly authorized by law, the procuratorates lacked the appropriate expertise and the filing conflicted with their work as supervisory role over judgments, and safeguarding state interests (Lü, 2008, p. 134)[34]. In 2009 the US model of class action and citizen suit seemed to have gained momentum. Lü Zhongmei, together with Alex Wang 王立德, back then a founding director of the China program of a well-known ENGO National Resource Defense Council (NDRC) with headquarters based in New York, edited a whole volume called “The Comparison Of Environmental Public Interest Litigation Between the United States and China” (环境公益诉讼: 中美之比较).

[31] 未获得法律授权

[32] This is an obvious reference to other legal systems where a notice period is required to first notify the administrative agency/polluter. Similarly, the system of procurators filing administrative EPIL is set up with a notice and sue period, for more on that see 2.5 Post-EPL development, p. 35.

[33] First case took place in 1997 in Henan with procuratorate vs. administrative departments (but via civil lawsuit over the selling of state-owned real estate property) and other case filings by procuratorates in Shandong, Sichuan followed (Bie, 2007, p. 5). It should also be noted that many of the EPIL lawsuits would not have qualified as EPIL from today´s viewpoint and the confusion over what used to constitute a public interest lawsuit and what didn´t makes the categorization difficult. The first such public interest lawsuit in environmental matters probably took place in 1995 with the government of Jixi in Heilongjiang acting as a plaintiff in a compensation lawsuit (compare S. Wang, 2014, pp. 29–34).

[34] The latter two are arguments also found in today’s debate where the procuratorate is given a prominent position in these lawsuits, albeit authorized by the law itself.

The legal scholar Lin Yanmei 林燕梅 who later participated in the first lawsuit in 2015 as a representative of CLAPV as a supporting unit for FON, an environmental NGO as plaintiff, remarked: “We all use the term ‘public interest litigation’ but we do not know what it stands for […]” (Lin, 2010, p. 273). In the absence of a precise legal definition and clear rules on standing, the term “public interest” was used loosely to refer to issues that affected broader constituencies such as consumer class action, individual lawsuits with public goods at the core filed by a group of lawyers that had developed a professional identity as *weiquan* or “public interest” lawyers and individuals, procuratorate protection of state assets (state interest). The uncertainty was going to be resolved only by the new EPL in 2014. In the meantime, various regulatory developments were already in progress on the local level. These developments are reviewed in the next chapter.

2.3 Local experiments

The explosion of the petrochemical factory in the city of Jilin known as “Songhua River incident” (Wilson, 2015, p. 180) in 2005 led the central government to voice its support for EPIL (Wilson, 2015). Although the awareness of policymakers at the central level arguably rose with the occurrence of such environmental disasters, the primary focus did not lie on EPIL as a solution. Such legal developments occurred through innovations at the local level. Only a minor fraction of local governments decided to pursue the judicialization of environmental politics (J. Wang & Liang, 2019, n. 5). A few localities stood out regarding the level of experimentation with various institutional designs of environmental public interest litigation.

The further inclusion of social organizations into environmental litigation is closely tied to the “local innovations” (Stern, 2014, p. 72) associated with the emergence of specialized environmental courts[35] (Stark, 2017; Stern, 2014; A. L. Wang & Gao, 2010) in certain localities. In 2014, there were around 134 environmental courts and by June 2019 the number reached 1201 including environmental tribunals, panels, and circuit courts (SPC Website, 2019). Stern (2014) has outlined the potential function of the courts as “de facto environmental regulators”

[35] The term “environmental courts” is broadly used for 1) freestanding courts, 2) environmental divisions within courts and 3) designated panels of judges for environmental cases (Stern, 2014, p. 55). Stark mentions the case of China’s environmental *district* courts (Umweltbezirksgerichte) that he does not count as environmental courts because they fulfill “mostly consultative and executive tasks” (Stark, 2017, p. 40). Contrary to Stern (2014), the authors of another article point out that “environmental courts” should not involve designated panels or *xunhui* (circuit) courts because judges are “assigned to work onsite at agency offices” (A. L. Wang & Gao, 2010, n. 5, p. 39). These can only be set up by basic-level courts.

(p. 61) in the sense that they might be able to shape the course of the lower-level administration, albeit operating in a space defined by the boundaries set by local government´s policy objectives (Stern, 2014). Given the broad meaning of the term "environmental courts" and its implications this possible regulatory boom did not lead to any extensive emergence of new grounds for EPIL. On the contrary, only a few of these environmental courts in the more regulatory sense have engaged with practical reforms aimed at increasing public participation in legal matters for NGOs[36].

The pioneers in EPIL were the Qingzhen environmental and Guiyang courts established in 2007 in Guizhou province, followed by Wuxi (Jiangsu province) and Kunming (Yunnan province) in 2008 (A. L. Wang & Gao, 2010). these localities were eager to innovate in the area of environmental protection, participation, and law. They were situated in a favorable political environment brought by the "environmental turn" (Stern, 2014) signified by Hu Jintao's green rhetoric and the introduction of binding targets for local officials in the second half of the 2000s and pushed by the rising bottom-up worries in the light of worsening environmental degradation (Stern, 2014). There was a considerable variation in the rules: the Kunming environmental tribunal had only cases accepted brought by government agents whereas others permitted non-governmental actors as well (J. Wang & Liang, 2019).

As for public interest lawsuits filed by social organizations, there were clearly not the major objective of the courts and policymakers as observed with the nine cases filed between 2009 and 2012 (see Table 4, p. 102). Notably environmental courts in Guiyang and Wuxi have paved the way for further development of EPIL by experimenting with cases filed by ENGOs even in absence of such rules[37] that would grant NGOs standing. Only later these courts started issuing a set of rules that were the first of their kind in China and were then incorporated by policymakers on the local level[38] (A. L. Wang & Gao, 2010). Wang and Liang (2019) have

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[36] According to Stark (2017) the first such tribunal dates back to the first experiment in 1989 in Wuhan to establish an environmental tribunal that ceased the same year with other experiments sharing the same fate in the 1990s (p. 45).

[37] For example, Guiyang 2007 Rules only permitted the prosecutors and administrative agencies active in environmental protection to file civil EPIL and did not mention NGOs (analyzed in J. Wang & Liang, 2019). From today´s point of view that is a much narrower window of opportunity than the EPL 2014.

[38] Some local regulations foresaw considerably more open standing requirements than the nationwide version after passing the 2014 law, at least on paper. The 2009 Meeting Minutes of Yunnan Provincial Court suggest the most open standing requirements for participation both in civil and administrative EPIL allowing prosecutors and NGOs but not administrative bureaus to initiate lawsuits. A joint opinion issued subsequently by the court and procuratorate in Kunming nevertheless allowed the EPB to initiate lawsuits as well. Wang and Liang (2019) make note of these contradictory rules: "In terms of legal hierarchy, the 2009 Minutes of the Yunnan Provincial High Court were higher than either the 2008 or 2010 Opinion. This would suggest that administrative bureaus such as the EPB should not in fact have standing to institute EPI lawsuits, effective May 2009. The Kunming court nevertheless accepted an EPI lawsuit filed by the EPB in August 2010" (p. 650). However, the higher-level provincial Minutes are quite brief and have not explicitly prohibited the administrative agencies from suing. Rather

traced the establishment of Kunming and Guiyang environmental courts back to a change in the position of party secretaries who were prompted to adopt solutions due to the occurrence of environmental incidents. These two localities vary considerably in the solutions adopted. Kunming focused on strengthening administrative enforcement while Guiyang sought to proactively empower the court. In Guiyang, this was done by strengthening the authority of the court by drawing on political resources available such as elite connections within the higher-level judiciary, but cases in both localities lead to some sort of judicial empowerment (J. Wang & Liang, 2019).

Even though the founding of the courts marked a further commitment to citizen participation in environmental affairs, it did not change much on the ground. For example, the Kunming court heard literally zero EPIL cases between 2008 and 2010 (Wilson, 2015)[39]. In 2009, ACEF, national GONGO, was the first one to file an environmental public interest lawsuit, joined by other social organizations, namely GPEEC (2010), GVLCQ and FON (2011) in a joint lawsuit together with ACEF. In 2011 there was the first lawsuit filed by NGOs without a presence of a GONGO in Qujing, Yunnan (see Table 4, p. 102).

The local innovations related to environmental courts did not occur in a local vacuum. Instead, there are numerous documented exchanges between the local and central actors with local developments getting the attention of provincial and central level actors (J. Wang & Liang, 2019). Stark (2017) cites a Notice issued by the SPC in 2010, in which the SPC voiced its support for these innovations aimed at judicial professionalization in environmental affairs (p. 37) but he concludes that given the fact that most courts have been established before 2010 and the non-binding nature of the document "it lies closer that the Notice does not provide a sufficient legal basis for the establishment of the environmental courts"[40] (p. 37). On the contrary, the central level was much more inspired by the development at the local level. When the SPC established a specialized environmental tribunal (最高人民法院环境资源审判庭) in June 2014, this step legitimized the local environmental tribunals and courts ex post (Stark, 2017).

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they have not explicitly allowed them to file public interest lawsuits (Yunnan High Court, 2009). This could be seen as closing the gap at the prefecture level to a permitted degree. Since the 2015 amendment of Legislation Law, any courts except the SPC are not allowed to issue Opinions anymore.

[39] This might be attributed to the regulatory uncertainty and the fact that the rule-making was still in progress as outlined above (see ft. 37, p. 27).

[40] „Angesichts dieser Unklarheiten liegt es näher, die Mitteilung nicht als ausreichende Grundlage für die Einrichtung der Umweltgerichte anzusehen. […], muss berücksichtigt werden, dass die Mitteilung im Jahr 2010 erlassen worden ist, zahlreiche Umweltgerichte jedoch bereits in den Jahren 2007, 2008 und 2009 eingerichtet worden sind." (Stark, 2017, p. 37).

2.4 National legislation

In a case filed in August 2015 regarding the pollution of Tengger Desert, Zhongwei, the Intermediate Court in Ningxia rejected the case and argued that the plaintiff did not meet the requirements for standing. The ENGO filed an appeal but in line with the lower-level court, the Higher Court of Ningxia chose to fully ignore the new Environmental Protection Law that granted the standing in this and other cases to Chinese environmental NGOs. Finally, the case was heard in front of the SPC who affirmed that the plaintiff fulfilled the requirements for standing and ordered a retrial in January 2016 at the original place of filing where the case was later concluded by mediation (Guiding Case No. 75, SPC, 2016).[41]

With the revised environmental law in 2015, localities that try to prevent social organizations from filing public interest lawsuits that fulfill the requirements set forth under the law cannot simply do so by throwing the cases off the table. The fact that some still decide to do that anyway buys them some short time span[42] that can be potentially used for various arrangements in the meantime such as preparation efforts to mediate or to scare off plaintiffs from taking further action. Yet, plaintiffs willing to take the case further are able to climb the ladder of court appeal hierarchy making sure the lower court accepts the case after receiving instructions from a higher-level court as observed above and in a handful of other cases.

By simply granting standing in the case to the ENGO, the success of a lawsuit is still uncertain, and the outcome of the case heard at a local court that had previously displayed a hostile attitude towards the plaintiff is still an open question despite the case hearing following the involvement of a higher-level court authority. As opposed appeals concerning the standing requirements quickly sorted out by the upper-level court with reference to the law, appealing the whole case decision is costly and time-consuming. Only a few plaintiffs have filed such appeals disputing the original decision[43]. For a discussion of how plaintiffs fill the legal opportunity created by the law and how their claims (demands) are received see Chapter 7 Outcomes. Before ENGOs were granted standing and could make use of the rights as qualified

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[41] The contents of the mediation agreement were not made public. According to media reports the costs for ecological restoration to be borne by the defendants reached the sum of RMB 569 million and additionally 6 million were to be paid into environmental compensation public welfare funds (Chongqing Court Website, 2017).

[42] In a case filed in 2019 by Friends of Nature at intermediate court in Nanchang, Jiangxi province, the court refused the case on the grounds that FON would not qualify as a plaintiff to file EPIL (不具备环境民事公益诉讼资格) (Nanchang Intermediate Court, 2019). FON appealed against the decision and the Higher Court of Jiangxi ordered the lower court to hear the case (Jiangxi High Court, 2019) just a month after the issuance of the lower court decision.

[43] As far as cases on the docket are concerned, only in 7 instances have the plaintiffs (mostly CBCGDF and FON) filed an appeal and from those only those two have applied for a re-trial in four cases at the SPC after losing the second case as well, for the concluded cases see Figure 5 Length of concluded cases, p. 165.

plaintiffs, there were several rounds of legislative amendments at a central level summarized in the following section.

Article 55 of the amended Civil Procedure Law CPL (2012, in effect since January 1, 2013) enabled "relevant organizations" (有关组织) to file cases where the harm to environmental public interest had occurred. Authorizing NGOs to file cases nationwide enabled plaintiffs to sue for the first time without a direct relationship to the case (such as victims or representing the victims). However, rather than the clarification of the standing requirements sought after by ENGOs, the vague language ("relevant") of the law resulted in further confusion as it did not specify under which conditions social organizations qualify as plaintiffs. This created a sort of legal uncertainty that paradoxically reversed the course of the EPIL development with certain jurisdictions previously supportive of the EPIL becoming less open as they started "changing their regulations to match the new CPL" (Carpenter-Gold, 2015, p. 264).

Until the amended Environmental Protection Law there was no substantial and unified nationwide legal basis for EPIL lawsuits. The final amendment of the EPL published on April 24, 2014 (in effect since January 1, 2015) by the NPC Standing Committee that brought the change in this respect was preceded by several rounds of heated debates. One of the most disputed issues during the amendment had been the EPIL and with it the larger debate on the regulation and extent of public participation in environmental affairs. The lawmakers were concerned that too liberal rules for standing would result in a rapid proliferation of law-abusive cases filed by plaintiffs without minimum expertise, as they argued in the context of the EPIL that it was necessary to "prevent vexatious litigation" (防止滥诉) (Bulletpoint No. 8, NPCSC, 2013) .[44] The NPC Standing Committee justified its cautious approach by citing the "novelty of the procedure" (一项新制度), the need for both "technical expertise" (专业能力) and "societal reputation" (社会信誉) on side of the potential plaintiffs as an important set of criteria in its review (Bulletpoint No. 8, NPCSC, 2013).

The controversial balance assessment between too relaxed and too restrictive rules for standing and the inclusion of societal organizations into the legislative process opened up "a

[44] This specific point regarding the financial stimulus for litigants on behalf generally viewed negatively in the continental legal tradition (although unconfirmed in later practice) is also present in legislative debates elsewhere. For example, the legal scholar Csongor István Nagy observes and counters similar attitudes within the EU when it comes to class action and opt-out models (i.e. litigation without explicit authorization to act on behalf) with abusive litigation, traditionalism, technical difficulties together with the criticism of being unconstitutional listed as the main arguments against a wider representation of interests. As Nagy shows based on 10 EU member states and the experience of a handful of other civil law countries previously alien to this procedure where such an opt-out system is now available and the fears of class litigation leading to a "litigation boom" (Nagy, 2019, pp. 23, 36) were not confirmed. For more on this point and especially the "fear of abuse" see footnote 20 p. 20.

window of opportunity for Chinese ENGOs" (Qiaoan, 2020, p. 32) to shape the final version of the rules. The debates on various drafts of the EPL constitute a case of policy advocacy by the ENGOs active in this area. A coalition of interrelated Beijing-based NGOs including Friends of Nature, Institute of Public and Environmental Affairs, and CLAPV were pivotal in mobilizing other participants. Together with other "grassroot NGOs" they have written letters and proposals reposted on their social media accounts and reported by the media and have also organized seminars for the legislators to attend (Qiaoan, 2020).

Popović (2020) has reviewed this exact opening and attributed the possibility to shape the law by civil society actors to "policy responsiveness"[45]. Such responsiveness in the area of environmental protection generally owes to a higher bar of tolerance set for larger public pressure to emerge and change the course of the official line (Popović, 2020). Seeking the expertise of environmental NGOs by the legislators throughout the law-making process is explained through the ability to provide feedback on policy design and implementation and the model of "consultative authoritarianism"[46] (Froissart, 2019). As I have shown in the previous chapters, this "trial by fire" of ENGOs' usefulness, namely acting as qualified experts that are able to propose practical solutions to problems, was preceded by a decade of intense interaction with the administrative and policy advocacy efforts. This particular experience in the lawmaking process yielded further opportunities beyond the 2014 amendment of the Environmental Protection Law for those social organizations "perceived by the Chinese government as trustworthy and reliable" (Popović, 2020, p. 6)[47]. Environmental NGOs were

[45] This is not well-defined in the cited study. Responsiveness in policy formation implies a more direct reaction to public opinion than similar consultative models discussed below. This process is often likely to be accompanied by some form of incentive to extract feedback and the existence of responsive institutions (Meng & Yang, 2020) together with appropriate technological measures to enable wider populations not solely limited to certain chosen groups or influential elites. The feedback loop in the online sphere is based on issue areas and is characterized as selective (Z. Su & Meng, 2016). Yet, feedback can also be collected via officially non-sanctioned channels such as collective action and is influenced by threats to social stability (J. Chen et al., 2016). The basic differentiation between responsive and consultative authoritarianism is that the latter "emphasizes the procedure of information solicitation, and [the former] includes the state reaction based on information" (Qiaoan & Teets, 2020, p. 141).

[46] The consultative authoritarianism model is a hybrid form of rule that features "a pluralistic civil society participating in policy formation and implementation, and the use of multiple indirect tools of state control" (Teets, 2014, p. 70). It implies the existence of various participation mechanisms aimed at the collection of preferences and other information relevant to decision-making as outlined by Baogang He and Mark E. Warren (discussed in Truex, 2017, p. 330).

[47] This observation is consistent with the system of graduate controls, a term originally coined by Kang Xiaoguang and Han Heng. They explore a wide range of organizations and present a model in which "the government uses different strategies to regulate different social organizations" (Kang & Han, 2008, p. 38) with varying levels of control based on the power of various organizations to challenge the state and the ability to provide public goods. This model marks a departure from previous explanations targeted at one robust explanation of China's civil society. Qiaoan (2020) combines the insights from the fragmented authoritarianism model (Lieberthal & Lampton, 1992; Mertha, 2009) that takes the fragmented bureaucracy and their competing interests as a starting point of the theoretical inquiry with Kang's and Han's graduate control as further developed by Wu Fengshi and Chan Kin-man by including further factors such as scale, funding source(s) and business nature of the organizations (as discussed in Qiaoan, 2020, p. 27). By combining the perspectives from these two streams of the literature, Qiaoan

again consulted and their expertise and experience with circumstances on the ground were sought after by the state in the legislative process such as the subsequent SPC Interpretation on the EPL 2014 and the Law on the Prevention and Control of Soil Pollution (Froissart, 2019)[48].

The responsibility for drafting the law changed multiple times during the four draft amendments between 2011 and 2014. The originally designated drafting authority – the Ministry of Ecology and Environment - handed in the first *proposal* with arguably the widest proposed scope for EPIL (all social organizations above the county-level as compared to the current version with social organizations above the city-level). The drafting authority has later shifted to the National Reform and Development Commission (NDRC) and the Environmental Protection and Resources Conservation Committee of the NPC (see Table 1 Drafting of the amendment to EPL, p. 33). The ENGOs petitioned the NPC multiple times during the process requesting relaxation of the standing requirements and thus lowering the applicable threshold for participation (Popović, 2020).

The first officially released legislative draft did not include the EPIL procedure at all, and the second draft gave the sole power to initiate EPIL to one single organization (All-China Environmental Federation). The restrictive scope was later relaxed after receiving much criticism from NGOs and lawmakers themselves (Popović, 2020). Based on the wording of the second draft, the relevant passage on EPIL allows for multiple interpretations because in addition to ACEF, the province-level „environmental federations" (环保联合会) (C. Wang & Cheng, 2014, p. 35) were also authorized to initiate EPIL.[49] The final draft contained a requirement on ENGOs to have a "good reputation" (Popović, 2020, p. 4), a vaguely formulated provision, which after being petitioned by NGOs was changed into "no criminal record" (无违

in her model of graduate control 2.0 argues that inter-ministerial competition and "contingent factors such as the timing and performance" (Qiaoan, 2020, p. 37) additionally exert influence on the degree of openness in the officials' attitude towards various civil society movements' goals.

[48] The list of laws and legislative proposals is much longer as Friends of Nature regularly participates in new legislative and law revisions as well as provincial-level regulations (for an example of such a list see FON, 2018, p. 6).

[49] The possible (restrictive) interpretation is that the law means only ACEF and its offices (*banshichu*) but given the structure of ACEF it is quite unlikely. It rather means provincial and other local environmental federations (*lianhehui*). These are organizations under the direct horizontal management of the corresponding EPB and local governments, the EPB leaders who generally preside over these local organizations participate in the organizational board of the ACEF. These local organizations are connected to ACEF through the authority of the MEE at the central level and indirectly through the membership of their leaders in ACEF (although that is only the case for some), yet they are not directly vertically managed organizations like typical "mass organizations" under the CCP such as the monopolized (in the sense that the organization is the sole representative of the interests it seeks to represent) All-China Women's Federation or in the All-China Federation of Commerce and Industry where leaders of some GONGOs discussed in this thesis have held leading positions. Other mass organizations connected to the CCP also appear in this thesis, for example the Communist Youth League (*gongqingtuan*) representing the young members of the CCP or the China Law Society (*faxuehui*) which is the official representative of both legal and legal academic profession.

法记录, see EPL Art. 58) in the final version of the law. According to Wang and Cheng (2014), the difference between the second and the third draft was merely a change in the wording as basically both were designed in a way that only ACEF would qualify for the conditions set forth in the third draft, thus just being „the same medicine with a different name" (换汤不还药) (p. 36).

Following the fourth draft, the current version of the law is considered a compromise between the first and most open initial proposal by the Ministry of Environmental Protection (now MEE) and the second and most restrictive one (see Table 1 Drafting of the amendment to EPL, below). Article 58 grants standing to social organizations officially registered with the civil affairs authorities and to those that have at least five years of consecutive experience in environmental protection and no criminal record (EPL, 2014). Further Article 58 prohibits social organizations from pursuing any economic benefits (EPL, 2014). Public interest lawsuits can be instituted by social organizations in circumstances where "environmental pollution" (污染环境), "ecological damage" (破坏生态) or "damaging societal public interest" (损害社会公共利益) had occurred (Art. 55, CPL, 2012; Art. 58, EPL, 2014). Moreover, these lawsuits can also have a preventive character as plaintiffs are authorized to sue polluters in cases where there is a potential risk of damage to the aforementioned environmental public interest (Art. 1, SPC 2014).

Table 1 Drafting of the amendment to EPL

	Initial proposal (September 2011)	First draft (August 2012)	Second draft (June 2013)	Third draft (October 2013)	Fourth draft (April 2014)
drafting agency in charge	MEE	NDRC, EPRCC	NPC Law Committee	NPCSC	NPCSC
standing requirements (Art. 58)	all legally registered NGOs at county-level and higher	EPIL not addressed	Only ACEF [addition: and provincial environmental federations] are eligible to act as plaintiff in EPIL	• organizations registered with the MOCA (at the central level) • five years of experience in environmental public interest activities • *national* social organization with "good reputation" [addition: 信誉良好的全国性社会组织]	• have continuous involvement in environmental protection for past five years • social organizations registered with Civil Affairs Bureau at city or above-city level [including those in a city's district][50] • no criminal record

Note: Table based on Froissart, 2019

[50] This minor addition followed an appeal to NPCSC by FON based in Beijing but registered with the supervising unit in Beijing´s Chaoyang District, see Froissart (2019, p. 10).

The release of the amended EPL was followed by the "Interpretation of the Supreme People´s Court on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation Cases" (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; henceforth referred to as *Interpretation I*) passed by the SPC on December 8, 2014, that entered into effect on January 7, 2015. The interpretations are binding for all levels of courts in China and play an important role as they set forth concrete stipulations in implementing the law. *Interpretation I* stipulates that plaintiffs can claim the defendant to assume civil liability[51] in cases where environmental harm had already harmed or "poses a major threat to the societal public interest" (具有损害社会公共利益重大风险, SPC, 2014, Art. 18) that speaks to the preventive character as outlined above.

Interpretation I set forth that intermediate courts serve as first-instance courts and only with the approval of higher courts cases can be handed over to basic courts. This responsibility for administering cases reflects the realistic expectations of what basic courts residing at the lowest level in terms of the court hierarchy are thought fit to handle. Case handling by intermediate courts makes EPIL procedure more resistant to the influence of local governments in addition to the chain of appeals to the higher-level (provincial or Supreme People's) courts mentioned at the beginning of this Chapter. Special rules were also announced regarding the publicity of mediation agreements where "basic case facts and contents of the agreement"(案件的基本事实和协议内容) (Art. 25) should be made public. Furthermore, *Interpretation I* grants the courts a certain autonomy to: (1) influence the claims put forward by the plaintiffs but only in cases where it benefits the protection environment and the original claims fall short of addressing the pollution (Art. 9), (2) entrust a specialized appraisal unit to conduct investigation and appraisal of the harm (Art. 14).

[51] These are based on the methods of general civil liabilities set forth in Art. 134 of the General Principles of the Civil Law (NPC, 2009) and since 2020 in the relevant provisions of the Civil Code. They specifically include (1) "cessation of infringements" (停止侵害), (2) "removal of obstacles" (排除妨碍), (3) "elimination of danger" (消除危险), (4) "restoration to the original condition" (恢复原状), (5) "compensation for losses" (赔偿损失) and (6) "apology" (赔礼道歉) (Art. 18, SPC, 2014). In case (4) is not possible anymore, the plaintiff can request substitute measures. Plaintiffs can also request the defendant to cover the "litigation costs" such as costs of an appraisal, attorney fees, and other costs connected to the case as listed in the SPC Interpretation (Art. 22, SPC, 2014). Regarding the costs, the SPC only affirms the rights of the plaintiff to make such a claim but refers to the law when it comes to the court that *may* grant such a claim (人民法院可以依法予以支持). However, the corresponding reference in the civil law is not included. These case expenses are to be differentiated from other types of fees in civil law litigation and the ways in which the plaintiffs can submit a request to omit or reduce case acceptance or application fees and fees related to expenses borne by the persons appearing at the court such as witnesses or interpreters. These "court fees" have their basis in the civil procedure and their calculation is stipulated in detail in separate regulations.

2.5 Post-EPL developments

Further legislative developments regarding the public interest litigation occurred after the newly enacted EPL and the above-mentioned *Interpretation I* went into effect in January 2015. They continued to be mainly fueled by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP). Especially the authorization of the procuratorates to file both the civil law and the administrative law EPIL was supported by the Party's top leadership and by corresponding legislative amendments in 2017 of the Administrative Litigation Law. Administrative public interest litigation for NGOs is neither prohibited nor explicitly allowed by the law.

Administrative litigation constitutes a grey area for social-organizations-plaintiffs. The Working Rules (工作规范) for trial implementation issued by the SPC on April 1, 2017, suggest that the courts should not accept NGOs suing administrative departments (Art. 8, SPC, 2017a). In 2017, the SPC also called for a more nuanced approach in judicial decision-making based on local conditions, hinting at the conflicting values and interests in environmental protection (SPC, 2017a). In the afore-cited Working Rules the SPC stressed that local courts should balance environmental protection against other priority interests (economic development, personal safety, property interests, industry and business interest, environmental public interest, regional interests and overall interests, interests of contemporary and future generations).

As already briefly mentioned, the Party leadership voiced its support for the procurators before the concrete legislative amendments shortly after the passing of the EPL in April 2014 but before the law became effective in January 2015. In October 2014, Xi Jinping mentioned "public interest litigation" at the meeting of the Central Committee of the CCP in the "Explanation Concerning the 'Central Committee Decision on Several Major Questions in Comprehensively Advancing Governing the Country According to the Law " (关于《中共中央关于全面推进依法治国若干重大问题的决定》的说明) (cited in Tong, 2015, p. 137). He argued for the need to explore the procedure of the *procuratorate* to file public interest lawsuits against administrative departments. This was seen as useful to tackle the problem of administrative "random conduct [and] bureaucratic inertia" (乱作为、不作为) (Xi, 2014), but Xi did not mention civil society representatives as nominated plaintiffs in the administrative litigation that was celebrated as a breakthrough by ENGOs and state officials a few months before. This signaling lead to a two-year-trial period for procurators EPIL authorized in 2015 before the 2017 ALL amendment (NPC Observer, 2016).

Contrary to the NGOs in administrative lawsuits[52], the procuratorates are explicitly authorized to sue the administration in the public interest based on the amended Art. 25(4) ALL in 2017 including cases of protection of consumer interests in the areas of food safety and pharmaceuticals, transfer of rights to use state-owned land, etc. (Q. Gao & Whittaker, 2019) and since June 2021 also in workplace safety, cases related to military personnel and other ongoing experiments such as disability rights and public health area or personal data protection (NPC Observer, 2021). The special privilege of the procuratorate to file *civil* lawsuits has roots in the Maoist era with the procuratorate having acquired that privilege in 1954 for the first time that was later reconfirmed in 1957 by the SPC (Bie, 2007, p. 9)[53].

The case filing by procuratorate is a last resort in case administrative departments fail or refuse to comply. It is clearly the legislative intent to motivate the administrative to comply first as the procuratorate shall first give notice to the administrative departments (Q. Gao & Whittaker, 2019). In the realm of the *civil* law, the procuratorate can only sue polluters in case there is no other authorized entity such as an NGO. [54] Procuratorates who want to take the action as mentioned by Art. 55(2) that was newly entered into the CPL during the 2017 amendment, are further required to issue a 30 days' pre-trial notice based on Art. 13 of the Judicial Interpretation of Public Interest Cases from 2018 (Q. Gao & Whittaker, 2019).

However, the difficulty associated with finding such an announcement on local procuratorates' websites has met with harsh criticism from the NGO community. An article originally published in Nanfang Daily featuring Ma Yong (CBCGDF) and Ge Feng (Friends of

[52] Zhang and Mayer (2017) also recall that "courts have (wrongly) accepted three PIELs [public interest litigation lawsuits] filed by NGOs against EPBs." (p. 210). Two such cases filed by FON in Yunnan against the local EPB were rejected as reported by the China Dialogue (Schule & Li, 2017). That does not mean, however, that the litigation failed completely as such strategic litigation can potentially also yield favorable results despite the unsuccessful legal proceedings or be used for advocacy purposes. NGOs also make use of other mechanisms unrelated to EPIL when seeking to address potential administrative wrongdoings. CBCGDF requested the local EPB to provide more information on the company, but the EPB subsequently denied these requests, the organization sued the EPB in 2018 under the Open Government Information alleging that the EBP „has failed to fulfill its legal duty to provide public information" (未依法履行信息公开法定职责) (CBCGDF, 2018). The court decided in favor of the NGO (Daye Court, 2018). The same NGO-plaintiff has used the OGI again for a lawsuit against the Department of Forestry in Guangxi and also launched an administrative review (*xingzheng fuyi*) as mentioned in the decision (Second Intermediate Court of Beijing, 2019). This shows that other instruments, albeit for different purposes, are available and utilized by environmental NGOs in China.

[53]The development of the procuratorate organ in China and its powers are subject to considerable variation throughout the history of the PRC. The institution of the procuratorate in China was heavily influenced by the Soviet model of procurator already implemented as early as 1932 in areas under the control of the Chinese Communists. After the 1957 Anti-Rightist-Campaign marked the return to the mass campaign style of governance and the procuratorate was merged with other administrative and judicial institutions into joint offices of "public security – procuratorate – court" (公检法) in 1961. The procuratorate remained *formally* abolished throughout most of the Cultural Revolution, from 1968 until its revival in 1979 (J. Chen, 2015).

[54] Administrative departments can undertake such action if it evolves around maritime protection (on state's behalf), see Gao & Whittaker (2019).

Nature) argued that "finding the announcement is like looking for a needle in the haystack" (寻找公告如同大海捞针) (CBCGDF, 2019d), thus making the privilege of "suing first" for NGOs quite useless. The rising activity in public interest lawsuits initiated by the procuratorate has already by far surpassed the number of cases filed by NGOs. Between July 2016 and June 2017, the courts accepted 791 environmental public interest cases(环境公益诉讼案件) filed by procuratorates (SPC, 2017b), which is a sharp increase since a handful of cases accepted before 2013 analyzed elsewhere (Shi & Rooij, 2016). According to media sources, the number of these cases filed by procuratorate reached 1737 cases in 2018 according to a transcript from an interview at Legal Daily (Legal Daily, 2019) with parts of the interview reposted on WeChat profile by one of the NGO-plaintiffs as they have filed a joint lawsuit together with the procuratorate in one locality (CBCGDF, 2019a).

The return of the procuratorate into the environmental public interest arena echoes the earlier scholarly criticism of the procuratorate's wide scope of powers as a supervisory body and a representative of state interests and therefore seen by some as unfit to represent the public (see p. 25). Others have highlighted the limited capacity of NGOs and civil society to act on behalf of the public and deemed the inclusion of state actors necessary in the absence of robust civil society. The main rationale behind procuratorate's ability to perform better in this regard is its resources and better regional and geographical coverage of undertaking such action when correctly incentivized (S. Deng, 2019; Shi & Rooij, 2016).

While procurators have acquired wider powers in filing (not just environmental) public interest lawsuits than NGOs, provincial governments have also re-entered the area of public interest litigation. On December 3, 2015, less than a year after the EPL went into effect, the General Office of the CCP and the General Office of the State Council jointly issued a two-step plan (General Office of the State Council & General Office of the Central Committee of the CCP, 2015; henceforth referred to as "Measure"). The Measure first sought to permit provincial governments in designated pilot areas between 2015 and 2017 to authorize administrative departments to seek compensations resulting from ecological damage; and secondly, foresaw the gradual nationwide implementation of the system since 2018.

The initial plan laid out in the 2015 Measure foresaw strengthening governments to seek compensation from polluting companies via judicial channels in cases (i.) following a "major environmental incidents" (较大及以上突发环境事件), or (ii.) environmental damage in "key-ecological function regions" (重点生态功能区) or (iii.) other "incidents with severe impact on the environmental incidents" (其他严重影响生态环境事件的). As established per separate

decisions, Jilin, Jiangsu, Shandong, Hunan, Chongqing, Guizhou, and Yunnan were chosen as pilot areas (General Office of the State Council & General Office of the Central Committee of the CCP, 2017). The central legislator sought to empower local governments to act swiftly in recovering financial damages following environmental disasters, widen their capacities in environmental monitoring, to incentivize to employ and invest in judicial channels in this process. This is further supported by an explanation (解读) regarding this policy issued by the MEE in 2017. The main goal of the policy is circumscribed by the MEE as "resolving the dilemma of 'companies pollute, masses suffer, the government pays the bill'" (破解"企业污染、群众受害、政府买单"的困局) (MEE, 2017).

The compensation lawsuits do not alter the environmental public interest litigation, nor does the initial plan explicitly mention EPIL by name. Yet similarities in the aspirations and the representative component of acting on behalf of the public interest are striking. This partial overlap in the design has caused some overlap in practice as illustrated by the cases described below. The issue did not go unnoticed, and the problem has been addressed by the SPP and the SPC[55] in the respective official documents. As for the public interest lawsuits initiated by the procuratorate, the SPP held the compensation lawsuits initiated by the government as less problematic stressing complementing nature of the PIL filed by the procuratorate and the compensation lawsuits filed by the government departments (SPP, 2018).

In Jinan, a public interest lawsuit was first filed by social organization against chemical companies[56] and accepted in March 2016. It was halted by the court just four months after the case filing and overtaken by the provincial EPB chosen by Shandong's provincial government as the work department to act as a plaintiff in this case (Jinan High Court, 2017). The EPB used the pause and in the meantime reached an agreement with the defendants. It filed a lawsuit (tort liability dispute) to claim damages under the Tort Law later (August 23, 2017) but only against two remaining defendants out of four, with whom no agreement could be reached (Jinan High Court, 2017). The Intermediate Court relied on the Measure, Tort Law, and the *Interpretation I* pursuant to the 2014 Environmental Protection Law although strictly speaking the plaintiffs discussed in the law and by the SPC in the *Interpretation I* are "social organizations", not administrative departments. The court concluded that "the plaintiff and the case have a public interest character" (Jinan High Court, 2017, p. 14). Only after the case filed by the EPB was concluded (December 21, 2018), The initial lawsuit by the social organization was then

[55] 最高人民法院关于审理生态环境损害赔偿案件的若干规定 (SPC, 2019).

[56] CBCGDF versus Shandong Jincheng Heavy Oil Chemical Co. (山东金诚重油化工有限公司) and four other defendants (Jinan High Court, 2018).

resumed and concluded resulting only in retrieving the costs of legal representation spent by the plaintiff without the organization having any influence over the substantial claims that were at the core of the lawsuit (December 27, 2018) (Jinan High Court, 2018).

In 2019 the SPC issued a set of provisions (for trial implementation) that among others addressed this issue and stipulated that in cases where civil law public interest litigation has been initiated in the same matter, the court shall "try both matters in the same trial" (同一审判审理) (Art. 16, SPC, 2019), this "government first approach" is also valid for any other civil cases that should be interrupted and resumed (in case there are still unaddressed claims) after the compensation case is concluded (Art. 17, SPC, 2019). Social organizations are entitled to re-open the case *ex post* if they prove that additional harm has not been addressed or discovered. Practically, it remains, however, there is little to no incentive for social organizations to reopen the concluded case filed for example by the provincial government. Especially where a binding agreement has been reached between the plaintiff and the defendant or considerable resources are spent in concluding the case so that the court and litigation parties might be reluctant to reopen the case.

In some cases (#43 Chongqing provincial government, #37 Jiangsu provincial government, see Table 16 Concluded cases by type of outcome, p. 220) discussed in this thesis, the cases by social organizations were either merged or filed alongside the government. In the Chongqing case, the court stated that "no matter whether the case constitutes an environmental harm compensation lawsuit or an environmental public interest lawsuit, both have a public interest character" (First Intermediate Court of Chongqing, 2017, p. 14). In the case filed by Jiangsu provincial government and a provincial GONGO, the court treated the lawsuit as an "environmental pollution civil public interest lawsuit" (环境污染民事公益诉讼一案) (First Intermediate Court of Chongqing, 2017, p. 1), into which the provincial government had gained access as a plaintiff based on the provincial regulations following the 2015 Measure. These real-life examples further illustrate the blurred lines between the two instruments and the unclear line drawn between state interests and (societal) public interests that are both subsumed under "environmental public interest".

3 Theoretical framework

As Nonet and Selznick (1978) have laid out in their influential study, different types of law serve different ends[57]. Whereas the state might decide to rely on *repressive law*, with the absence of checks and balances, in order to legitimize and to a certain extent "normalize" actions deemed repressive and automatize the corresponding sanction mechanisms that are then characterized by legal formalism (*autonomous law*), whether in the rule-by-law mode or rule-of-law mode with the political elites subjected to the law in the same way, the very same regime might decide to address pressing societal issues by relying on the *responsive law* in order to address and ultimately solve social issues.[58] This thesis evolves predominantly around the *responsive* type as seen in the state's basic promise via updated regulation (i.) based on public feedback (element of responsiveness) that is (ii.) then designed to deliver environmental justice in response to the worsening environmental situation and mitigate environmental risks as an envisioned outcome (element of responsiveness).

The mission to provide solutions to all kinds of complex societal problems goes beyond the respective political system. In the case of the PRC, the party-state draws upon its legitimacy to deliver stability and prosperity to the entire nation and therefore carries a strong promise of resolving pressing societal issues. There are two ways for a higher-level government to find out about a pressing problem at a lower level. As far as formal channels of participation are concerned, either the central or local governments proactively employ top-down inspections ("police-patrol"), find out about the problems, and resolve them or motivate participants to channel their grievances bottom-up ("fire-alarm") by easing restriction on access to institutions.

[57] Nonet and Selznick differentiate between the repressive, autonomous, and responsive law based on purpose, method, and source of legitimacy.

[58] The developmental model by Nonet and Selznick (1978) of ideal types of legal regimes follows a logic of linear developmental trajectory where one type is replaced by the other. This is no exception to models such as the legal rationality model outlined by early pioneers of legal sociology such as Max Weber. Nevertheless, some form of co-occurrence of multiple types is only logical, especially in transition phases or where some shifting back and forth between the types occurs. Nonet and Selznick acknowledge at least a partial overlap between the ideal types and thus do not completely rule out the existence of certain "mixed type" of at least certain elements of multiple types occurring together when they write: "[A]ny given legal order or legal institution is likely to have a 'mixed' character, incorporating aspects of all three types of law. But the elements of one type may be more or less salient, strongly institutionalized or only incipient, in the foreground of awareness or only dimly perceived. Thus although a legal order will exhibit elements of all types, its basic posture may nevertheless approximate one type more closely than the others." (Nonet & Selznick, 1978, p. 17). Legal regime is not defined in Nonet and Selznick's work but can be understood broadly as "a system or framework of rules governing some physical territory or discrete realm of action that is at least in principle rooted in some sort of law" (Hurst, 2018, p. 21). The *mixed character* is once again hinted at in the empirical analysis of Chinese courts by He Xin and Kwai Ng when they write about the two sides of the same coin: "What is most likely to happen is a gradual development toward a mixed, eclectic model, where the courts become more specialized and professional in dealing with civil cases, particularly in economic and commercial cases, but continue to remain at once populist and controlling in criminal cases." (Ng & He, 2017, p. 201).

Drawing on "police-patrol" vs. "fire-alarm" terminology originally coined by McCubbins and Schwartz (1984), Gallagher (2017) in her study on workers' legal mobilization in China argues that the prevalent "fire-alarm" model is fueled by the central-local relationship, in which the central government distrusts the local level with inspections. The "fire-alarm" further bears less danger to the legitimacy of the central government enabling the center to "take credit for the high standards, while the local government takes the blame for the lack of enforcement" (Gallagher, 2017, p. 108). Should the issue not be resolved in the chain of actions, the central government through its organizational branches acts as a kind of "corrector" of wrongful behavior. In this sense, bottom-up legal mobilization[59] has not only led to the law becoming a "weapon" of the citizens to borrow Gallagher's formulation originating from the state legal discourse (Gallagher, 2005) but even "more important as a tool for policy implementation" (Gallagher, 2017, p. 32) to counter local protectionism.

The problem with the idea of a "bottom-up" chain reaching from the lowest to the highest level is that issues get stuck at a certain level. Well-established in the Chinese political system, semi-formal channels such as petitions have received criticism for their lack of transparency (Xiao, 2014; Yu, 2015). The incentive set by the central government to contain contention at the local level and the lack of a free press had prevented protesters from reaching the kind of support needed to effectively advocate their cause, and solve the roots of their problem. It made the success of public protest in taking the issue further up the hierarchy dependent on factors such as media exposure and personal connections (*guanxi*), unstable and unpredictable pre-conditions for success that can be easily constrained.

This context explains the rationale behind the central leadership's decision to boost the image and capabilities of formal legal institutions such as courts and judges, yet another channel of participation. Courts equipped with professional judges were to assume the role of efficient problem-solving entities and become a specialized forum for the conflict parties to reach binding decisions via formal legal channels of participation.

The solution in lawsuits handled by the court is different from the executive's legal proceedings, no matter the pressure of local protectionism (for more on this pressure and its sources see the discussion in Chapter 3.1) on both, as there is a different relationship to the public. Take for example administrative penalties issued by local environmental protection bureaus under the direct control of local governments. Even where outsiders (e.g. social

[59] Legal mobilization can be broadly described as "the act of engaging with the legal system to solve a problem" (Gallagher, 2017, p. 149). The modes of this engagement depend on the subject and can vary considerably: from directly participating in the legal channels via discursive mobilization of law or just by disseminating legal knowledge. They also include both individual and collective modes of action.

organizations, other interested parties such as citizens) become aware of the administrative fines (many government or citizen-driven monitoring initiatives regarding “open information” on pollution exist with publicly available information on fines or certain types of pollution data), they are not immediate parties to the case and left with limited options to challenge the fine or other action taken by the administration. In case the information is not public, they would need to apply for information disclosure that is foremost targeted at the bureaucracy in the “fire-alarm” way. Environmental social organizations make use of information disclosure – but then the fine is not a subject matter of the challenge - or resort to judicial review in case they demonstrate that their interests have been violated.

The situation is slightly different with publicized court decisions and plaintiffs in a court setting that are parties to the case and could take the case further up the formal court hierarchy. Moreover, even in the case the administrative fines are levied, the “pay and pollute” logic of polluters causes pollution to continue with non-compliance costs being part of doing business for economically strong polluters. This issue can occur with court judgments as well, but civil law cases are an alternative channel for plaintiffs to claim civil damages and legally oblige the defendant-polluters to take necessary measures to stop pollution from occurring or otherwise ameliorate the negative effects of pollution under public scrutiny. With administrative law cases the institution (court), notwithstanding the influence of the local Party or government, is in a position to oblige administrative departments to do their job. This is arguably different from the complainant turning to the (various levels of) government whose complaint is handled directly within the administrative power structure. Administrative public interest litigation is not available to social organizations yet as explained above.

Social organizations active in public interest litigation are equipped with the necessary resources needed to exploit this opportunity window by representing certain interests that the Chinese party-state argues to represent and aims to protect. The state is also willing to delegate the protection of these interests to intermediaries as already discussed in the Introduction (Chapter 1). Social organizations with independent operation from localities (for those that come from the center to the periphery or sue in other localities out of the place of registration) are able to climb the ladder to a higher level through a formalized legal procedure, thus partly avoiding local protectionism. The “fire alarm” perspective explains a general theoretical rationale behind litigation alongside other formal and informal channels of participation from the viewpoint of the central leaders. The following framework of judicialization of politics further speaks to the context of the emerging legal opportunities for Chinese society and Chinese (domestic) social organizations and the conditions for their realization.

3.1 Judicialization of politics

The scholarly field of judicialization of politics evolves around the inquiry into the process of court empowerment, particularly into a) what motivates (authoritarian) governments to delegate power to courts and b) how courts become active venues for conflict resolution. Scholars agree that judicialization is somewhat a global phenomenon with a varying degree and impact on day-to-day politics (Hirschl, 2008; Landry, 2008; Moustafa, 2008) and regard judges as actors that actively shape politics rather than mere passive servants of the political order (Ginsburg & Moustafa, 2008). Hirschl (2008) argues that judicialization is a multi-faceted *process* that occurs in different stages: from the spread of legal discourse and jargon, over public policy outcomes being increasingly influenced by courts and finally with courts resolving core political questions referred to by Hirschl as "mega-politics" (Hirschl, 2008, p. 98). Concerned with the "checks and balances" of high-level politics, the study of courts for judicial politics scholars often focuses on constitutional courts (for India see Bhuwania, 2016; for various cross-country cases see Hirschl, 2008; for Egypt see Moustafa, 2007) or other highest judicial authorities such as the SPC in China (Ahl, 2015). The SPC's role and influence in shaping the rules have been accounted for in Chapter 2 of the thesis. The thesis is confronted with the effects of judicialization at a lower level as the focus lies on decision-making apart from the highest level of courts in China (with the vast majority being High and Intermediate Courts) as important players in the overall opportunity created by the law and as used by the participants.

Courts are central to judicialization. Based on its object of influence (politics), the subject (judiciary) and the degree of influence by the latter on the former via judicial means or courts, judicialization of politics can be defined as "the reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl, 2013).[60] According to another more general and summarized definition with various aspects of judicialization of politics:

[60] A good example of the influence on public policy outcomes in the European Union is the European Court of Justice (ECJ). In the past, the ECJ exerted a crucial influence on public policy and international agreements formerly for example by declaring the Privacy Shield (Judgement of 16 July, 2020, *Schrems II*, C-311/28, ECLI:EU:C:2020:559) and the earlier Safe Harbor (Judgement of 17 July, 2014, *Schrems I*, C-362/14, ECLI:EU:C:2015:650) agreements invalid after a private citizen followed a suit. These agreements used to lay the foundation for personal data transfers from the European Union to the United States and were negotiated between the respective administrative. The ECJ continues to annul many EU and EU Member State legislative acts for their incompatibility with the EU law such as by declaring the 2006 Data Retention Directive invalid in 2014. The Directive aimed at broadening the access rights of the executive to users' traffic and location data in the efforts to combat organized crime and terrorism. For further examples specifically regarding environmental policy and participation see footnote 20, p. 20.

> Judicialization of politics is understood as, first, process by which there is *an increase in the impact of judicial decisions upon political and social processes* [emphasis added]. Second, it refers to the process by which *political conflict is increasingly resolved at the level of the courts* [emp. added]. Third, at a discursive level, judicialization of politics reflects the degree to which *regime legitimacy is increasingly constructed upon the public perception of the state's capacity and credibility in terms of delivering on rule of law, and rights protection* [emp. added]. Finally, it refers also to the *growing trend by different political actors and groups within society to use law and legal mechanisms to mobilize around specific policies, social and economic interests and demands* [emp. added]. (Domingo, 2004, p. 110)

Thus, judicialization is used as an umbrella term to account for various aspects of the courts impacting the political decision or the politics resorting to courts as means of societal or political conflict-solution. It refers to both the kind of intervention of the court in high politics and also the way how courts are designed to become (by policymakers) and are perceived to become (by the society) venues for *legal mobilization* for rights protection and resolving societal and political disputes. Both definitions share a connection when it comes to the "judicialization from below" (Hirschl, 2008, pp. 96, 113) as individuals or collectives *mobilize the law* and *turn to courts* for solutions in matters involving political decisions, courts are activated in resolving societal disputes - areas traditionally reserved through policy and other participation mechanisms to governments or subject to self-management - and judges' decision-making will inevitably impact public policy in some way. This view goes beyond the divide between legal formalism on one hand - put in simplified terms referred to as what the law ought to do solely based on legal rules and doctrine in the absence of society and political institutions - and legal realism on the other hand - again put simply, what law does and its anchoring in the socio-political context - that both focus on how decisions are reached.

The question of the impact, i.e., whether courts develop or rather are "allowed to develop" as some judicialization scholars might argue[61], the ability to influence rulemaking, formulation of public policy or its implementation, is case-dependent (studies in judicial politics are usually "country-studies") and remains therefore unaddressed on the theoretical level of the judicialization of politics. Further, the relationship between judicialization on the one hand and

[61] Some initial delegation of power to courts in addition to developing such institutions is an essential prerequisite for any form of judicialization to occur whether in a democratic or autocratic context (Ginsburg & Moustafa, 2008; Hirschl, 2008). Such delegation can stem from governmental empowerment (rule of law projects etc.), external societal pressure, or even institutional pressure by courts and judicial elites from within the system.

legal mobilization on the other is quite complex and seemingly also quite blurred, especially with the bottom-up perspective. Both legal mobilization and judicialization seek to describe interrelated dynamics of people *turning to the law*. Yet, judicialization (in the narrow bottom-up sense) is more concerned with the *court-centric legal mobilization* of participants demanding a change in public policy or trying to influence policy outcomes *through formal institutional mechanisms* and the influence exerted via the authority of *courts* on these public policy outcomes.

Judicial reforms in the PRC are abundant and far-reaching. Although it is difficult to pinpoint their precise starting point, the flagship project of building the "rule of law" in the PRC originates in the post-1978 Reform era and was spurred again - with a brief cessation of some law reforms in the aftermath of the Tian'anmen massacre in 1989[62] – by economic drivers of reform after Deng Xiaoping's Southern Tour in 1992 and further reforms centered on the quality of the judiciary. With decades of formal legal education, the formation of a distinctive legal profession and professional judicial ethics, the emergence of the legal services market, the demand for law reforms following China's integration into the world economy after joining the World Trade Organization in 2001 and several rounds of judicial reforms and the constant pressures, tensions and changes the Chinese judiciary faces in connection to these developments, the Chinese judicial system has made itself a remarkable case study of judicialization in many aspects.

A growing amount of scholarship has noted the bigger role Chinese courts play in settling complex disputes (Ahl, 2015; He, 2013; Liebman, 2007; Ng & He, 2017; Zweig, 2003). The statement that Chinese judges are not independent of the various pressures they face does not need further support, but their dependency and increasingly pluralized forces that influence courts' work in China pose interesting research questions regarding the less understood sources and impacts of the pressure. Recent scholarship has contributed to closing this knowledge gap and provided a better understanding of the judicial milieu by tracing the sources of the dependencies arguing that judges remain "embedded" (Ng & He, 2017) in administrative, political, social, and economic forces that shape their decisions. This "embeddedness" is most

[62] Examples of the suspension of such prior to 1989 legislative projects are the planned amendment of the criminal law and criminal procedure law that were resumed only after the mid-1990s (Lubman, 1999, pp. 160–161), SOE reform similarly "slowed for several years after the repression of the 'democracy movement'" (Lubman, 1999, p. 108) only to be resumed after Deng's Southern Tour. The difficulties in launching village elections after the trial 1987 Organic Law on Villagers' Committees throughout the 1990s are partly attributed to the cautious attitude of central Party organs after 1989 (O'Brien & Li, 2000). The legacy of Tian'anmen has a profound influence on the further course of reform, marks a stronger grip of Party over state institutions, and is also seen as the *cause célèbre* for the emergence of *weiquan* movement and bottom-up pro-democracy initiatives in China (Pils, 2011).

apparent when it comes to the reliance of courts on local governments.[63] Some of the decisions by courts might be reached in the "'free zones'" (L. Li, 2019, p. 37) and thus nearly free from political influence but this "degree of autonomy" (H. Fu, 2019b, p. 86) depends on the Party's own discretion or court superiors dropping the administrative pressure that forms the "contingent nature of their [courts'] independence under the control of administrative hierarchy" (Ng & He, 2017, p. 118).

Such limited "judicialization" described above that supports *channeling societal issues with relevance to public policy through courts* and delegating the *conflict-solution away from the administrative* (see the definition on p. 44) would supposedly direct problem-solving towards more formalized ways. Different from informal channels such as street protests, the court carries an emphasis on formal procedure and the higher authority of transparent laws that justifies the possible limit of claims (demands) of each party.[64] Abiding by the established rules of the courtroom, each litigant must strategize and compromise its claims and fulfill requirements within the possible boundaries set by the law.

This does not entail that the law is always free from vagueness or that the plaintiffs or courts never choose to challenge this existing "legal stock" (Andersen, 2006, p. 210). A challenge within the law lies in a rare yet still permissible interpretation of the law, but the parties and the court must at least adhere to the maximum permissible interpretation of vague laws to substantiate their arguments. This comes with some sort of transparency as justification for e.g. a minority legal opinion is expected. Such a challenge can also provide feedback as it

[63] Local protectionism is one of the key forces determining the scope of operation for courts. One of the central findings of the book by Wang Yuhua is that "provinces with more FDI are more likely to fund their courts, while provinces with more domestic and ethnic Chinese investors are less likely to fund courts." (Y. Wang, 2014, p. 135). Just like Wang Yuhua, the focus of He and Ng's research regarding the reliance of courts on local government to determine their budgets (court funding) is to a greater extent informed by the fieldwork and data collected prior to the reform "package" launched by the SPC since 2015. Following the reforms, the provincial government takes care of the administration of the budgets while "budget funds will be appropriated by the centralized payment system" (Ng & He, 2017, p. 189). But courts are still subject to local government intervention resulting from other areas of "embeddedness". Even more, local protectionism can also take other forms (informally), e.g., through the court´s own discretion in the decision-making phase. This is also observed in the statement that "the fundamental problem has not been resolved, and that fundamental problem is the lack of thick institutional boundaries separating the courts from the rest of the political system" (Ng & He, 2017, p. 189). This basic tension between centralization efforts and local strongholds of power is reflected in a recent study that investigates the impact of judicial centralization reforms (Y. Wang, 2020). Wang Yueduan (2020) illustrates the power that local state and party authorities still hold over the courts: despite the judicial centralization reforms at the center of the examination Wang notes the difficulty of detaching institutions from the influence of local protectionism: "Decades of decentralized governance have made each local party-state a mini Leviathan that holds great sway over every aspect of local activities through both formal and informal means" (p. 17).

[64] Regarding the advantages and disadvantages of formal judicial procedure versus *xinfang*, Xi Chen notes that *xinfang* in addition to being in general regarded as a more flexible and cheaper channel not strictly limited by the (legal) validity of the claims, yet *xinfang* also has a number of disadvantages including the informality of the decision-making and a higher risk of repression in case of collective petitions or demonstration of power throughout the bargaining process (X. Chen, 2011, pp. 120–121).

identifies the root of the problem in the law by its name if the given space is too narrow or if the law fails to solve the problems it aims to address.

Court decisions can be challenged via the right of appeal and such challenging thus follows a clear chain of actions (appeals) that may or may not reach the central organs but it rarely catches the central level by surprise compared to collective petitioning (*jiti shangfang*), street protest or other forms of direct confrontation as already discussed and supported by practical examples in Chapter 2.3. The Party avoids dealing with highly sensitive issues because of the danger posed to its legitimacy and the lack of professional knowledge and personnel needed to find a solution to the complex issues and therefore prefers to delegate some of the responsibility to institutions such as courts. The "courtrooms" in the abstract sense then provide opportunities for actions for civil society representatives such as NGOs.

Empowered in this way, courts could, however, pose a threat to the system by challenging the ruling party either because of their own developed professional ethics (*resolving political conflict at the level of courts*) or because facing an enormous caseload that they are unable to handle. The overburdened judiciary would make its capacity for *societal conflict-solving* useless and erode the legitimacy that the state or Party (*perception of state capacity's capacity in delivering rights protection*) construed upon the courts (for the parts in italics refer to the definition on p. 44).

Regarding the independent judicial profession, the Party counters such developments by an expanding disciplinary system with emphasis on "political discipline and ideological conformity" (Finder, 2021, p. 105) of judges and directly steers the career of individual judges by controlling their appointment (Ahl, 2015, p. 81) in general as Chinese judges lack tenure. The system forces judges to remain overly cautious about the permissible boundaries of their professional conduct. Following the 2018 amendment of the Organic Law of the People's Courts, PRC judges were made lifelong responsible for their decisions including vague grounds on which judges can be held accountable (Finder, 2021)[65]. At the same time, the law sought to prohibit interference in judicial decision-making and any form of interference to be documented (Finder, 2021)[66]. This influence over institutional setup is complemented by what Li Ling refers to as a "micro approach" described as "the Party's engagement in judicial decision-making in

[65] The lifelong responsibility has again been preceded by local innovators. As Liebman describes in his detailed study of courts in Henan, this innovation was a part of a whole reform package aimed at public confidence initiated by court president Zhang Liyong 张立勇 in Henan at least as early as 2012 (Liebman, 2015).

[66] As discussed by Susan Finder the 2019 amendment of Judges Law also brought a list of punishable disciplinary offenses including one catch-all violation related to "other violations of discipline and law" (Finder, 2021, p. 94). In the paper, Finder (2021) argues that the law should be read together with the vague offenses under the Civil Servants Law such as opposing the leadership of the Party and broader efforts under Xi´s leadership for disciplining CCP cadres.

individual cases" (L. Li, 2019, p. 34), influence over judicial decision-making in certain cases is exerted by local Political-Legal Committees (政法委员会) through case coordination or supervision (L. Li, 2019). In a more flexible way based on the individual circumstances surrounding the particular case courts are also able to *internally* handle certain sensitive cases affecting social stability through the much-debated collective decision-making body called Adjudication Committee (审判委员会) (Ahl, 2015, p. 133) often leading to a "black hole of responsibility" (He, 2012)[67].

As far as the second source of danger for the legitimacy and operation of the judiciary - the inability to handle cases or an enforcement gap (Lo et al., 2012) - is concerned, these developments could result in a somewhat undesired direction. Contrary to reducing contention, this could drive aggrieved litigants into the streets or by handling too many sensitive disputes as a promoted model lead other litigants to follow suit. To avoid courts from being overrun by mass lawsuits and limit the scope of judicial activity to focus on the public interest of the "environment" without corroding the political legitimacy of the system, three further points are outlined below in addition to the limitations posed by the institutional setting mentioned above, namely, first, limitation of formal participation by imposing rules that define the selection of plaintiffs, second, the courts' ability to strike a balance between multiple priorities and, third, ruling out contentious points outlined during but not solved via civil proceedings.

First, the law itself limits access to courts by establishing formal legal criteria for participation[68] and directs the interests to concrete problem-solving. As discussed by Gao (2018), I also deduce that the core target of EPIL lawsuits is *the environment* at large (see also Chapter 2.1). This means that the lawsuits do not primarily tackle the individual facets such as the effects of environmental destruction on human life. References to these effects are brief and abstract and never the core of the argument in the written judgments or courtroom proceedings available. ENGOs as litigants can, in fact, bring these lawsuits precisely because they are not

[67] Adjudication committee takes on the discussion of difficult potentially sensitive cases and has been described as the "by far the most powerful organ of any Chinese court" or as "a court within a court" (Ng & He, 2017, p. 95). He Xin observes that the influence of the adjudication committee has recently somewhat declined and the decision over sensitive cases has been moved to a higher-level (often provincial) authority, likely also due to the lack of transparency and the lack of individual responsibility inside the adjudication committee, which runs contrary to the recent central reforms focused on individual accountability of judges. While this might be the case, He Xin observes that "the 'legitimate' influence emanating from upper-level courts or government or Party organs has only strengthened" (He, 2021a, p. 66). This is also in line with the trends discussed in other studies.

[68] The restrictions imposed on legal standing are not unique to China as various legal systems exhibit various degrees of openness towards the filing of public interest litigation and some requirements for *locus standi* (standing to sue) are present almost in every legal system. For a comparison of rules for standing between environmental public interest litigation in China, in terms of standing comparatively strict environmental association suits in Germany and more flexible citizen suits in the US see the study by Gao and Whittaker (2019). For some notes on environmental public interest litigation in Europe see footnote 20, p. 20 in this thesis.

directly involved and are therefore in a fundamentally different position than the affected populations that decide to pursue a class action lawsuit or launch other forms of collective action. There is scarce evidence of some "unintended consequences"[69] of opening the doors to the courtroom via environmental public interest litigation. Citizens interpreted this signal as an opportunity window for themselves to approach the judiciary in a formalized proceeding. In some locations parallel to the EPIL lawsuit there are other lawsuits filed by local villagers concerning the same pollution event. This scattered evidence suggests that they face great obstacles even getting their cases to court and are confronted with much greater difficulties in terms of access than NGOs in the EPIL civil lawsuits they file[70]. EPIL lawsuits center around environmental issues and are argued on behalf of the public by actors that do not directly suffer

[69] Throughout the data collection phase I have seen some anecdotal evidence showing that although clearly not permitted by law, different plaintiffs had nevertheless tried to file environmental *public interest* lawsuits such as the one brought by the village assembly in Wuxiang County in Shanxi province (Wuxian Court, 2016) or by a multi-plaintiff group of 90 villagers from Dianbai County district in Guangdong's Maoming to fight an industrial waste caused by a local factory with the youngest plaintiff born in 1999 and the oldest in 1928 with multiple generations of families joining (Dianbai Court, 2017). They tried to utilize what they likely perceived as an opportunity and a signal from the center to represent themselves and fellow villagers to counter pollution but were rejected as citizens do not qualify as EPIL plaintiffs under the EPL.

[70] The social organization CBCBGDF successfully sued the village committee and county-level administration in a civil lawsuit in Zhengzhou evolving around 1870 ancient jujube trees that were uprooted in order to make room for a local school (see #47, List of concluded cases for analysis). Before the lawsuit by the social organization took place, a group of five villagers had attempted to bring in a collective lawsuit on behalf of the affected villagers who had considerable interest in the trees as a source of revenues from their subcontracted land. Based on the court documents collected, they initially filed a civil lawsuit for „restoring the environment to the original condition" and demanding compensation against the township government blaming the county party branch secretary and other village cadres for the damage. The civil lawsuit and appeal against the decision (Zhengzhou Intermediate Court, 2015) were both rejected by the court on the grounds that the villagers *cannot represent the interests of the affected group* (不能完全代表两个村民组全体成员行使权利) (Xinzheng Court, 2015, p. 2). After fully exhausting the chain of appeals and the rejected application for retrial to the provincial High Court (Henan High Court, 2016), the villagers were prompted by the failure to file an *administrative case* separately one by one questioning the administrative decision to uproot the trees. One of the judgments of the individual lawsuits shows that the court affirmed that the government's action violated the law (but nothing further, also no change in the decision because the local school had already been half-built) and the villager had received an out-of-court compensation by the village committee as stated in the judgment (Zhengzhou Intermediate Court, 2018a), yet she still decided to challenge the compensation decision in a compensation lawsuit (Zhengzhou Intermediate Court, 2018b). In the last round of appeal, the court added that replanting the trees would not be in public interest anymore as the school already stood (恢复原状将对公共利益产生较大损失) (Henan High Court, 2018, p. 1). The other plaintiffs went through the same process. Although the court said that the government action of "removing the trees" was illegal, the first court judgment was regarded just as a piece of paper as one of the village plaintiffs commented on the case in the Pengpai News (ThePaper) as follows: "The cadres told us directly: 'So now you´ve won, now you´ve got what you wanted [basically meaning that the court victory does not change anything]' (村干部直接和我们说，你们现在打赢了，打赢又怎么着)" (Yu & Han, 2017) and the construction of the kindergarten was not halted. Interestingly in one of the cases involving the villagers (Zhengzhou Intermediate Court, 2019), the court used the “favorable” outcome of the EPIL lawsuit initiated by the social organization (where none of the villagers' issues was a topic to the lawsuit but evolved around the same pollution event) to argue that the government would replant some new trees instead and therefore the villagers´ demands were basically met (Case #47 cited above). The final choice of villagers to sue in the name of the property loss and illegal land use where other opportunities like environmental policy would be, in theory, available closely resembles the choice of a particular opportunity described by Deng and Benney (2017). Compared to them, the NGOs might have more limited choice on what to do, yet whatever the NGOs choose they are less affected and in the safe space created by EPIL.

a loss resulting from the pollution. In addition to the formal criteria for limiting public interest to trusted partners capable of representation found in many Western legal systems, this logic explains why the intermediate actors such as ENGOs, and increasingly also procuratorates, are from the view of the Chinese party-state more suitable to represent the public than affected citizens themselves.

Second, courts in their decision-making capacity strike a balance between law and politics and limit their influence in addition to the previously mentioned external/internal mechanism to keep judges in line. The courts are often found having to strike a balance berween "multiple goals" (Stern, 2014, p. 74) and reducing harsh punishments by articulating "discretion (*zhuoqing* 酌情)" (Stern, 2014, p. 70). This does not only include the all-encompassing political mission to uphold social stability, but they also have to pay attention to balancing concrete contrasting interests such as environmental protection and economic development against each other (proportionality). Judges must pay particular attention to any decision that potentially affects the supply of other goods (e.g. interruption of food, heat supply, etc.) to the local population or could hamper local political goals. In the reality, this often leads to a sort of "balancing statements" issued by courts with judges weighing economic and social stability aspects against environmental goals. Especially in local economies where old sources of growth are gradually being replaced by economic modes of production with more added value and less resource-savvy business models, a more favorable external environment for these lawsuits might exist. Some local governments have made companies the source for restoring the environment and the courts contribute by acting as leverage to force polluters into compliance. This leverage is aimed against polluting industries that do not amend their production models despite numerous penalties and fines or move to another location to continue extracting natural resources elsewhere leaving a devastated environment behind and the local government to take care of the depleted natural resources. The collected data shows that most EPIL lawsuits take place in the East China region (see Table 11 Overall cases by region of filing per plaintiff, p. 102) where such external conditions favorable to the EPIL lawsuits filed by NGOs, in general, might be present. Other popular regions for EPIL such as South Central and Southwest China, especially the provinces Yunnan, Guangxi, and Guizhou are known for their natural heritage and have served as a traditional base for many ENGOs. As shown by the research provincial capitals of Yunnan and Guizhou have functioned as early pioneers in the judicialization of environmental protection (J. Wang & Liang, 2019). It is unsurprising that such developments are highly uneven, and variations can be found even within the smallest geographical units

beyond these administrative divisions below the level of analysis employed in this thesis such as in economic zones.

Third, the party-state wants to avoid a public discussion and criticism of government policies by the larger public, which is also reflected in the courtroom. In the first EPIL case filed after the amended Environmental Protection Law went into practice in January 2015, defendants running a mine in Nanping were sued for forest destruction and applied for retrial to the SPC. In their application, one of the defendants stated that "using the forest land is completely in line with the local government's policy to invite businesses and attracting investment (招商引资)" (Supreme People's Court, 2017). The case is much more complex than it appears at a first sight. The defendants argued that the Department of Forestry had collected the fees for damaging the forest, but the miners were not ordered to halt the mining and submitted written evidence where the Land Resources Department allegedly confirmed that the mines do not extend the permissible scope.

Such arguments frequently come up as counterarguments of why the defendant feel that their liability for the pollution should be reduced and claim that part of the blame for the pollution should be shifted to government departments in charge of notification, issuance of permits, and regular onsite check-ups. Regardless of whether these arguments are valid or not, administrative misconduct is not addressed in these mainly civil law cases as the court dismisses the responsibility of the administrative easily as not being part of a civil proceeding. Nevertheless, it is not fully possible to exclude such arguments from judicial proceedings as otherwise the courtroom would lose any professional legitimacy as a problem-solving entity and the government would lose the possible source of information. However, the strength of these arguments can be easily undermined to an extent that they lose weight and become simply irrelevant regarding the issue at hand and the immediate outcome of the lawsuit. This is also a more subtle aspect of the judicialization of politics where political topics of responsibility (apart from the interplay of policy priorities) come to light but are not resolved directly through the judicial proceedings.

Summarized it can be said that the judicialization in the environmental public interest litigation with the constraints presented above and existing variation (geographically, by issue, by law area such as criminal vs. civil law), plays a significant role and opens a range of opportunities for various new actors to enter the courtroom. The impact is the influence on how public policy plays out in a local context while significant boundaries shape the rules and context by which judicialization empowers courts. The nature of this *legal opportunity* is further discussed below in greater detail.

3.2 Courtroom as a venue of legal opportunity

Chinese civil society organizations (CSOs) might be presented with different opportunities. Ho (2007) talks about "windows of opportunity" with regard to policy advocacy, Hildebrandt (2013) identifies numerous political, economic, and personal opportunities for Chinese NGOs.

These moments of opportunity for certain issues such as environmental litigation have proliferated even beyond policy advocacy, yet most studies[71] do not treat litigation as part of these opportunities. In the scholarship on collective action, the account of courts is regarded with general scepsis and lacks up-to-date accounts that would examine the increasing relevance of litigation as a mode for conflict resolution and courts as venues for social activism brought by judicialization as explained above. This is even more relevant as some empirical studies focusing on *legal mobilization* in China show evidence of such dynamics occurring in the context of movements exploiting opportunity openings provided by law. In the context of legal mobilization by Chinese workers, Froissart (2014) remarks that "these new forms of political participation take place *within* the authoritarian regime and should be understood as being an integral part of its mode of operation rather than a means to spread democracy and the rule of law" (p. 268).

In one of the most cited accounts on collective action in China, Cai Yongshun briefly discusses "the use of courts" (Cai, 2010, p. 25) by Chinese citizens as a choice of conflict resolution preferred by the urban population (although not that much used in reality as Cai remarks), even much before the launch of a new wave of legal reforms aimed at more centralized judiciary announced by the Central Committee of the CCP at its October 2014 Fourth Plenum (Clarke, 2015; deLisle, 2017). Cai relies on the data from the 2005 China General Social Survey (中国综合社会调查; CGSS) and official data on litigation from 1995 and 2004 China Law Yearbook of China (Cai, 2010). Cai shows that compared with other channels the respondents in China in 2005 perceived courts as one of the most important channels (41.1 percent of 10,111 respondents to this question) for solving conflicts with the government and although in reality the gap between intention and reality, especially among urban residents, was significant (50.5 percent intended, only 33 percent used it in reality), it still ranked in the top means of conflict-solving[72] (Cai, 2010). At the same time, "this number [of

[71] An exception is the study by Rachel Stern. In relation to environmental litigation, she concludes that "mixed signals have provided openings for new actors to wedge themselves into the legal system" (Stern, 2013, p. 226).

[72] In the 2005 CGSS survey, respondents were asked whether they had a conflict in the past four years with another person and how they solved it, and whether they had a conflict with the government and how they solved it. After that, there was a multiple-choice on the solutions they took. Another question was hypothetical, what would be their preferred solution (single-choice) had they experienced a social conflict with another person / administration.

4.26 million accepted lawsuits in 1994] rose by 90 percent to more than 8 million in 2003" (Cai, 2010, p. 22).

Yet, Cai does not investigate the opportunities created by courts and is predominantly interested in other modes of action employed by the Chinese public (collective petitioning, large-scale protesting) between 1994 and 2007. In his study on protest-supported litigation by homeowners, He Xin observes the following:

> A recent phenomenon is that more affected individuals, in addition to other means of collective action, also use litigation as a way of resistance. […] The existing literature, however, has rarely addressed the way in which residents organize litigation as resistance. (He, 2014, p. 849).

The study by He Xin and the focus on homeowners also demonstrates the renewed importance of civil law as a bottom-up instrument. Such efforts overlap with other forms of resistance organized around contentious and rising issues like real estate and housing property disputes (Göbel, 2019).[73]

Litigation is generally understood as the "pressing of claims oriented to official rules, either by actually invoking official machinery or threatening to do so" (Galanter, 1974, n. 1). Despite the importance it has acquired as one form of claim-making[74] centered around shared

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The various options for conflict resolution included "legal channels" (法律途径) where respondents were explicitly told an example of court litigation, 2) "conflict mediation via another familiar person" (找熟人调解), 3) "mediation through a government department or village organization" (找政府部门或村组织调解), 4) "complaint to the media" (找媒体投诉), 5) "endure" (忍了), 7) "using force" (武力解决), 8) "mediation through one's own agency" (自己协调解决), 9) "find a solution based on the situation" (看情况而定) and other means. For the hypothetical conflict with the government Option 2 was changed to talking to the leader of the respective government unit, Option 3 to reaching out to a higher-level leader, and one option of "collective petitioning" (集体上访) was added to the list of options. For more discussion on some general aspects of the survey see Cai (2010).

[73] In some instances, there is also the opposite dynamics where the case in court mobilizes protesters. This was the case with well-known protest-supported legal cases with protest crowds gathering in front of court buildings like during the trial of the famous lawyer Pu Zhiqiang (Wickedonna, n.d. [url withheld]) or similarly in the support of the well-known criminal defense lawyer Li Zhuang in 2011 in a case analyzed in the literature (see S. Liu et al., 2014), Jia Lingmin from Henan, a victim of forced demolition who later became *weiquan* activist (Wickedonna, n.d. [url withheld]), or again in front of the court (Wickedonna, n.d. [url withheld]) and the detention center (Wickedonna, n.d. [url withheld]) with protesters demanding the release and procedural justice for Fan Mugen, yet another forced demolition victim who had killed two people as they have attempted to escort him from his home in Jiangsu province: an event which had triggered a larger debate in China on house demolition and relocation policy. Some of these rather small-scale protests were attended by foreign media representatives or foreign diplomats and received coverage in media outlets such as China Labour Bulletin, Radio Free Asia, or other Western media and human rights blogs.

[74] Claim-making is a necessary communicative feature of any contention. Based on the logic developed by Charles Tilly who coined some of the following terms marked in italics: when claims are *performed* and appear as routines, they bring about certain *repertoires* in contentious politics (Tilly, 2008). The very idea of a *repertoire* implies that claimants have more than one available tactic or multiple ways to perform that one tactic at their disposal to make

interests in presenting and addressing contentious issues, there is a lack of general conceptualization of litigation as part of the tactical "repertoire" employed by social movements in the works of well-established contentious politics[75] scholars despite their strong interest in the study of civil rights movements (McAdam et al., 2001; Tilly, 2008). Where such inquiry into litigation exists, for example in the context of China, it is generally aimed at understanding administrative litigation because of the more straightforward link between the state as an object that is addressed by the society as a direct "challenger" in contentious politics terms inherent to lawsuits directly targeted at administrative (L. Li & O'Brien, 2005; O'Brien, 2008). A similar direct relationship but more of a connection rather than opposition between the state and society is also found in the under-researched opportunities for Chinese NGOs: the possibility of NGOs to influence government decisions summarized under the umbrella term "policy advocacy" are treated as an opportunity (Hildebrandt, 2015) mainly because policy advocacy speaks directly to the state-society nexus. Litigation has not yet been placed anywhere on the existing map of strategies employed by civil society in China (for such a strategy overview see Teets, 2014).[76]

The landscape of various stakeholders, beyond the simple state vs. society paradigm, has become more complex with communities broadly affected by the government´s decisions and policies increasingly dealing with a web of intermediaries, companies, and other legal persons on their journey to achieving economic and social rights. This complexity leads to the increased importance of civil law as well and calls for the investigation of these widely used and readily available opportunities anticipated beyond administrative lawsuits. As the political scientist William Hurst observes: "*none* of the scholars who perceive an emergent rule by law regime in China focus on the criminal apparatus – every argument for the 'rationalization' or professionalization of Chinese law is centered on the analysis of the civil litigation system" (Hurst, 2018, p. 135). This is reminiscent of the various legal regimes and the "mixed character" I have discussed in the introduction to Chapter 3.

their claims but with the number of possibilities bound to certain innovations emerged through historical development.

[75] "Contentious politics" is described by Tilly (2008) as: "[…] involv[ing] interactions in which actors make claims bearing on someone else's interests, in which governments appear either as targets, initiators of claims, or third parties. Contentious politics thus brings together three familiar features of social life: contention, collective action, and politics." (p. 5). Note the similarity with public interest litigation as defined and understood in this thesis.

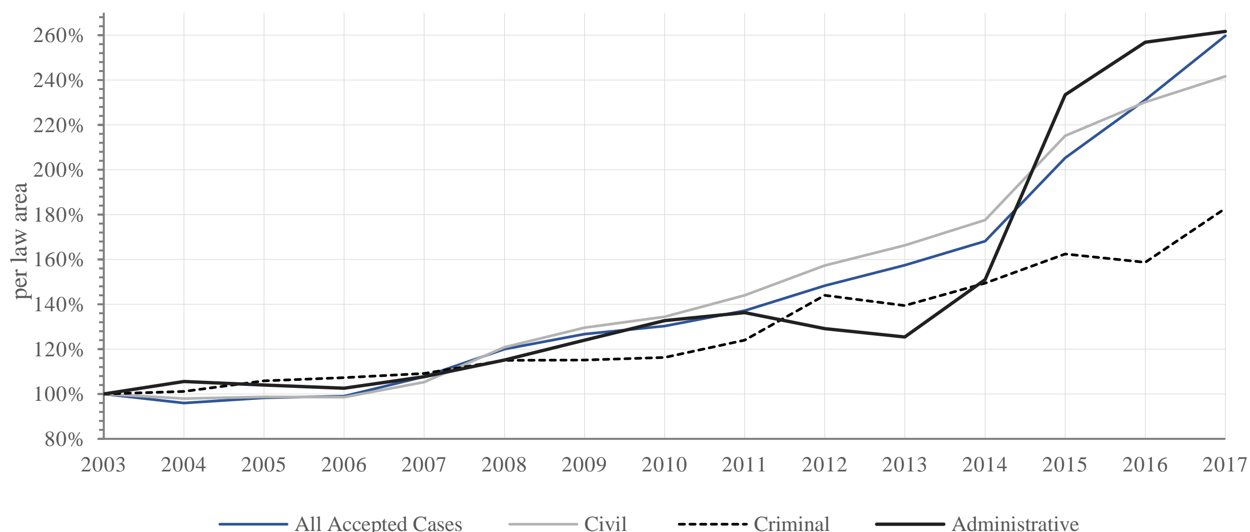
[76] Such strategies discussed in the scholarship include "more independent" ("public shaming", "strict independence" in unregistered capacity) and "more collaborative" ("action research" hand in hand with the government, "interpersonal networks") strategies with "collective protest" placed in the middle (Teets, 2014, p. 147). The missing litigation is partly due to new developments in certain chosen areas like environmental protection, partly due to the reasons described above. For some noteworthy exceptions discussed in more detail see Chapter 5 State of the Art , p. 92.

As others have shown in their studies for example in regard to individual divorce cases and their less conspicuous impact on social stability (Ng & He, 2017)[77] and as I show in this thesis at the example of EPIL even civil lawsuits touch on politics and state actors and in a less predictable way than readily assumed. The governments in these lawsuits are not always directly present or targeted directly (in the case of civil litigation). Nevertheless, they participate in the lawsuit in the Tillian sense as “third parties” (see ft. 75, p. 54) with *state intermediaries* (e.g. through the activity of procurators or administrative departments) directly involved in the lawsuit. Arguments of litigation parties that speak to the activity of the state and the administration were already mentioned in 3.1. Companies’ behavior and the trajectory of environmental and economic *policy* are challenged and shaped by litigation.

The overall trend of more Chinese people “turning to the courts” has further intensified since Cai´s analysis based on 2003/2005 data. The broad trend is reflected in the official data from the Law Yearbook of China (中国法律年鉴)[78]. Based on the available official data between 2003 and 2017, the caseload of Chinese courts has risen by a factor of 2.8 from 8 to 22.6 million accepted cases in 2017 in absolute terms. In relative terms, the increase rate of accepted cases per 100,000 people, whose cases were heard at a court, is still significant but it is quite low given that only 24 cases / 100,000 were accepted in the administrative law area with the highest growth rates (see Figure 1 Cases accepted by Chinese courts between 2003 and 2017). Civil law cases have been especially prominent with more than 11 million cases accepted in the first instance in 2017 in absolute terms. Since 2014 there was a spike in the annual growth rates of overall accepted cases with the curve flattening in 2015 (2014: 23%, 2015: 13%) but still maintaining a high growth rate compared to the average 5 percent annual growth between 2004 and 2010. Civil law cases have followed with 22 percent increase in 2015 compared to the previous year. While administrative and criminal law have nominally seen fewer cases than the civil law arena, in 2015 following the amended ALL (2014), the administrative cases increased by 21 percent the same year and then again by 56 percent in 2015 reaching a total of 298 thousand cases accepted per year (see Figure 1 below).

[77] Ng and He discuss quite some examples of handling divorce petitions in China. For a separate monograph on this topic see He Xin (2021b).
[78] Law Yearbook of China is a yearbook issued by the China Law Society (中国法学会), an official organization of the Chinese law profession. The yearbook contains various reports on the development of the rule of law and statistical data regarding court cases (China Law Society, 2004, 2004-2018).

Figure 1 Cases accepted by Chinese courts between 2003 and 2017 (normalized per 100,000 people in percent)



Note: The basis for the change in % is a normalized per capita value (China's population per 100,000 people). There were 623 accepted cases (2003),1619 cases (2017) per 100,000 people. Civil cases (2003: 371, 2017: 897 cases) are followed by criminal cases (2003: 57, 2017: 104 cases) and administrative cases (2003: 8, 2017: 24 cases) newly accepted per 100,000 people per year.

Sources: Judicial data (Law Yearbook of China, 2004-2018)[79], population data (World Bank)

Similarly, there was a sharp increase in criminal law cases a year after the amended 2011 Criminal Law by 17 percent, less so after the 2015 amendment (2015: 9 % growth) but then again reaching the 2011 growth level after the amended law took effect in July 2017 with nearly 1.5 million cases, double since 2003.

The growth in case numbers does not say anything about the mode and outcome in terms of decision and enforcement, and neither should the reasons for the higher case filing rates be purely seen as a direct result of the enactment of new laws or amendments. Criminal law amendments, for example, are quite frequent with 11 amendments between 1999 and 2020 and two amendments of the criminal procedure (2012, 2018) during the same period, yet the scope

[79] Overall accepted cases in the Law Yearbook of China statistics generally include (ordered from the highest to the lowest): first instance (一审), enforcement cases (执行), appellate cases (二审), applications for appeal and application for retrial (申诉申请再审), retrials (再审) and compensations (赔偿). The fact that some of these applications and cases overlap but are counted separately shows a general tendency to curb the overall case number. That is why this number is considerably higher than the number of only first and second instance cases in the three areas of law: civil, criminal, and administrative. The sums for civil, criminal, and administrative include only first and second (appeal; 二审) instance cases accepted by courts. The number of appellate cases heard counted as the percentage between accepted appellate cases and overall cases in the respective law area remains quite low on average in civil law cases (on average 8 percent between 2003 and 2017) and criminal cases (11 percent for the same period) but is quite high in administrative cases (24 percent on average in the given period but reaching over 30 percent in 2016 and 2017). The statistics itself note that the number of accepted cases shall only include new cases accepted during the year but it is difficult to verify as pending cases from other years are included in the proportion of resolved cases as well (the statistics make a note of that too) and the official numbers do not indicate how many new cases accepted per year got resolved during the same year – 2010 and 2017 numbers show that courts resolved more cases than accepted. Similarly, filing vs. acceptance rate is not clearly accounted for in the official statistics.

of these changes in the law and observed growth in caseloads vary.[80] Similarly, administrative litigation saw rising case acceptance rates between 2007 and 2010 (between 6-8 percent) despite no major revisions or amendments of the core laws governing the administrative justice since 1989. This signifies that the effects of certain laws might show up much later or only have a moderate effect on case filing. Significant law-making progress in the civil law area such as single laws as the 2007 Labor Contract Law (in effect since 2008) and with relevance to the whole body of civil law such as the amended 2007 Civil Procedure Law (in effect since 2008; first amendment since 1991) might have contributed to the increase from zero growth rate in 2006 in the civil law area (2007: 7 %, 2008: 15 %, 2009: 8 %) but the impact on caseloads is less straight-forward and as everything in China varies across population groups, meaning that the increase might have been significant among certain populations – addressees of the new law - but the overall effect has seen only flat growth rates and regions.

Finally, the direct impact of important changes to the institutional environment that affect the whole legal profession and court system on the case filing like the 2007 revision of the 2001 Lawyers Law and the 2006 amendment of the 1979 Organic Law of the People´s

[80] Case records from historical periods of extreme violence and injustice serve as a useful reminder and a good example for drawing any (meaningful) conclusions about a legal system based purely on quantitative evidence (case filings statistics or case acceptance numbers or rates). During the Cultural Revolution in China, for example, legal institutions were partially destroyed or severely weakened, therefore there were no formal or functioning institutions to accept and resolve cases that citizens could approach, hence the law, so the dominant interpretation, was non-existent during that period. As part of the collapse of the legal system in the initial phase between 1967 and 1968, Peerenboom (2002) and many other influential studies restrict the experience of law during the CR or its total absence to the most visible instances of mass trials without any notion of due process and completely unchecked extreme violence against the so-called "class enemies", which further finds support for the problematic thesis of "lawlessness" in the post-1978 leadership's own sources of legitimacy to build up the legal system, namely the response to prevent the occurrence of extreme violence and arbitrariness that took place during various phases of the CR and the demarcation to this aspect between post-Mao and Mao eras at large. The dominant view is complicated by the complexity of the previous legal regime: the (previous) to-be-destroyed legal system was in flux pretty much throughout the 1950s and had suffered multiple setbacks and resurrections, e.g., during and after the Anti-Rightist Campaign in 1957 and the Great Leap Forward. Su Yang who examines mass killings at the height of the Cultural Revolution shows that after the erosion of many legal institutions that began already after 1957 the number of civil and criminal cases quite understandably declined, but nevertheless, there were still over 800 thousand cases heard in 1965 (Y. Su, 2011, p. 166). Contrary to studies that emphasize the numerous disruptions and shocks that the legal system had undoubtedly experienced during CR, legal historian Xu Lizhi pays attention to the elements of continuity and finds that: "While in some places and during specific periods of time illegal activities were condoned to suit the aims of the Cultural Revolution, the policy toward ordinary crime remained consistent […] During the ten-year period, many documents were passed to optimize the current order and to target criminal activities. The ordinary crime was mostly dealt with according to the established regulations." (L. Xu, 2018, pp. 41–42). From a comparative perspective, this observation is found in studies of the legal system during the Nazi era. In addition to despotism in line with Nazi ideology these studies note that "[…] much of the German legal system continued to function in a manner that would have been recognizable to observers before 1933." (Steinweis & Rachlin, 2013, p. 2). The characterizations of these high periods of extreme social control and violence as "lawless" in the sense of any absence of law are therefore inaccurate. The extreme perversion of justice, atrocities, and the pronounced duality with which the law was applied based on class background and in line with policy preferences are hardly mirrored in any purely quantitative source of evidence and even when legal statistics are able to show certain trends they fail to differentiate between the various ways of how the law was applied.

Courts are difficult to ascertain and probably take longer to materialize in case acceptance statistics and case filing rates.

Therefore, the sources legal subjects turning to courts must be accounted for by analyzing the outcome of the judicial reforms, access to courts in certain areas (and uneven in others), and sociological variables like trust in the judiciary and legal awareness. Last but not least it is also accounted by the changes in the political environment, the possible flow of disputes from other less institutionalized participation channels or a combination thereof (see He, 2014), and the drive to hold government officials accountable when it comes to administrative litigation. On the other hand, further limitations imposed on activism under Xi Jinping via the rule by law such as observed in "criminalization of contentious participation" (D. Fu & Distelhorst, 2018, p. 109) might be the result of the stronger grip of the state over the society motivated by the internal pressure for social stability. In the Deng era throughout the 1990s and Hu-Wen eras, the Chinese leadership enacted many new groundbreaking laws, and the actual impact has been catching up rather slowly. The fact that certain law amendments are even capable to curb the case acceptance rates shows that, at least partially, the reforms have had an impact.

Courts might not be the number one choice for solving everyday disputes due to the high costs associated with filing lawsuits and other "have-nots" (He & Su, 2013), uneven access to judiciary, lengthy trials, problems regarding the enforcement and availability of other more efficient and more importantly the existence of less resource-savvy and cost-intensive channels for conflict resolution.[81] Nevertheless, courts have become an ever more used opportunity for China´s civil society at large in solving problems and for social activism.

As I argue in this thesis, the opening of judicial channels has created *legal opportunities* for Chinese environmental NGOs to challenge polluters. To define the opportunity space and

[81] In the Wickedonna database on protest events there are numerous examples of failed litigation. This is understandable as the database mainly consists of a protest-related type of events and successful litigation examples are not to be expected to be contained within this dataset. For example, homeowners in one prefecture-level city in Guangdong have sued for 3 years without any success before turning to the street (Wickedonna, n.d. [url withheld]). But even where the case is rock-solid, some considerations on the cost-benefit of litigation are outlined in the discussion. Consider the following two homeowner protest events in urban setting in two unrelated localities that have allegedly suffered commercial fraud – good grounds to sue another private party at court – have briefly discussed litigation as an option but rejected it for various difficulties associated with it: "The lawyer told us that if we choose the legal procedure, we surely can win. But the costs for litigation are high and it takes a long time. If we want to get a reply by developers, the quickest way is to go directly to the Property Management and the City Government to reflect on the problem. […] We are all people with character (*suzhi*) (有素质的人) and really don´t want to go petition the government, but they have made us do so" (@user_7 Wickedonna, n.d. [url withheld]). "We have talked to many lawyers. They all told us very clearly that we will win our cause under these circumstances, for sure, but as far as the enforcement (执行) is concerned, there will be trouble and it might not get enforced at all. […] So for us homeowners, the judicial channel (司法途径) will not resolve our current dilemma" (@user_8 Wickedonna, n.d. [url withheld]).

how it works in the context of this thesis, I discuss insights based on the *legal opportunity structure* (LOS) literature and incorporate insights by scholars exploring *resource mobilization* (RM). I aggregate the findings from these two literatures and present a conceptual framework to analyze the *courtroom as a legal opportunity* for Chinese *environmental NGOs* active in EPIL.

3.3 Legal Opportunity Structure

One dimension of political opportunity in abstract terms is the "opening and closing of space for action" (Gamson and Meyer 1996, discussed in Andersen, 2006, p. 7; also McAdam, 1996). Scholars seeking to explain the structural elements behind contentious action and the emergence of social movements have developed the *political opportunity structure (POS).* Originally motivated by the study of protests in comparative settings and developed by scholars primarily interested in the variation of tactical repertoire utilized by social movements mentioned earlier, legal opportunities in the POS might be viewed just as a part of the broader repertoire (Hilson, 2002; Tilly, 2008). This positioning and the elements of opportunity openings as outlined for protest mobilization (Tarrow, 1996)[82] can be partly utilized when it comes to legal opportunities but fails to fully explain legal opportunities encountered by social movements.

This lack of explanatory power of the POS for legal action and the changing empirical reality of increasingly utilizing courts by social movements in Europe lead socio-legal researchers (Andersen, 2006; De Fazio, 2012; Hilson, 2002; Vanhala, 2010) to advance the concept of the *legal opportunity structure* (LOS). These studies examine different social movements, mostly in various European or American contexts of "strategic litigation"[83], and

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[82] These are "the opening up of access to power, shifting alignments, the availability of influential allies, and the cleavages within and among the elites" (Tarrow, 1996, p. 54). In the same edited volume the fourth dimension is substituted by the "state's capacity and propensity for repression" (McAdam et al., 1996, p. 10). As argued by the critics of POS, the core problem in POS is that a clear hypothesis on how these factors affect movements is missing and might not even be possible to articulate on an abstract theoretical level as *choices* shape the movement's strategy (Goodwin & Jasper, 1999). Some have even called for abandoning the term "opportunity structure" altogether as the two words seemingly contradict each other and proposed replacing it with the more neutral and more descriptive term "political context" (Amenta & Halfmann, 2012).

[83] Also referred to as "test case litigation" (Vanhala, 2010, p. 6) this form of litigation is mainly characterized by (i) taking up entirely new issues or (ii) issues that were decided differently in the past and/or (iii) issues that affect the larger population (Vanhala, 2010). What makes the action (litigation) strategic is "when an organization purposefully turns to the courts to pursue its goals" (Vanhala, 2010, p. 7). The goals can be very broad ranging from combatting social or individual injustice, and exposing legal and procedural flaws, to achieving policy change or merely creating problem awareness (Fuchs, 2019a). Gesine Fuchs mentions the resulting legal interpretation and includes the impact in her definition as the outcome should have "a political effect beyond the respective case" ("politische Wirkungen über den konkret verhandelten Fall hinaus") (Fuchs, 2019b, p. 44) but defining, locating and measuring these different effects beyond the legal outcome is an uneasy task, especially where such effects are missing, relate to multiple sources/multiple pressures or gain momentum much later as individual cases can serve the establishment of certain reference points. Many such cases are discussed in this thesis, some of which

their findings are therefore country-specific or in some cases even movement-dependent. Studies on Legal Opportunity Structure inform this research about elements that *might* determine the boundaries of the legal opportunity and thus helps to constrain the choice of independent variables. In general, LOS scholars have outlined the following *four* dimensions (mostly independent variables, yet some scholars seeking to explain access as opportunity treat some of the variables as dependent) discussed in more detail in the following sections: *access*, *judicial receptivity*, and *framing of claims*. The fourth variable *elite alignments* is omitted here as I examine them as resources but played an important role in the historical trajectory and regulatory efforts of Chinese NGOs as analyzed in Chapter 2: influential allies played a major role in bringing the topic forward to the attention of leaders. Once the topic gained significant momentum, elite conflict over the final version and adoption of the law opened up an opportunity for NGOs to shape the final version of the rules emerged. Elite connections are important when assessing the plaintiffs' organizational background and belong to political connections as part of resource mobilization.

3.3.1 Access to court

Laws, rules, and requirements for standing (*locus standi*) form the basis of all sociolegal studies concerned with legal opportunity in litigation. In this understanding, access refers to "what may be litigated, who may litigate, and where such litigation may occur" (Andersen, 2006, p. 9 similar in Vanhala, 2012). Hence, it is a structural and formal condition traditionally found in the respective legislation or otherwise established by court precedents in common law systems, international treaties, or as such in connection to the case law of the European Court of Justice in the context of the European Union and the tension between national and supranational authorities. The tension directly influences the possible access to and the scope of litigation and creates space for previously unseen legal opportunities. On a more general level even in systems that lack precise standing requirements and seem fluid in their precise cultural mode of *locus standi*, some form of who qualifies as a would-be litigant is found even if it is grounded in the ideology and coupled with the existence of "class enemy" such as in political purges during the Mao era.

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are unsuccessful but point to administrative inertia or wrongdoing. For some boundary-testing examples in the context of EPIL refer to footnote 52. For some strategic cases heard in front of the European Court of Justice see footnote 60.

The accessibility of courts is necessarily tied to the availability of state funding (De Fazio, 2012). That does not entail that litigation is necessarily the most cost-benefit option. On the contrary, litigation is an extremely resource-consuming way of presenting claims and solving disputes. In this context, funding simply means that courts are accessible beyond the system's elite circles to a more general audience or high costs are substituted by resource pooling, legal aid, and group efforts to alleviate the financial burden (more on that and civil society support networks in the specific context of EPIL later).[84]

Access to litigation is often preceded by certain access to rulemaking (legislative or top political parties) by interest groups in their efforts to grant them or others standing in particular instances and accompanied by a bargaining process. I have illustrated that such processes take place even in authoritarian systems by drawing on the example of the historical trajectory of environmental public interest litigation in China. In the China case, such bargaining took place on various local levels and on the central level advanced by elites themselves or with the inclusion of elites.

Derived from the political opportunity, Chris Hilson (2002) who first used the term LOS believes that "[legal] opportunity [too] must be seen in terms of both access and receptivity" (p. 244). The empirical support for such a strong normative claim is weak in Hilson's study which focuses more on policy receptivity in the UK with unclear implications on how judges were influenced by political priorities. The tension between quite stable rules on one hand judicial or political receptivity on the other and the theoretical contribution is well-illustrated in other studies discussed in more detail in the next section on judicial receptivity, but it is important to point out already here that the ongoing debate on static and contingent conditions (De Fazio, 2012) is perhaps misplaced and the decision of how a particular factor might is shaped is much more difficult to articulate on a general level without taking the particular circumstances into account.

In China's environmental public interest litigation, the rules for the level playing field come under increased pressure mainly from three sources: 1) rejection of rules by local courts, 2) efforts to widen the scope by eligible litigants, 3) efforts to widen the scope by non-eligible litigants. In the first two instances it is the Chinese ENGOs whose cases get rejected by local courts and face the choice to claim their rights to sue that they are formally entitled to. In the second case, ENGOs choose to test and overstep the boundaries set by law by trying to hold administrative departments responsible despite no clear rules in place and possible limitations

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[84] De Fazio (2012) argues that "alliance" forms a separate element. I view it as a type of resources as it pertains to alleviating the financial burden and knowledge resources related to litigation.

of enforceability of such decisions, thereby widening the scope of their access and pushing for a policy change. Finally, participants such as ordinary citizens not foreseen by the rules on standing in EPIL perceive environmental public interest litigation as an opportunity and try to squeeze themselves into the court arena, thereby attempting to widen the scope of the eligible participants to claim their rights.

In all three cases also imaginable in a democratic context (for example the lack of knowledge, conflicting national laws in place, or an error on part of the judiciary) fully in line with judicial independence but in case of China the first problem of getting the case into court is notoriously known and believed to be the result of the judges "judicial *dependence* [emph.]" (L. Li, 2016) and larger "embeddedness" (Ng & He, 2017) in wider social forces already discussed previously in greater detail.

The rejection/acceptance points to the judicial receptivity discussed below and shows that despite the existence/non-existence of formal rules, the scope of judicial receptivity and the power of political actors is a crucial element that influences the access to litigation as laid out in the procedural rules.

3.3.2 Judicial Receptivity

Unlike in POS where the position of elites (usually influential actors in high politics) is deemed decisive for the movement's success, in LOS judges assume this decisive role. As already hinted at before, judicial receptivity has the potential to influence the actual accessibility to courts and forms a basis for a neutral attitude toward the claims brought forward by litigants. Ellen Ann Andersen speaks about the "configuration of power" and illustrates the "attitudinal shift" (Andersen, 2006, p. 208) in US Supreme Court judges and decisions by lower-level courts towards claims brought forward by social movements in the area of gay rights in the late 1980s. This shift, she argues, has not originated from legislative amendments but is traced back to "internal rather than external shifts in sociopolitical understandings of homosexuality" (Andersen, 2006, p. 208) through cases that the courts heard and public opinion debates surrounding these cases.

The debate around judicial receptivity in Western countries concentrates on the ideology of judges in the sense of their "personal value influence […] as a contributing rather than primary determiner of case outcomes" (Andersen, 2006, p. 209). What is interesting in Andersen's study is that courts do not just grow more sympathetic towards certain claims in the sense of becoming proponents of the movements themselves and projecting the movements'

values into their work. Rather, Andersen observes that judges tend to show their sympathy by acting less biased or by being less concerned about certain features, for example, Andersen shows that the parent's sexual orientation has gradually become irrelevant in cases involving child custody (Andersen, 2006). In addition, the extent of opportunity provided by judicial receptivity for the movement might depend on the perception by the movements' participants themselves as scholars interested in what motivates social movements to mobilize the law have outlined (Vanhala, 2018).[85]

The influence of certain values as part of the "judicial culture" (De Fazio, 2012) on case outcomes stands in sharp contrast to the understanding of the role of the judge in civil law systems viewed as a mere blunt instrument of the law, a legally trained professional constrained by the legal system to the extent that she only applies the existing rules in a sort of courtroom vacuum, almost in a mechanical way. Quite understandably, LOS scholars in line with the judicialization of politics introduced earlier, therefore, focus on the highest decision level of supreme court judgments and constitutional matters as there is more room for judges to decide on previously unaddressed and larger issues (for judicialization of politics see Chapter 3.1, p. 43). Furthermore, the appointment and therefore the very configuration of the judicial bench in these highest judicial authorities is often politicized and subject to political pressure.

The role of judicial attitude becomes clear when challenging the view and simplified understanding of judicial decision-making as a purely mechanical application of the law. Even in a regular courtroom such understanding is challenged when judges are presented with a choice such as a case-based value judgment (e.g., child safety, set of conditions to evaluate a danger to the society of a criminal) with the evaluation often guided by an expert opinion or proportionality being an integral and required part of their reasoning. The judge's direct influence on the outcome of the case also becomes apparent in settings where a judge is faced with legal uncertainty or cases with high complexity and still must reach a final decision. In these instances, typically a certain problem awareness guides the reasoning. In general, this problem awareness forms an *attitude* of one judge, the whole judicial bench, the whole court, a particular jurisdiction, or even on a transnational level. Such attitude is explicitly understood by the judges and sometimes references to changes in broader social attitudes are found in landmark court judgments as a broader justification for looking at cases differently from a

[85] As McAdam remarks in his response to the critics of POS, these processes of realization of specific opportunities should be analyzed separately and not be confused with the structural changes that form the opportunity at hand (McAdam, 1996). Some of these processes especially framing when already utilized by social movements give a hint at how movements have perceived and adapted to the opportunity. For more on the resources that ENGOs use to fill the structure see the chapter on resource mobilization below.

particular point in time, which is in line with the findings of previous scholarship on the subject, especially the aforementioned "attitudinal shift" (Andersen, 2006)[86].

Chinese judges are subject to performance evaluation criteria based on the target responsibility system and therefore arguably less immune to policy pressures than their Western counterparts and more alert to social stability concerns. Tied to the performance criteria is the socialist legacy of the function of the judge that also carries a strong populist tone as noted earlier (Minzner, 2011). Art. 3 of Judges Law defines the envisioned judicial function profile as follows: "Judges must faithfully implement the Constitution and laws, *safeguard social fairness and justice, and whole-heartedly serve the people* [emph.]" (Judges Law, 2019)[87]. The middle sentence was inserted into the otherwise unchanged general provision since 1995 during the 2019 revision to further emphasize the judge's closeness to the population. The mention of serving the people is an important part of the ideological function of the Chinese judge and is seen in various forms under the slogans "judiciary for the people" (司法为民) framed by the CCP as an integral part of the Chinese characteristics of Socialist Rule of Law.

The question of "how to be a good judge" is addressed by the description of numerous judicial role models (模范法官)[88] that give a hint at how the CCP leadership imagines the ideal qualities every judge should possess. As already shown by Minzner (2011), there are various role models with some differences in the background of frontline versus senior, more elite academic versus basic-level judges at the grassroot level active in different milieus, and possible

[86] Good example of such an attitudinal shift from a civil law jurisdiction with references to the changing circumstances in the court decision are civil cases involving prostitution. Such acts in civil law disputes were decided in a manner developed by courts to violate the general abstract clause of "good manners" (gute Sitten), which resulted in the annulment of the contract and zero legal protection for sex workers. Regarding the question of contractual validity of "telephone sex", the Federal court of Austria made numerous references to "moral value shift" (Wandel der Moralvorstellungen) in court decisions in Germany and Austria and corresponding legislative changes (The Austrian Supreme Court of Justice - OGH, 1 Ob 244/02t, 27.05.2003).

[87] The CCP is not included here but "upholding the Party's leadership" gets mentioned later in a separate provision. In the context of the Article 3 Judges Law it is explicitly mentioned in the 2010 Code of Conduct for Judges discussed further below (Article 1). The original passage translated in the citation reads as follows: 法官必须忠实执行宪法和法律，维护社会公平正义，全心全意为人民服务.

[88] Various "model judges" with regard to the preferred conflict resolution through mediation are discussed by Minzner (2011) but their typology remains understudied. Role models for the judicial profession and the values they embody are hardly restricted to the examples of real-life contemporary judges. Aside from official role models, some of the popular role models widely referred to in society also include fictional examples drawn from literature and popular culture. A well-known popular example from the dynastic past is Lord Bao (Bao Zheng), a Song dynasty official widely praised in contemporary China for his efforts to combat corruption. The broader roots of "the justice closer to the people" are traced back to Ma Xiwu, a legendary judge active in communist revolutionary basis prior to the Communist victory in 1949. For more on the so-called "Ma Xiwu adjudication method" and its legacy in contemporary China see Ahl (2015, pp. 104–116). The method is in theory characterized by an intense information exchange with the population at the locality of the dispute at hand implying flexible handling of the situation with pluralistic solutions suited to the particular local conditions.

differences in narratives based on gender role models with more than just one story to tell[89]. The question of whether the award was presented posthumously, or the judge is still alive also likely affects the style and attributes that are most highlighted in the descriptions as well as the effect that such models achieve beyond their locality.

In general, working hard[90], being a good Party member, the proven ability to mediate rather than adjudicate disputes (together with the idea of minimizing further complaints), and being close to the masses (Minzner, 2011) seem to be the universal criteria for the depiction of Chinese judges by the CCP leadership. How the last feature, "a judge in the service of the people", is imagined in practice is best illustrated by the story of one model judge, court president from a county basic-level court in rural Jiangxi, the story posted on the SPC website goes (paraphrased) as follows:

> Judge Zou has won the trust (信任) and esteem (爱戴) of the local people. […] A worker who had suffered an injury from an accident at work got emotional (情绪非常激动)[91] as the factory boss would not agree on the amount of the compensation to be awarded. […] Judge Zou's expert legal dissemination (法律宣传) and explanations delivered in plain and sincere language have dispelled the doubts of the aggrieved party […] In another case, a male migrant worker living in a family with two children filed for a divorce, the wife - considered about their children well-being - refused to divorce the husband. Judge Zou *invited* both for a cup of *hot tea*[92] and talked them out of the divorce. The husband was so

[89] In 2020, 40 percent of 70 model judges selected nationwide were female judges according to the final selection list reposted on the SPC website (SPC Website, 2020).

[90] Working hard is expressed in countless references to the "Iron Judge spirit" on Chinese court's websites. Interestingly in the example of Judge Zou described below, there is an attempt to humanize the judicial personnel in an effort to bring the official closer to the population and increase trust by explicitly rejecting the Iron Judge spirit. By that, it is shown that the judge is also a living being made out of bones and flesh even though working tirelessly and is exhausted as a result of work as mentioned in the full article where the excerpt is from, also a certain part of the vision.

[91] Note that "getting emotional" or "feeling agitated" is left open here but it implies more than simply being unsatisfied. It is often used in reference to disruption of social stability and implies escalation in public or private in endless ways thinkable (laying down production, strike, threat to do self-harm, the use of violence etc. or planning to do so) and can be used together for a collective as well for example when saying "masses/crowds became agitated" (群众情绪激动). The fact that it is mentioned here is important as it shows that the judicial role model is also taking emotions (*renqing*), sources and relevance of the effects of the discontent into account, not just pure legal considerations.

[92] The exact phases used in the text are "invited them to the mediation chambers" (把他们请到法庭的调解室) and "were served hot tea" (端上热茶). Being invited for tea (被请喝茶) is a phase commonly used by netizens to refer to police interrogations. Such usage would not be expected in the official context and quite unlikely in this setting. These details are probably supposed to add to the voluntary and friendly atmosphere as presented in the narrative. More importantly, it should be noted that what is meant by invitation here is, just as filing for divorce mentioned in the text, a formalized procedure step as the mediation stage is possible for divorce cases either after filing a divorce petition with administrative departments (which may mediate) and *compulsory* as it is the case

> moved by the Judge's honesty (诚心) that he himself took the initiative to drop the divorce and made peace with his wife. […] [After quoting the passage from the report from the 19th Party Congress from October 2017 on taking the fundamental interests of the people as the utmost important criteria, the Judge said:] "'People's satisfaction' (人民满意) is a must-have aspiration, a goal and a direction for every judge to follow". (SPC Website, 2018)

The short excerpt highlights the "zero distance" in terms of the distance between officials and the population. It hails the ability to disperse the worries of would-be litigants in a quick manner and to everybody's satisfaction - efficiency (the judge is depicted concluding those two cases in one day) - and certain pragmatism bounded with knowledge and problem-awareness among other human-centered qualities are all found in the judge's narrated behavior. The article also mentions "Five Zeroes" (五个零)[93], a broader set of performance criteria and almost a professional code of conduct this judge is praised to meet. Although the depiction of the perfect judge is a part of the larger "Model Judge" ideological campaign, the story tells how an exemplary judge is *imagined* by the Party and the set of criteria for judicial performance that draw the boundaries for conformity. The envisioned judge in Chinese society is thus characterized by proactive ties to the local population, together with the remaining state bureaucracy she is supposed to find a balance, bring about larger stability, prevent conflict where possible and avert escalation before, during, and probably even after an agreement has been reached, a functioning portfolio that is undeniably much broader than that of her Western counterparts and has an impact on judicial receptivity when it comes to specific issues and cases. Her character is often described with adjectives such as "close (to the people)" (贴心) (SPC Website, 2018) and "good-hearted" (良心) (SPC Website, 2015), abstract mediator skill set that consists of empathy and problem-awareness when consulting potential or actual litigants.

Whereas such general conceptualization and pronounced portrayals of judicial qualities are indeed helpful and of great importance to understand the ideological framing of the duties and the judicial profession or even single case outcomes in China, for example involving the practice of leniency in criminal cases[94], it is less helpful to ascertain and explain the effect of the influence judges exert on the case outcome in question.

here (向法庭起诉要求离婚) during hearing a suit at the court under the Chinese Marriage Law. For more on the topic of divorce in China see the monograph by He Xin (2021b).

[93] Such indicators include zero reversed cases remanded for retrial returned by the appellate court to the original court, zero discipline cases, zero erroneous cases, zero cases involving petitioners, and zero cases exceeding the time limits (SPC Website, 2018).

[94] "As one judge explained, if 'cases come from ordinary lives' then courts will try to be lenient, even if there is no formal legal basis for doing so" (Interview, quoted in Liebman, 2015, pp. 178–179).

At the expense of following a certain quite evident trend towards a particular image of a judge outlined above, it should not be forgotten, however, that this image is just one of many pieces of various sources fitting into the multifaceted ideal type of judge. Such a picture is essentially simplified even in the context of the existing typologies in China (albeit those restricted to the state official narrations). As already quoted, the first part of Article 3 of Judges Law stresses the (unchanged) reliance of judges on formal law as the cornerstone of judges' work. There is also a parallel official discourse that focuses on promoting a judicial role model in line with judges only relying on formal written law and limiting out-of-court or within-court influences. This discourse has found its way into the revised Judges Law while simultaneously strengthening Party building and oversight.

Values and professional ethics for the judicial profession have been laid out in a Code of Conduct for Judges (法官行为规范; hereinafter referred to as The Code) first issued by the SPC in 2005 for Trial Implementation and revised in 2010 containing 98 Articles with various values and some general rules of conduct from case acceptance over trial phase to delivering judgment, setting rules for mediation and covering numerous aspects of judicial professional conduct ranging from gift policy and graft to alcohol consumption, smoking and some aspects of out-of-work appearance and participation in free time activities. The Code speaks about "legal effects/results" (法律效果) and "social effects/results" (社会效果) and mentions that the task of the Judge to realize the "organic integration" (有机统一)[95] between these two when handling cases (Article 2; SPC 2010).

There are many illustrative examples in judicial role models of what the integration of legal and social results or the separation thereof can mean. Compared to the one discussed above, this one involves an expert judge that came from a modest background with an exceptional career track[96], the former Vice President at Shanghai High Court, judge Zou Bihua that was

[95] Often the phrase to crown a perfect judge is to say that she has performed well in all three areas and her work yielded political results (政治效果), legal results (法律效果) and social results (社会效果).

[96] Here the mentioned Basic Courts and rural vs. urban divide may also play out differently regarding the target audience of these model judge campaigns, but it seems that from the cases discussed here SPC policies and role models focus on senior role models from lower-level courts situated in a less urban environment or at the community "grassroot" level. Based on the list of 70 selected 2020 model judges, only five percent of the selected judges were from High Courts (including one from SPC), 30 percent from Intermediate Courts, and the rest mostly from the district or county-level courts (SPC Website, 2020). The local also a line with the emphasis put on solving and preventing conflicts from happening at the local level (源头预防化解矛盾) and thus avoiding conflicts from escalation through the hierarchy. For these references, the means and special focus regarding the role played by People's Tribunals in these efforts and specifically mentioned strategies like Rural Revitalization (乡村振兴) and Poverty Alleviation Campaigns (脱贫攻坚战) refer to the 2021 Opinion issued by the SPC (SPC, 2021). The Opinion takes the "three nongs" (agriculture, farmers, rural areas, 三农) as a departure point to outline "three services" (三个服务) of how frontline judges should contribute to these areas.

posthumously praised as a nationwide role model with press coverage nationwide (SPC Website, 2015). This story is built around a case involving a death of a family member due to a fire emergency and a subsequent compensation lawsuit that was lost after exhausting all possible judicial ways so that the plaintiff's family filed a petition with the judge. Judge Zou Bihua confirms that the legal outcome is flawless, but Zou goes beyond that and does not accept the consequences, so he gathers all the other judges, contacts the personnel from the local administration and together they go investigate the site on their own, which is less of an investigation than becoming acquainted with the living conditions of the people (SPC Website, 2015). The judge did not dispute the legal outcome but instead sought some help from local officials to support renovating the burnt house, which allegedly contributed as a substitute for the non-awarded compensation by securing a living space for the family (SPC Website, 2015). The moral of the story is quite apparent, the legal outcome didn´t do justice to the social consequences that the family suffered as a result of the catastrophe but only tackled the legal question of whom to blame without solving the core issue. The other side of the story is not so much the practical solution itself, as some problems cannot be solved by the Judge, but in mediating the subjective injustice feeling and consoling the losing parties, thereby also fulfilling the function of promoting and restoring the faith in the law as promoted in the CCP ideology. As Zou Bihua is quoted in memoriam:

> As a good Judge, it is not sufficient to just rely on solid expert knowledge. If expert knowledge (专业知识) is not combined with societal life (社会生活) and without nourishment of the humanistic spirit (人文精神的滋养), the expert knowledge will wither away (干瘪无味) (SPC Website, 2015).

This human quality and staying in close touch with the people and vising the masses recalls the principle of the mass line (also refer to the discussion on p. 19). Similar activities are regularly conducted by leaders when they pay a visit or as it is expressed "bring warmth" (送温暖) to "ordinary people". Contrary to them, the Judge is imagined more as a link between the legal and other systems who is in direct contact with the complainant and with the administration to facilitate a solution.

As described above the judge is envisioned as more than just a professional applying the law but is more of a problem-solver that employs various modes of conflict resolution and various logics when it comes to approaching problems and mitigating conflict. Navigating

between these two selected existing models is a daunting task for a judge to perform.[97] From a broader perspective, these tensions open a room for judges to act and pre-supposes that judges are responsive to signals where a choice to which role model to subscribe is to be made or where disputes cannot be decided based on formal law as some traits of both ideal types are likely to be found in the practice.

To rely on the condition of judicial receptivity empirically is not to understand the mentalities of Chinese judges. Their broader environmental consciousness as a result of an environmental turn or their respective attitude towards social organizations is not the focus here. Rather this condition is examined with regard to the outlook on how judges *exert direct influence* on the case outcome when they are presented with a *choice* and how they legitimize this choice given the structural environment and various roles they perform, for example in *striking a balance* between multiple preferences such as environmental protection and the local economy in their decision or weighing various possibilities against each other and receptivity to a particular set of claims that have the potential to benefit the locality (more on this point see below). It would be a mistake to assume that these decisions that are reached via "balancing acts" (as I refer to these proportionality assessments) are somewhat illegitimate or even unlawful. It is a departure from seeing "systemic bugs" held against standards for evaluation of the judiciary not applicable in China to evaluate judges rather than "integral features"[98] of the Chinese judicial system. As I illustrate in my analysis, in situations where judges are in certain special circumstances expected to perform such a balancing act in striking a balance among competing interests and legitimate their outcomes by referring to discretion power based on the law or the inherent ideological backing/belief behind that.

3.3.3 Framing of Claims, Function and Law

Framing can be described as a specific constructed understanding of reality that allows for the interpretation and organization of reality. Benford and Snow (2000) point out that "framing is

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[97] It is difficult to interpret the prevalence of one model over another. Although a return to ideological criteria for judges and certain populist tendencies are noted in the literature, the picture is far from clear. The above-mentioned Judge Zou could be held against decades of emphasizing the other role models, therefore not simply eroding the first model but making room for the re-introduction of these tendencies in line with Party policy and ideological campaigns. In a similar fashion, the overemphasis on one model does not mean that the other one fully disappears from the political stage as illustrated by the two selective case examples in this chapter that can both be found in today's discourse.

[98] This point and criticism were outlined by Doug Clarke in an online lecture titled "Order and Law in China" on June 25, 2021, as part of the series "Rethinking Cultural Constructions of Law in East Asia" organized by Li Chen and Taisu Zhang.

a dynamic and ongoing process" (p. 628). The resulting frames are therefore at the crossroads between structural and more dynamic elements as "framing processes are affected by a number of elements of the socio-cultural context in which they are embedded" (Benford & Snow, 2000, p. 628) but "movement actors are viewed as signifying agents actively engaged in the production and maintenance of meaning for constituents, antagonists, and bystanders or observers" (Snow & Benford, 1988; cited in Benford & Snow, 2000, p. 613). The perspective on frames transcendent the individual as the focus of social movement scholars and LOS studies as well lies primarily on the shared meanings and collective *action* frames that act as mobilization catalysts for social movements either in the sense of mobilizing consensus or direct action (Benford & Snow, 2000).

The focus of framing in LOS lies on legal frames employed by the movements themselves. As legal claims put forward by parties are central to litigation, LOS scholars understandably pay great attention to legal framing processes employed by social movements in formulating claims (on claim-making in general see Galanter, p. 53). Similar dynamics outlined by sociologists and the rich account of the literature on framing as reviewed by Benford & Snow (2000) and particularly the frame resonance are found in LOS studies when it comes to legal frames. Andersen (2006) identifies two sources of claim-making, which she refers to as the previously mentioned "cultural stock and existing legal stock" (p. 210). These broader shifts in *culture* and their effect on the attitude of the judicial and legal profession at large in setting the scope for legal demands and their mutual influence were already discussed in the previous chapters. The fact that such interlinkages to other factors exist bears the danger of "analytical eclecticism disguised as theory building" (Vanhala, 2010, p. 20).

The process of producing legal frames is, therefore, understood here as the way of taking certain demands ("we want justice" / "we want the tree fixed") and clothing these "injustice frames" (see Benford & Snow, 2000) into legal claims (demands) that are understandable to the legal order, e.g. party A demands a compensation/restoration from party B due to <situation, e.g. harm, violation> based on <law/specific legal provision/contract>. The choice of a particular set of claims depends on the legal system, in other words, which claims the legal system permits the litigation parties to outline. The choice of a specific claim or multiple claims is a conscious and well-thought process whose result (a finalized set of claims)[99] bears different meanings and points to the motivation of the parties. These motives are especially relevant as

[99] Finalized is understood here at a certain point of time, e.g., at the case filing phase. The parties can drop certain claims during the case hearing phase or relinquish the action, therefore triggering this process again or completely reversing its course.

the parties in public interest litigation claim to represent the imagined public and the question of who should benefit from the greater good (the result of the litigation) in the end is always present. The question of choice and omission of specific legal claims over others in the public interest is therefore even more relevant than that of classic civil litigation where parties defend their own interests or act as representatives of a specific narrowly defined group of people and enjoy the benefits of their action to the extent based on the litigation outcome.

Aside from legal claims defined by the legal order, the focus of LOS scholars lies on movements' own "rights-based framing" (Andersen, 2006, p. 26) building on the earlier interest of POS scholars in understanding civil rights movements (mentioned above, see p. 54). Lisa Vanhala further advances the understanding of the framing by drawing on perspectives from sociological-institutionalist and organizational literatures (Vanhala, 2010). As a result, she focuses on organizational identity and related framing processes and incorporates organizational norms and values into her analytical framework.

Inspired by the institutional logics perspective that draws attention to the "[t]he principles, practices, and symbols of each institutional order" (P. H. Thornton et al., 2012, p. 2) and review the organizational values (mission framing and framing of legal channels where possible as well as references to official ideology) where possible to include it as an auxiliary criterion to sharpen the understanding of the characteristic of the organization. I access the organization based on its values and self-description regarding its mission based on the organization's charter that illustrates its basic framed posture towards the government, which aids the analysis, especially where information is scarce.

Hildebrandt (2013) notes the rhetorical adaption by Chinese NGOs to the language of government policies in regard to political opportunities reflected in a more strategic-corporatist way: "numerous groups have rewritten mission statements or otherwise reframed their activities to highlight their dedication to helping the government build this 'harmonious society.'" (p. 83). The scholarship on framing employed by NGOs in China is rich and discussed in more detail in the State-of-the-Art Chapter.

By drawing on the LOS and institutional logics insights, I operationalize the framing variable to study legal action by Chinese environmental NGOs as follows 1) choice of available legal demands put forward by social organizations and 2) framing when it comes to self-understanding aimed at the outside world in terms of a) how NGO-plaintiffs conceptualize and perceive legal channels and b) construct their own functional role in the legal opportunity by acting on available frames of green ideology and/or official ideology. The role of the latter was

already explained for the crucial momentum gained for EPIL as law institution codified in the law throughout the legal discourse phase (see Chapter 2.2 Legal discourse).

3.4 Resource Mobilization

The LOS with a focus on structural elements of the opportunity gives no explanatory value to the dynamics occurring within the structural elements it seeks to understand. This is partly because some of these available opportunities are realized and seized by the various participants in different contexts and therefore constitute multiple *dynamics* that cannot be covered by mainly structural elements such as for instance legal requirements for standing. Even the status quo given static legal requirements for standing could be deemed dynamic as groups choose to carve out opportunities themselves, even though this might have not been foreseen by the state-regulator (for the attempt of aggrieved villagers to make use of EPIL mentioned above see ft. 69, p. 49). In POS the structure and exploitation of opportunities are *selective* depending on the nature of the opportunity being either "soft" or "hard" rather than its immediate correspondence to the goal as persuasively illustrated by Deng and Benney (2017)[100]. Andersen (2006) concludes that "increases in legal opportunity do not translate automatically into litigation success. *Shifts* [emphasis added] in LOS provide *opportunities for action* [emph.], not the action itself. That depends on the *ability* [emph.] of social movement actors *to recognize and respond to* [emph.] the opportunities presented" (p. 215).

Drawing on earlier scholarship, De Fazio (2012) tries to overcome this problem of overemphasized structuralist explanations by differentiating between *stable* and *contingent* elements of LOS.[101] Such general distinction is questionable as some elements have structural

[100] Deng and Benney (2017) explain the selective nature of political opportunities as follows: "'Hard' opportunities are characterized by high operability, whereas 'soft' opportunities, due to disjuncture between their form and their function, lack the potential for practical implementation." (p. 101). Their findings also highlight the use of symbolic political opportunities in the efforts by activists to deliberately disrupt the elite alignment or in their words: "they [protesters] played different levels of government against each other, provided themselves with public space for communication and time for negotiation, and demonstrated an intimidating capacity to use the discourse of the state against itself" (Y. Deng & Benney, 2017, pp. 101–102).

[101] According to De Fazio (2012), *stable* elements include access and justiciable rights whose scope is governed by the requirements set forth in the law, *contingent* on the other hand is the judicial receptivity that is subject to less strict and codified rules. It is worth noting that De Fazio talks about US Supreme Court and therefore his assessment is based on an example from a common law jurisdiction where individual judges have much more space. For the impact of judicial activism in civil law countries see the influence of the SPC in China in the sphere of law-making (Ahl, 2015), for the attitude of local courts, the study of labor disputes where courts might be receptive to the already very pro-worker legal but at the same time might choose to limit some collective action potential in line with other priorities especially when it comes to the often used and preferred mediation over adjudication (F. Chen & Xu, 2012). I observe (partly codified) similar dynamics that lead courts in environmental matters to balance various interests against each other. Another dynamic is that of courts interpreting and applying

and dynamic components (see framing above). Furthermore, some tendentially more stable elements might easily be transformed into contingent ones and vice versa. As already mentioned above, legal standing might be subject to considerable interpretation as seen with the development of the standing requirements as seen throughout the development of the norm in the phase of Chinese Civil Procedure Law and the applicable provision on standing for NGOs in question (for more see 2.4 National legislation, p. 29) where courts were given more leeway over-interpreting the arguably vague standing requirements before the concretization through the respective amendment[102]. What matters is the degree of how flexible these elements are and their ability to move from one category to the other, which is difficult to predict. Therefore, the generalization is of limited theoretical value and must be adapted to the respective research context.

The tension between structural and less structural elements forms the cornerstone of criticism addressed by political opportunity structure theorists. As Goodwin and Jasper (1999) argue “the idea of political opportunities as ‘structural changes and power shifts’ suggests that structures are not so fixed as the word normally implies.” (p. 34) In other words, particular institutional arrangements of opportunity are subject to further negotiation affected by “strategic considerations, by the choices movement leaders and activists make” (Goodwin & Jasper, 1999, p. 53). In China, official and societal discourses on the past and future course of environmental protection, the promise, and the difficulty of the party-state to deliver environmental justice formed a generally affirmative attitude of the party-state towards solving the environmental problems and thus translated this attitude into more tolerance towards movements willing to assist the leadership in its goals, the rise of the civil society organizations with their own agendas and internationalization in the 1990s and the continuous development of the legal system have all contributed to an opportunity opening for the cohort of shifting alliances between NGOs, state institutions, the legal profession, academia, media, and the general public.

These new emerging proponents and opponents have pushed for a dialogue that spans over two decades and whose outcome has now become institutionalized as the environmental public interest litigation. Even this opportunity signal has been misread by private parties such

vague laws or when courts encounter “novel situations” (Chenguang Wang, 2006, p. 546) without proper guidance. The space of judicial receptivity that emerges from these sources (such as vague laws) forms how courts operate, regardless of whether they are the sole masters of their decisions.

[102] The present phase shows that there is still some room for courts left to resort to restrictive interpretation after the revised EPL went into effect and some choose to act on it. But the room is considerably smaller and can be easily overridden by higher instance courts, which results in a delayed case hearing rather than its complete dismissal.

as citizens (see ft. 69, p. 49), thus participants other than NGOs (procurators, government agencies) have since then explored and carved out further opportunities. As far as the ENGOs are concerned throughout this whole process, from what is observable some have chosen to remain silent, some have been active participants in the whole debate actively raising new issues and communicating their expectations vis-à-vis other participants. The historical trajectory of this opportunity and the development of legal requirements for EPIL described in Chapter 2 shows that what might be regarded as a relatively stable element open to a narrow interpretation by courts used to be a much more contingent element subject to experimentation. Furthermore, today's NGOs-plaintiffs have had a direct stake in shaping the concrete rules since the very emergence of this topic in legal discourse, experimentation with more open and closed designs (in terms of parties and issues raised) of EPIL until the various stages of fixation in national legislation and beyond.

Such limitations to strategy and the missing attention to agency approaches pointed out in the above-mentioned criticism are inherent both to the political as well as to the legal opportunity structure (LOS). The overemphasis on the structure has led researchers to put more weight on "resources" (McAdam & Boudet, 2012; McCarthy & Zald, 1977) and similarly LOS scholars to incorporate "resource mobilization" (RM) into their research designs (De Fazio, 2012; Vanhala, 2010, pp. 258–260, 2016, pp. 114–116). Furthermore, the lack of specific resources including but not limited to legal knowledge, financial means, evidence, governmental support, and connections can partly be made up by resorting to various *support structures* (O'Brien & Li, 2006; Stern, 2013; Wilson, 2015), which itself should be considered a supporting factor that helps to circumvent the lack of resources and become a more qualified plaintiff even beyond fulfilling the basic legal requirements. In EPIL, the participants draw on resources and support within the structures among civil society organizations to fill the immediate space of LOS. I, therefore, focus on the following types of resources that are used to describe the organizations examined in this thesis:

Discursive resources. I use *organizational framing and values* (see above) to show the mobilization of discursive resources of social organizations. Taken together with political resources they point to the character of GONGOs/NGOs but also offer evidence about the discursive adaption some organizations undergo. It is expected that GONGOs and NGOs with embedded in the administration explicitly invoke state-official discourse with corresponding framing of their organizational mission (realizing certain aims and values), function regarding the position towards the government together with the overall abstract function, framing of law

and legal channels[103]. This could also be true for other organizations with no or very little political resources as discursive resources are easy to accumulate low-cost investment with the appropriate provisions in the organizational charter that reflects the attitude adopted towards the government (either given with active-positive stance or missing with zero or neutral stance). The organizational charter is a must-have legal requirement for all registered social organizations. The individual items to be included in the Charter including the obligatory "mission" (宗旨) and "scope of activities" (业务范围) are required by Art. 14 of the regulations for social organizations (*guanli tiaoli*) since 1998 (Art. 14, State Council, 2016). The regulation foresees that a draft must be submitted upon registration and any changes in the Charter must be approved by the supervising unit. The provisions also lay down various violations including the cancellation of registration in case the organization oversteps the mission and scope set out in the Charter (Art. 30 par 1 item 2, State Council, 2016) but do not prescribe any specific requirement regarding the specific content. Therefore, the Charter or Constitution (as it might also be referred to) remains a self-regulatory activity (constrained by the possibility of the supervising unit to review changes ex post) on part of the social organizations and creates a binding document on which grounds the organization might be held accountable.

Political resources. The institutional background offers insights into connection to elites mainly through the *key leader* of the organization. Political resources are limited here to the direct resources through the current leadership background with administrative leaders in charge of the organization having these direct resources at their disposal. Due to partial availability, I mention governmental funding only in a handful of cases. Where the social organization is funded by the government, the funding serves as a proxy that it has a stronger governmental background and backing (GONGO) together with other factors.[104]

Where political resources are understood as outside connections without an insider in charge with direct links to the administration, I provide a description of how social organizations cultivate and engage in acquiring such connections to local/central administration in a handful

[103] The aim includes legal aims such as "advancing the environmental rule of law" as well but in order to be analyzable it is separated here. Similarly, the more functional profile of let's say "protecting environmental rights" is also subsumed under the framing of the law. The function is only limited *by the analysis* as described in regard to the self-described relationship adopted by the social organization towards the government and the overall abstract function. The functional profile is usually quite long as every organization, of course, assumes various tasks regarding environmental protection.

[104] For the distinction between GONGOs and NGOs and the sources of this methodology see 4.4 Categorizing plaintiffs, p. 85.

of cases but do not explicitly focus on this part as these connections are expected to be less formalized in most cases. The government-ENGO nexus is different from the support networks among the organizations themselves described further below.

Legal knowledge resources. Many organizations have employed legal professionals on their boards or set up and run their own legal centers. Legal knowledge at immediate disposal within organizations is useful in bringing cases, at some level adding to mitigating failure of complex cases and also serving as a point of contact to outside partners (law firms, other legal professionals). This type of resource can be substituted by extensive networking and partnerships with experts or by strong political resources in the sense that the government can offer some legal personnel as well.

Experience. Experience is counted based on the number of lawsuits before the 2014 revision of the Environmental Protection Law. Only a few organizations have been active in litigation before the nationwide standardization. This serves as an important reminder for organizations active the longest in EPIL. The experience prior to the EPL 2014 can also be taken as a special form of legal knowledge (early pioneers) through direct case filing that differentiates the few organizations from others active in the EPIL plaintiff scene as well. Such experience constitutes a part of the *legal knowledge resources* described above but is shown separately because it is limited to a few pivotal organizations active in EPIL early on.

Support networks (social organizations). As explained above, organizations can also close deficiencies in resources by pooling resources together and actively cooperating with other social organizations in this area. Especially where legal knowledge resources are scarce, the network can provide sufficient backing and assistance. As such existence of networks is not documented, the thesis focuses on mapping such networks, their nature, and the participants within these networks with a stronger focus on ties between the GONGO/NGO-plaintiffs and other closely connected participants.

3.5 Opportunities and Resources in Litigation: An analytical framework

The usefulness of opportunity as vocabulary and insights generated by LOS and RM introduced above becomes apparent when "unpacking" (O'Brien & Li, 2006, p. 38) the complex opportunities created by environmental public interest litigation. How wide is this opportunity

and where lie its boundaries? Who are the plaintiffs making use of the LOS in terms of organizational background and what do the resources they mobilize and the way they frame the litigation say about the qualities likely necessary for mobilizing the law? How do these plaintiffs adapt to and innovate legal opportunities by mobilizing various other participants and creating new networks? The first part focuses on the identities of this group of participants engaged in EPIL with the hypothesis outlined above, and the second on examining variables that likely influence the success of the lawsuit.

By streamlining the insights from LOS and resource mobilization against the broader background of judicialization of politics literature I arrive at the following key elements for examination regarding the overall success of the litigation:

Organizational type. I focus on NGOs' general relationship to the political establishment based on their institutional background and personnel structure (key leader). I include organizational framing and experience in EPIL prior to the national law in 2014. The plaintiffs are categorized based on various *resources* they mobilize as described above in Chapter 6 Plaintiffs.

I assume that GONGOs lie closer to the party-state in public interest lawsuits and their strength as plaintiffs is, therefore, greater because their participation in the institutionalized legal channel is backed by the central or local government. NGOs on the other hand rely more on other CSOs for support.

Government support. Lawsuits can be categorized to whom they benefit the most as local environmental spending or the environment in a more direct way are sought be remediated for the current or future losses. Such lawsuits have a higher chance of winning. Cases that receive support from the procuratorate and the administrative lead to more favorable results.

Type of outcome. Lawsuits are decided either by adjudication or mediation where both parties reach an agreement often assisted or confirmed by the court. Mediation should be quicker and yield more favorable results that lie closer to the claims (demands) raised by the plaintiff.

Court's direct influence. Court's direct influence serves as a proxy to illustrate the receptivity of the court and the level of discretion judges have at their disposal to weigh different priorities against each other in designated cases and perform this balancing test ("balancing act/balancing statement/balancing reasoning" as explained further in the thesis). The influence of this reasoning on the outcome is crucial.

4 Research design

This thesis has two main empirical parts which closely intersect with each other. In the first part I am concerned with the classification of plaintiffs in EPIL to analyze their organizational character and how they fit into the space provided by the legal opportunity structure and resources they mobilize to fill this structure and understand how NGO-plaintiffs make use of the above-outlined LOS. For the first empirical part, I qualitatively access the background of all plaintiffs in EPIL on a comparative basis based on all cases filed (Chapter 6).

In the second part (Chapter 7) I access the degree of success and use part of the classification (organizational type) to test for factors outlined based on the theory that likely influence the success of the case together with additional factors. This symbiotic approach thus combines theory-driven (deductive) and data-driven (inductive) approaches or in the language of a case study methodology it combines “theory-testing“ and “heuristic” case studies.

First, I describe the general methodological approach of this thesis. Then I introduce the dataset (population of cases) and the discussion of specific samples used in this thesis to answer the research questions. I give a short overview of the open-access official database China Judgments Online before discussing the definition and measurement of the outcome variable (*degree of success*).

4.1 Methodology

In both parts, the basic unit of analysis is the case which is understood as an EPIL lawsuit filed by social organizations at a given locality against one or multiple defendants. In addition, the first part of the analysis focuses on the respective social organization (basic unit of analysis) with some modest generalization as a goal.

Regarding the second empirical part, I calculate the outcome of interest (degree of success) based on a smaller sample out of concluded cases and evaluate the effect of the causal factors on the outcome of interest (*degree of success*).

A case-oriented research approach lies at the center of this study. The chosen methodological approach of this study is best described as *cross-case analysis*. Based on Gerring (2006), a case study is “the intensive study of a single case where the purpose of that study is – at least in part – to shed light on a larger class of cases (a population).”(p. 20) Cross-case means that the study comprises multiple cases belonging to a certain set and is concerned

with how conditions and outcomes vary across cases. The set is comprised of EPIL (concluded) cases filed by social organizations or with at least one social organization as a plaintiff. Thus in order to relate to these methodological concerns, in this thesis the analysis of the various sub-set of cases based on the causal factors is supposed to contribute to the understanding of the small sample of concluded cases, the small sample is supposed to give insights about the larger dataset of future (not yet concluded) cases (generalization within the boundaries of the case-study) but also about NGOs and legal channels in general (larger generalization beyond the case study, organizations studied here and further beyond EPIL) should public interest litigation in other areas become more readily available in the future or should further organizations choose to enter the courtroom as plaintiffs.

The case selection and an eventual selection bias are not a problem as I access the whole sample of concluded cases that is diverse enough regarding the causal conditions (either given, absent, or following different typologies to an extent sufficient for testing various explanations). The exclusion of certain cases is a pragmatic choice as for example certain crucial information that does not concern the causal factors but lays down the basis for further analysis is missing (for example precise plaintiffs' claims that would allow for the calculation of the outcome variable as defined in this thesis, for more see Chapter 4.5 Measuring the Degree of Success). However, the sample of concluded cases shows little variety in terms of won/lost (only one case lost) and therefore goes against the basic rule of necessary variety of the dependent variable (see King et al., 1994, pp. 129–132). The "negative" instances[105] (George & Bennett, 2005, p. 80; Ragin, 2000) needed to measure the effect of causal factors are not given. This makes the binary outcome unfitting to answer the third research question of this thesis on the causal factors and their influence on the outcome as the effect of one causal factor from another on the outcome of the interest would be indistinguishable. I partly reduce this problem by focusing on a degree of success where cases are more-or-less successful instead of won/lost (see Chapter 4.5). Certain cases including the negative case and significant outliers that do not conform to the theory and causal hypothesis are discussed in depth in the empirical part.

Social scientists have been long interested in the question of how to define and research causality. Scholars agree that causality is never complete. In the words of Gary King et. al (1994): "we can never hope to know causal effect for certain […] and we will never know causal inference for certain". (p. 79) This owes partly to the very essence of social science and

[105] Some researchers point out that "no variance" case studies might still be useful if "they pose 'tough tests' for theories or identify alternative causal paths to similar outcomes when equifinality is present" (George & Bennett, 2005, p. 76). However, even for these studies, the assumption of causal equifinality is given meaning that the dependent variable can have different causes.

boundaries to the experimental nature of social science that cannot control for the environment and vary the "context" of social life or historical events as the researcher wishes[106]. On the other hand, causal conditions are never complete and as the knowledge of the researcher builds up, the knowledge of causal inference is subject to change. These characteristics are inherent to all studies of causation in social science. In the context of this thesis, it means that in a given case we could go back and insert the particular conditions and in the very same case we could swap with other conditions and see whether the outcome is the same in that given case but instead, this thesis can only accomplish comparison across the given population of cases.

Nevertheless, different notions and conceptions of causation in social science exist, out of which I discuss the causality as described by Gary King and the one described by Charles Ragin. King et. al (1994) set forth two assumptions central to their vision of causality: 1) *unit homogeneity* (or at least the assumption of *constant causal effect*) and 2) *conditional independence*. The first is described as "the assumption that all units with the same value of the explanatory variables have the same expected value of the dependent variable" (p. 91). The latter means that "values are assigned to explanatory variables independently of the values taken by the dependent variables". (p. 94).

A different understanding of causation with slightly more emphasis on mapping the causal conditions rather than evaluating the strength of causal effects is outlined by Charles Ragin (Ragin, 1987, 2000; Rihoux & Ragin, 2009). Contrary to the first assumption on causality made by King et al. (1994), Ragin advocates *causal heterogeneity*. Ragin´s basic assumption is that causality is always complex in the sense that a *combination* (rather than individual independent variables) of multiple "conditions" leads to a certain "outcome" depending on the context. Therefore, the emerging causal conditions *can* be *asymmetric* as the presence or absence of conditions is only judged in combinations and therefore outcome can follow regardless of the presence/absence of one *single* condition. This assumption is based on outlining the causal conditions leading to major historical events such as social revolutions and the emergence of welfare states where typically some conditions remain the same but vary and multiple paths lead to a similar outcome. Thus, Ragin is concerned with (various) patterns across multiple cases with qualitative observations made possible and causality described as multiple and conjunctural (as opposed to a more linear effect of independent variables) with different clusters of cases depending on causal paths in relation to a similar outcome (in Ragin´s terminology "solution formula(s)").

[106] Again, as King et. al (1994) write "Political scientists would learn a lot if they could rerun history with everything constant save for one investigator-controlled explanatory variable" (p. 82).

The complex causality fits into the empirical analysis of sociolegal variables and the paths toward success in law cases. In the light of the discussion of necessary pre-conditions outlined by Ragin for the study of causal mechanisms, this study is less ambitious and is concerned with the identification of conditions in EPIL as the theoretical background only provides a causal hypothesis signifying possible presence but the hypothesis on weighing (at least in a qualitative sufficient/necessary condition in Ragin´s terminology) is not given in the basic theoretical framework. In the context of this study, I use Ragin´s terminology of "conditions" and "outcome" and focus on mapping the "conditions".

4.2 Dataset

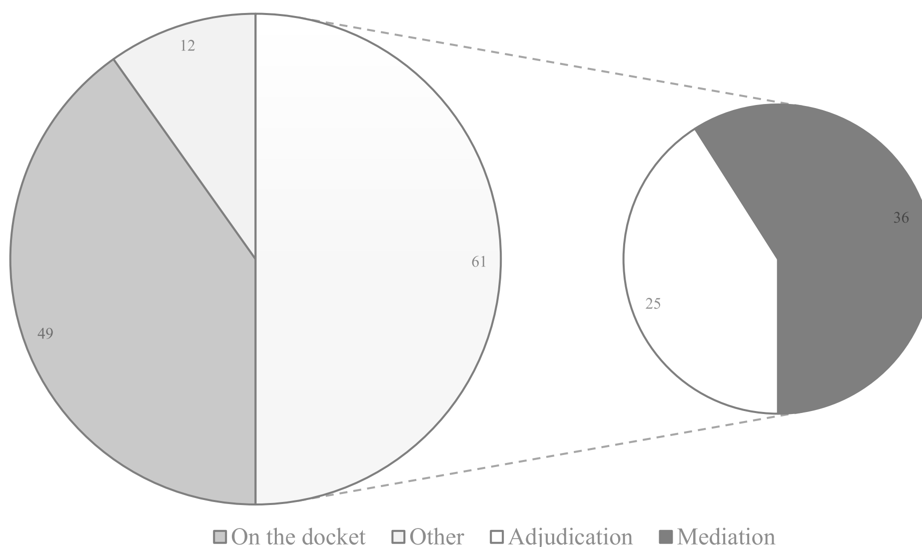
Arriving at the dataset included several steps. First, I searched by simple keywords "environmental public interest litigation" (环境公益诉讼), "civil" （民事）, and "social organizations" (社会组织) in legal databases: China Judgment Online (国家文书网) and commercial legal databases such as the Chinese edition of WoltersKluwer and Beida Fabao (北大法宝) – for case material collection by Zhang (2017) see the discussion Chapter 4.4. Second, I collected data by searching for the cases known from media reports and directly searching for plaintiffs' or defendants' names together with the location. Third, the results were then compared with the monthly report Environmental Public Interest Litigation Bulletin (环境公益诉讼简报) between 01/2015 and 08/2019 issued by FON on their website and necessary additions made. The report[107], although not a neutral source given that FON is one of the main driving NGOs behind the EPIL, proved to be a useful source of information and corrective in completing the dataset as the report seeks to inform on all (pending and concluded) public interest litigation cases with the involvement of ENGOs.

As for mediation agreements, the SPC Interpretation of the Supreme People´s Court on Several Issues Concerning the Application of Law in Environmental Civil Public Interest Litigation Cases (see *Interpretation I*, SPC, 2014) stipulates basic contents of the agreement (whether an out-of-court settlement or in-court mediation) and places emphasis on availability by requiring court no announce the contents of the agreement in given period and stipulating that mediation agreement in public interest lawsuits "shall be disclosed" (应当公开; Art. 25,

[107] •The report is issued by FON and is available on their website (FON, n.d.). The following reports were crosschecked: 08/2019-01/2019 (complete), 12/2018-01/2018 (complete), 12/2017-01/2017 (03/17, 11/17 missing), 12/2016-01/2016 (11/16, 08/16, 07/16, 06/16, 03/16, 02/16, 01/16 missing), 12/2015-01/2015 (complete).

Interpretation I). Some documents such as mediation agreements (调解书)[108] were directly retrieved from ENGOs' own websites[109]. The authenticity of such scanned documents is given as they carry the official seal of the court on the last page together with the hand-stamped reference that the copy does not bear any difference to the original (本件与原本核对无异), have a corresponding page numbering and unique case identified on the front page. Finally, the documents were not available in full in every case I reviewed – sometimes none were available (although the case identifier was known), sometimes only the second instance decision (in case there was an appeal) was available, in a few cases the contents of mediation agreement remained undisclosed or was published on the respective court's website. Where important details, for example, in the courts' own online announcement were missing, I excluded the cases in further analysis (see p. 89).

Table 2 Cases by type of outcome



Note: There are 119 cases with 122 outcomes (left). Concluded cases amount to 58 cases with 61 outcomes with roughly 40 % of these outcomes reached by adjudication and in 60 % by mediation (right).

[108] This type of mediation resulted in written documents confirmed by the court. There are also other kinds of mediation that are conducted on-site or informally. There is no way of saying whether such cases occasionally do not happen as well with public interest litigation. Based on the written evidence it cannot be assessed whether and in how many cases plaintiffs, defendants, and courts engage in such practice.

[109] See for example http://www.hj123.org/article.php?id=348

The dataset consisting of EPIL lawsuits between 08/2014 and 07/2019 is ordered into cases. Each "case" is counted as *one unit per geographical location* and includes one or more lawsuits filed at the given location (first instance court used as the basis for "location"). Typically, each case has only one *type of outcome* (on the docket, mediation, adjudication, or other) including minor exceptions with more outcomes (see Table 2 Cases by type of outcome, above). The "other" category includes withdrawals, case rejections, and otherwise cases that were concluded but the document or verified statement such as the court's own published statement or multiple sources confirming how the final verdict (adjudication/mediation) has been reached are missing. *Concluded cases* are those where an agreement has been reached either through adjudication or mediation and not followed by an appeal against the final decision/agreement (for more on this sample see 4.5.1 Sample).

Sometimes plaintiffs initiate more separate lawsuits against multiple defendants (each lawsuit then deals with the alleged scope of pollution caused) and the court decides each lawsuit by issuing more separate documents (however all dated the same), sometimes plaintiffs file one big lawsuit with many defendants and only one decision is issued. Both instances are counted as one case each rather than counting the individual lawsuits (party A against party B, party A against party C) – by that method, the overall number of EPIL lawsuits would be higher than the number of cases as understood here.

I follow the upper-mentioned definition of a "case" in order to make sure that in one locality cases filed by one group of plaintiffs in one location at the same time (one case) are not counted multiple times and big cases do not have to be split (one lawsuit against five defendants would need to be counted as "five cases" by that method). The only exception are instances where more lawsuits belonging to one case are concluded in a different way e.g. one of two lawsuits ends up being mediated, the other adjudicated.[110] Counting the cases in this very instance as one would cause confusion when measuring the success of the case. In this instance, there are treated as two cases but receive the same case number (#14.1, 14.2) to indicate that they somehow belong together.

Altogether there are 119 cases with 122 outcomes. Out of these 58 with 61 outcomes (counted by type of outcome) are concluded (see Table 2 Cases by type of outcome p. 82). The number of cases varies in the chapters depending on the focus – in the chapter on plaintiffs where the EPIL activity of individual organizations is examined - those cases filed by more

[110] I indicate this belonging of more cases to one by numbering (e.g. 14.1, 14.2 both belong to the same case), see Table 13 List of concluded cases for analysis, p. 214.

than one organization are split (14 collective lawsuits[111] split as each organization participated) – see Table 3 Civil EPIL cases filed per plaintiff, p. 102. In Chapter 7 the quality of the outcomes is measured – therefore all 61 serve as the basis for further inquiry.

4.3 China Judgments Online

An important part of the data collection for this thesis took place on the publicly available online court repository. Therefore, this official database should receive some consideration here. Rachel Stern (2013) writes at the beginning of her comprehensive study on environmental litigation: “The biggest problem is that there is no comprehensive central repository of court decisions.” (p. 10)[112]. The court verdicts analyzed in this paper were retrieved from the open-access database of court decisions “China Judgments Online” 中国裁判文书网 available at wenshu.court.gov.cn. The website was launched by the Supreme People’s Court (SPC) on July 1, 2013 (Liebman et al., 2017) and since January 2014 all four levels of courts are required to upload court decisions within seven days pursuant to the Online Publication Regulations (最高人民法院关于人民法院在互联网公布裁判文书的规定, referred to as “Regulations”) issued by the SPC (Art. 8, SPC, 2013 quoted in Ahl & Sprick, 2018, p. 10).

The types of legal documents that can be retrieved from the database include criminal, civil, and administrative judgments (判决书) and other judgment documents (裁判文书). such as payment orders and state compensation decisions as specified by the revised 2016 Regulations (SPC, 2016, Art.3; quoted in Ahl & Sprick, 2018, p. 7). The database is by far the best non-commercial resource for judgments and judicial decisions in the PRC available as it contained more than 51 million legal documents in August 2018[113]. As pointed out by Ahl and

[111] The term “collective lawsuit” (集体诉讼) is used to refer to lawsuits filed by more than one plaintiff. In the context of this thesis it usually means a case filed by two plaintiffs, which always involve at least one social organization as plaintiff. Normally both plaintiffs are social organizations, this thesis also includes two cases filed by local governments together with one social organization as a plaintiff.

[112] The political motivation behind disclosing such a vast resource of information to the public can be linked to the overall commitment of the Chinese government to increase transparency, accountability, and oversight in order to combat corruption and nepotism through the exertion of pressure on local officials and civil servants and to improve local policy implementation and law enforcement (see Distelhorst, 2017). The existence of the database also further contributes to the long-term goal of legal and judicial professionalism and fosters legal education. The development of this database and further (real and estimated) implications of this database for the public and for legal professionals are discussed by Ahl and Sprick (see Ahl & Sprick, 2018).

[113] Last retrieved on 2018 Aug 22, the exact number amounted to 51,002,581 legal documents. As of October 2021, the number of documents reached 123,925,781 which shows that not only new judgments were added but

Sprick (2018) “overtakes almost all Western liberal constitutional systems with regard to the accessibility of full-text court decisions” (p. 4). Nevertheless, there are several important limitations pointed out elsewhere that should be kept in mind when working with the database.

At first, there are regional disparities and a varying degree of compliance as pointed out in other studies (Ma, Yu, & He, 2016; quoted in Ahl & Sprick, 2018, p. 6), which suggests the incompleteness of the database. Liebman et al. observed that documents get occasionally deleted (Liebman et al., 2017).

Secondly, there are important exceptions for the publication of legal documents. The so-called “cases inappropriate for publication” - where state interest or public security is at stake or where there is a danger of affecting social stability like cases involving terrorism or ethnic issues - are to be excluded from online publication. Moreover, juvenile cases and divorce cases with the respect to the protection of the identity of minors and persons involved are to be excluded as well. However, the exclusion of these cases is decided by the court upon a request submitted by the trial judge or the collegiate bench (Ahl & Sprick, 2018, p. 7), these cases should still be listed in the database stating the reason for non-publication unless this would reveal a state secret (SPC, 2016, Art. 9, 6.; quoted in Ahl & Sprich, 2018, p. 7).

Third, pursuant to the revision of the 2016 SPC Online Publication Regulation publication of cases that are settled through mediation is only compulsory in administrative matters (see also the stricter rules that allow publishing mediation documents in public interest litigation cases). Mediation consists of an extremely important and widely used mechanism in Chinese law. This provision is especially crucial when dealing with environmental cases as the evidence suggests that settlements in environmental cases are often found through mediation that allows the parties to avoid high litigation costs and to reach more favorable outcomes. The above-mentioned disclosure and other bias should be kept in mind when working with the database and Chinese judicial decisions at large.

4.4 Categorizing plaintiffs

Drawing a clear-cut distinction between Chinese GONGOs and NGOs is by no means an easy nor a fully desirable goal as there is some overlap between those two. In general, organizations

also the old ones were uploaded rather gradually (compare Figure 1 Cases accepted by Chinese courts between 2003 and 2017, p. 56). Since September 2, 2020, China Judgments Online requires the user to set up an account by using (any country’s) phone number. However, this is more of a technical measure as the database had a lot of issues with speed when I used to work with it, which was partly the reason why I had to rely on commercial providers such as Beida Fabao to retrieve the documents. The resource can still be considered open access even after the introduction of user registration.

considered to be more "grassroot" without any clear-cut political backing that act as service providers for local governments maintain close and necessary ties with the local state. By the same logic, there is scarce but striking evidence that organizations traditionally perceived as GONGOs (or party-organized governmental organizations; PONGOs) are able to challenge the government´s narrative by exploiting autonomous spaces even against the interests of the party-state (C. L. Hsu, 2015). This line of argument serves as an important reminder of how to perceive the respective organization in the larger third sector (nonprofit sector including charities and community groups). Rather than advocating a static and overly deterministic perspective that fails to capture the changes and developments these organizations undergo, it is necessary to view social organizations as a stakeholder reacting to various opportunities, challenges, and pressures in a changing space.

My analysis cannot fully capture the diverse landscape of Chinese social organizations as I aim for a moderate generalization, therefore I follow the prevailing dichotomy of GONGOs vs. NGOs bearing in mind the differences of each organization or a subset of organizations alongside the "blurred lines" between Chinese GONGO and NGOs and even within those general types.[114] Hasmath, Hildebrandt and Hsu (2019) in their paper provide a basic characteristic of a GONGOs as follows: "A GONGO can be […] distinguished by both how it began (organized at the government's behest), and how it is lead (of the government's choosing)" (p. 269). I side with this broad perspective on GONGOs and my approach closely follows the one employed by Zhang and Skoric (2019). They characterize the organization as a GONGO if at least one of the following three criteria is met:

> *(1) whether the key leaders of the ENGOs were political officials; (2) whether the organizational committee members were in the political elite; (3) whether the organization's financial resources were mainly provided by the government* (N. Zhang & Skoric, 2019, pp. 401–402)

I also add the organizational values and framing as pointed out above to the analysis (for more see Chapter 3.3.3). I further categorize the organizations either as central (registered in Beijing) or local (registered outside of Beijing). If the organization's name contains province (省) or (市) and the sponsoring unit is at the corresponding level (province/city), GONGOs are either categorized as provincial/sub-provincial. For NGOs, the level is similar with only central/local

[114] Similarly, I also avoid hybrid forms such as QANGOs (quasi-autonomous non-governmental organizations). Hasmath, Hildebrandt and Hsu (2019) in their study also acknowledge a greater diversity of GONGOs by differentiating between "prototypical" and "spun-off" (Table 3, p. 279) GONGOs with government origin but weak ties to the government.

based on the registration. For the geographical scope (national/local) I use the description by the organization itself (e.g. local groups or offices) and a quantitative threshold of EPIL cases filed in at least 2 different provinces than the place of registration within the examined period.[115] It is worth highlighting that although the Regulations (State Council, 2016) prohibit organizational branches to have their own legal personality and social organizations (*shetuan*) are prohibited from establishing regional branches (地域性的分支机构), many do on a non-legal in the sense that the local organization has its own legal status, yet the quasi-institutionalized basis for example as work groups (*gongzuo xiaozu*) or volunteer groups. Those cases filed in other provinces outside the place of registration indicate increased mobility of social organizations compared to the limits posed by the registration requirements.

4.4.1 Sample

The sample of Chinese NGOs analyzed is derived from the dataset of retrieved 118 lawsuits filed from a period of five years between August 2014 and August 2019. There are 27 NGOs that are active in the lawsuits and drawn from the data and mentions of the lawsuits as described above in the Dataset. This sample was then enlarged by available information on the institutional set-up of the plaintiffs. Besides the cases and judicial documents, starting point of inquiry on registration, basic information regarding registration can be found at ChinaNPO (chinanpo.gov.cn), a publicly accessible official central database called *Public Service Platform for Chinese Social Organizations* (own trans., PSPCSO 中国社会组织公共服务平台) operated by the MOCA. For more on registration see the discussion in Chapter 6. For other substantial information I drew on organizational websites, public WeChat accounts, annual reports and for some organizations where information was scarce also on the JICA database (JICA, 2011)[116].

[115] This is, obviously, only an auxiliary measurement (where organizational branches exist). It is an imperfect and retrospective measurement as the first case filing would not catapult the organization from local to national scope. I believe it reflects the corresponding value of the organization better than the self-description (self-characterization as "national" in scope) alone and the fluid character is best captured as a static value at a given point of time (seen from today's point of view: the year 2019). This is helpful, especially for local NGOs (that are all peripheral in the sense that their place of registration is out of Beijing). It is likelier that social organizations that have filed numerous cases outside of their home province have had experience and ambitions to act nationally even before.

[116] JICA database has been used in other studies on ENGOs and refers to the following: "ENGO database constructed by the Japan International Cooperation Agency (JICA) in 2011, which is based on the in-depth surveys of 201 environmental NGOs across 30 provinces in mainland China." (N. Zhang & Skoric, 2019, p. 400).

Many of these organizations achieve a high degree of transparency and release a lot of information about their activity themselves so that retrieving additional data was not problematic. Where the sources were scarce, the court document (either a judgment or mediation agreement) with the entry in the official database proved to be the few pieces of information available.

4.5 Measuring the Degree of Success

The trial is either won or lost. In a mediation agreement signed by all parties and tendentially preferred by courts over adjudication, the outcome ideally constitutes a compromise acceptable to both parties. As already mentioned, plaintiffs in EPIL cases are quite limited in number but when they do make it into the court, regardless of the case being concluded by adjudication or mediation, they prevail in the vast majority of cases – in a single case[117] out of 58 concluded cases with 61 outcomes did ENGO lose the case as its claims were fully rejected by the court. However, such a simple binary won/lost dichotomy does not say much about the *success* of these cases. What kind of claims were raised? Which claims were met, which were not, and why? How were some of these claims transformed during the litigation? For these questions, one needs to go below the surface of winning and losing.

He and Su (2013) in their landmark study of 2724 adjudication documents measure the success by focusing on who bears the litigation fee and the awarded amount in the end. Like their study but dealing with much fewer cases and therefore being given more room for detailed measurement, I use *plaintiff's demands* (PD) in order to refer to the claims (诉讼请求; sometimes referred to as demands in this thesis) raised by the plaintiff at the beginning of each lawsuit and *court's decision* (CDe) to measure the final decision or points agreed in the mediation agreement under court´s assistance. This difference between PD and CDe is expressed in the *degree of success* (min= 0, max=1) as a percentage. The success is closely modeled on the claims including one or more of the maximum five components: 1) monetary demands, 2) litigation expenses on side of the plaintiff, 3) other non-monetary demands (A, B

[117] Case #12; FON vs. Beijing Dushi Fangyuan Real Estate Co., Beijing Jiuxin Property Management Co., see table Table 13 List of concluded cases for analysis, p. 214.

demands), 4) (public) apology[118] as a special category and 5) other (for special agreements that exceed the scope of the demands as provided by the law)[119]. A detailed explanation follows.

Arriving at the measure for a basic understanding of success included several steps. First, I created a text summary of the PD and CDe for each case. Although the availability of the binary outcome (won/lost) formed the necessary basis for all concluded cases, in some instances the information proved to be too vague and insufficient to reconstruct the precise claims. Altogether there were marked 18 out of 60 concluded cases where the PD or CDe is not coded due to the lack of precise information in these cases. In all coded cases the PD and CDe are based on primary documents unless otherwise indicated. For cases where there was an appeal and for some of those where there is only the second decision available in full length, the higher court always provides a very detailed summary of the demands, plaintiffs' and defendants' arguments, and the court reasoning of the previous lower instance.

In the second step, I coded the textual demands into six letters (A-F) and five categories (see Table 17 Coding manual for claims, p. 222). The scope of the possible claims is based on Art 18 (SPC, 2015), although in some cases plaintiffs differ in the precise formulation. Zhang (2017) has created a database listing all EPIL cases and coded the claims in a similar way to how I simplify the rich textual material in the documents. The key difference is that he does not measure the degree of success but merely lists all filed lawsuits with coded "main demands". Certain demands (demand B) are mutually exclusive in their category meaning that for example restoration is either demanded or the payment of the restoration fee is demanded, which is often in cases where the plaintiffs are either not sure whether restoration could be possible or wants to cover for the circumstances under which the defendant fails to fulfill its duty. Some plaintiffs demand that the polluter either restores or pays, hereby providing two options to choose from in their way of formulating the demands[120].

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[118] The apology is always public, in most cases it is stipulated that the defendant shall perform the apology in provincial or even national media. Only in one single case, the public character of the apology was performed in court (see #54 当庭向[...]公众赔礼道歉). Even in this case the plaintiff originally demanded an apology in the media but later changed the demand as the case progressed probably due to favorable changes on side of the defendant who had halted the production. The court ordered the defendant additionally to submit a written apology to the court as well.

[119] Zhang and Mayer (2017) refer to such innovative mediation agreements reached via mediation as "original agreements" (p. 224).

[120] Nevertheless, in some cases (#2, #45) based on the exact wording, the plaintiffs raise both demands. In case #2, the *success* of the demand is treated like the either-or construction and only one of the demands can be successful. The same case is treated differently and counted as two demands in case #58 where both parties agree both on restoration and the payment of the restoration fee simultaneously. What such an agreement means, for instance, whether the financial amount is reduced by the active duty on side of the defendant, is unclear from the mediation agreement. In case #45 the additional difficulty is that the plaintiff raised among others B, B+ (sum x) and C (no sum yet) demands, yet the court ruling met the B+ demand as a C (compensation) and left the C demand as raised by the plaintiff unanswered. This shows the blurred lines sometimes between what are fundamentally

The third and final step involved counting the total sum of PD as a *possible score*, i.e. *what could be reached*. This was then contrasted in percentage points with the CDe thus *what has been reached*. This contrast led to a value typically between 0 (= no demands reached as raised by the plaintiff) and 1 (all demands reached as raised by the plaintiff).

It should be noted that I am more concerned with understanding the immediate outcome of the legal proceeding rather than the effect in the post-litigation period (enforcement). As mentioned earlier, even losses can be understood as a certain kind of achievement as lost cases might point to the problems and through media reports and sympathizers among elites create further pressure on the very rulemaking. This kind of perception is often highlighted by the ENGOs themselves, especially when it comes to challenging the boundaries of the EPIL for example in the "grey area" of administrative litigation[121]. For some of these cases, it is important to acknowledge this symbolic and pioneering aspect of administrative EPIL and constant boundary-testing by environmental NGOs.

There is a pitfall with modeling the success based on the demands and that is that these demands can undergo substantial changes during the trial or even be subjected to the interference of the court (which should be noted down in the judgment). In certain cases, demands are not precise enough at the time of the case filing, in that case, I assume that they were met as the plaintiff did not object and for example, in the case of monetary demands, the precise sum emerged throughout litigation because of expert appraisal. The change of demands during the trial is rare but where it occurs it is noted in the court documents as illustrated in a major case filed in Jiangxi by ACEF against multiple companies held responsible for the water pollution of Xiannü Lake (#45). The case took 440 days to adjudicate which is slightly below the average of 450 days and above the median of 404 days (see also Figure 5 Length of concluded cases, p. 165). Nevertheless, the original demand by ACEF was changed from roughly RMB 22 million restoration fee up to the range of RMB 86 to 96.8 million based on a different method of calculation. Similarly, in another case (#38) filed by CEPF, the plaintiff demanded RMB 100,000 at the time of filing, which was later changed into RMB 10,890,000 after an expert appraisal was concluded and more precise information became available. The changes during the trial are considered here and taken as *PD*. However, it is much more difficult with certain non-monetary demands, especially when the time span is longer and certain

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different demands. Given the controversy during the trial around the alleged sum in C, it is likely that the C demand was not met at all.

[121] Nevertheless, some ENGOs that act as plaintiffs try to challenge the administrative inaction or wrongdoings via administrative public interest litigation, and their cases get accepted; see for example cases 43, 107, and 108 in the database compiled by Zhang (2017). In minor instances a lower-level administrative is challenged via civil law litigation, these cases are included and examined in this thesis.

demands are thus fulfilled at the time of the decision. I deal with this factor in detail when explaining the reasons behind a higher or lower degree of success and in relation to individual cases.

4.5.1 Sample

Altogether there are 60 concluded cases out of the dataset that form the basis for the sample. They are numbered from 1 to 58 because cases #14.1, #14.2 and #18.1, #18 respectively belong to the same case but end up with one being litigated and the other mediated, therefore they are treated separately. In 18 cases (mostly concluded by mediation, with only 2 cases out of 18 being adjudicated), the demands could not be coded as mentioned above. That leads to the sample of total 42 cases with both PD[122] and Cde coded.

Because the sample consists of concluded cases only, it does not fully cover all plaintiffs that have joined EPIL later (such as HYKJ with no prior case filings and ten cases in the second half of 2018) and some one-time minor plaintiffs are also not represented in the sample [123] with altogether 20 out of 27 organizations represented in the sample. HYKJ is the only major exception, the proportion of other major plaintiffs roughly matches those included in the dataset with some changes between decrease of 5 percent and an increase of 3 percent in the overall proportion.

Regarding the geographical distribution of all cases, the proportion in the overall population (from highest number of cases to lowest: East China, South Central, South West, North China, Northwest, Northeast) does not change in the first top two regions with most cases (East China, South Central, North China, Southwest, Northeast) with Northwest China being non-represented. The number of concluded cases in East China accounts for 46 % (thus increases in proportion by 12 percentage points) in the sample compared to the overall cases filed.

In terms of the outcome, the sample is slightly more biased towards the adjudication, with the ratio of mediation 48 % (20 cases) vs. adjudication 52 % (22 cases), that is mainly caused due to the selection of available data (in the sample of concluded cases mediation rate reached 59%).

[122] PD is coded in 43 cases altogether including Case #48.

[123] Plaintiffs not represented in the sample of concluded cases are as follows: Fujian EPVA, Green Hunan, Guizhou Youth Law Society, Jiangsu EP Federation, Qingzhen EcP Federation, Shandong EP Foundation, Shaoxing ECPA, Taizhou EP Federation, Xiangtan EP Association, Zhenjiang Society for Environmental Science, Hangzhou ECA, CMCN.

5 State of the Art

In the following two sections, I summarize the broader state-of-the-art literature on opportunities for CSOs and a narrower state of the art focusing on the scholarship on EPIL.

First to the broader literature. Most acclaimed studies have failed to fully recognize the legal opportunity (even beyond public interest litigation) for Chinese CSOs. Recently, some scholars have started focusing on broader networks that include NGOs and NGOs' emphasis and links to the law mostly supporting private persons' claims. Interestingly, scholars of contentious politics have noticed the public interest when it comes to protest challenging the assumption of localized contention. Public interest litigation is situated in this environment as well but the opportunity for civil society organizations and their utilization of legal action remains unaddressed in the existing scholarship.

Secondly, in the narrow state of the art, much attention has been given to the discussion of stringent legal requirements for EPIL. Some studies that go beyond the law on paper have been mostly occupied with the discussion of one single plaintiff or single case studies with scattered observations without a unified framework of analysis.

5.1 NGOs: opportunities, linkages, litigation, public interest

Timothy Hildebrandt has identified numerous opportunities for civil society organizations (Hildebrandt, 2013). The use of opportunities results from the corporatist arrangement for engaging CSOs to meet certain demands. These channels are strongly dependent on the ability of the CSOs to adapt to various opportunity openings such as through "policy advocacy" (political opportunity) or "social entrepreneurship" (economic opportunity) or "having a friend in the government" (personal opportunity) (Hildebrandt, 2013). Similarly, litigation as a strategy and action is not featured "on the menu" of the existing repertoire (Teets, 2014). Although the rights' protection is also at the center of more recent studies on CSOs (Hildebrandt, 2015; Hildebrandt & Chua, 2017), these and the aforementioned studies do not mention or elaborate on active litigation undertaken (either by formulating claims or threatening to do so) by CSOs. Yet these formal channels of participation opened for environmental NGOs have created a major legal opportunity for Chinese ENGOs even with the much longer existing and wider legal aid area where social organizations provide support to litigants other than themselves. This trend has escaped the attention of scholars, which probably has to do with the

quite recent alleviation of public interest litigation as an active strategy to a small number of CSOs but has been long present with other forms of litigation that these organizations have participated in or supported.

NGOs concerned with rights protection have been active in linking with lawyers and providing assistance to individual plaintiffs and plaintiff communities (Bondes, 2019; Steinhardt & Wu, 2016; Stern, 2013). Yet, scholars who emphasize participation in formal legal channels do not regard litigation as an action per se that has become a part of the available repertoire to at least a certain community active in environmental protection. The use of the law is treated as always in connection with the "affected communities" with NGOs merely functioning as "external linkage" concerned with providing assistance in searching for partners or offering legal knowledge (Bondes, 2019) or playing a "reinforcing role" (Steinhardt & Wu, 2016) in support for the goals of environmental protests. As such, NGOs and lawyers are made a part of a larger "networked contention" (Bondes & Alpermann, 2019).

Lying closer to the policy-advocacy, some recent studies have discussed the move of Chinese ENGOs into the lawmaking area (Froissart, 2019; Popović, 2020), yet the focus on litigation is still missing. In addition to exploiting formal avenues of participation, some scholars have noted down the trend to move towards more inclusive forms of governance (X. Gao & Teets, 2020; Teets, 2013) and for the CSOs to partially seek to institutionalize and strengthen alliance among CSOs active in environmental protection such as the Zero-Waste-Alliance (Lu & Steinhardt, 2020). These trends highlight the reliance on formal channels, in the case of the street protest also in combination with informal channels (Steinhardt, 2019) or alternative forms of organization ultimately designed to influence environmental governance. Yet these studies also do not seek to explain the litigation as part of the "repertoire" of CSOs and the networking that occurs among them in the pursuit of legal opportunities.

Zhan and Tang (2013) find that following the opportunities to participate in lawmaking, and to utilize new laws on EIA and information disclosure: "[t]here has been an increase in ENGOs use of legal and administrative channels to express their concerns and justify their actions" (p. 395). Another study that explicitly recognizes this trend and puts it into the repertoire is by Scott Wilson in which he compares the exploitation of legal avenues by CSOs in China concerning environmental pollution and HIV/ADS. He argues: "The shift to litigation and other legal means to protect citizens' rights […] is one of the most recent developments of civil society organizations and reflects a new element in their repertoire of actions that straddles contentious and institutionalized politics" (Wilson, 2015, pp. 10–11). This is also the focus of this thesis. As insightful as the study Wilson and the trends noted down by Zhan and Tang are,

none of the authors' focus lies on litigation where CSOs stand as plaintiffs in the public interest. Instead, the main part of Wilson´s book focuses on the actions of private citizens with the support of CSOs and lawyers by providing legal aid (for labor NGOs see also Lee & Shen, 2011) and representing the victims' community (on this see Rooij, 2010; Stern, 2013).[124]

The pursuit of *public interest* has been outlined in the context of contentious action. By examining various protest events between 2007 and 2013, scholars were able to show that protesters mobilize for the pursuit of public goods (Steinhardt & Wu, 2016) and "pursue goods beyond immediate concern of those involved" (Steinhardt, 2019). Steinhardt (2019) identifies what he calls an "Environmental Public Interest Campaign", which he describes as: "a form of contention in which citizens mobilize in the name of large local constituencies to change developmental policies that are perceived to be against the public's interest" (p. 247). But what if CSOs themselves take on this role to defend the environment through courts and become plaintiffs in "the name of the public" (Steinhardt & Wu, 2016) without necessarily having to establish a connection to the affected communities?

5.2 EPIL: Emergence, plaintiffs, outcomes, factors

Most studies examining EPIL in China have focused on the emergence and history of the procedure, the discussion of procedural design (standing to sue), and the implications for civil society organizations, as well as the rise of alternative plaintiffs such as procuratorates in the area of administrative law. For an extensive discussion of many Chinese-language comparative legal studies see Chapter 2.2 Legal discourse. Some scholars criticize the procuratorates' ability to sue the administration (for more on procurators see Chapter 2.5 Post-EPL development) and outline the potential danger of "window dressing" and the missing "checks and balances" when it comes to the designated administrative agencies and procuratorates, their political motivation to reach quota and view their inclusion into the arena of environmental justice as "an action ill-suited for the purpose" (Q. Gao, 2018, p. 59). Similarly, the procedure receives a lot of criticism for the stringent requirements placed on CSOs, their lack of oversight over the implementation, and the financial burden placed on the plaintiffs (Q. Gao, 2018).

This perspective stands in a contrast to studies that regard procuratorates to be in a potentially better and more impactful position. Situated as a comparative case study between

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[124] An exception is a discussion of a few older landmark public interest cases mostly in the context of EPIL in local experiments (see 2.3 Local experiments, p. 26) and a section that focuses on the institutional design of EPIL with some relevant observations discussed in the narrow state of the art in the following subchapter.

Brazil and China, Rooij and Shi (2016) examine 24 cases of civil litigation in the public interest filed by procurators between 2003 and 2012 and thus before the empowerment of procurators in 2017. By emphasizing the enforcement gap in environmental law and the weakness of local EPBs to adequately implement the law, the authors hypothesize that due to their number and geographical scope procurators in China could make use of their unique position to defend public interest but find that "the Chinese prosecutors have gone after the lower hanging fruit, fulfilling limited regulatory need and having almost no regulatory effect" (Shi & Rooij, 2016, p. 54). The case filing by procuratorates has risen dramatically in recent years (see 2.5 Post-EPL development) and the earlier observation of "using anti-aircraft guns to kill a mosquito" (Interview in the Chinese press quoted in Stern, 2014, p. 65) and in cases attributed to CSOs going after the "low-hanging fruit" (Q. Zhang & Mayer, 2017) against already criminally or otherwise sanctioned defendants is also a feature of EPIL cases noted in the scholarship. The case diversity in the dataset is huge with petty offenses pursued by plaintiffs with a strong governmental affiliation but it is not easy to identify the "easy" case. It is therefore tempting to view such cases as pure "window dressing" and some cases in this thesis such as the first EPIL lawsuit in Nanping conform to having a certain "learning character". This is partially expected in line with the relevance of judicialization of politics and also in China with a novel procedure first going through a phase of experimentation by parties active in EPIL in seemingly easy trials[125], which seems more of an exception than a rule. This is why this focus of scholars in trying to argue for the relevance is not contextualized and does not hint at the important questions: scholars do not view the magnitude of the cases in relation to some of the less resourceful organizations that file them, the financial resources spent by these plaintiffs that endanger their existence and challenges posed to the court together with the difficulties to held polluters accountable via civil law and social organizations as plaintiffs often entering a hostile political environment dominated by local governments.

Closely connected to the aforementioned inquiry is the interpretation of the *utility of EPIL, what it 'does' and what it 'could' do*. Based on the limiting scope and outreach, Gao (2018) shows that environmental public interest litigation has emerged as a complementary tool rather than a "panacea for China´s environmental crises" (Q. Gao, 2018, p. 73; similar in Carpenter-Gold, 2015; Q. Zhang & Mayer, 2017) for CSOs to hold private polluters accountable for pollution caused or to prevent future pollution but without targeting

[125] The case in Nanping was by this standard an easy one to win but very difficult to adjudicate with the court of first instance producing a nearly fifty-page long judgment and defendants challenging the standing of the plaintiffs to sue and filing an appeal. Moreover, plaintiffs also tried to get the most out of the case by holding administrative departments liable, an attempt that failed (for more see p. 51).

administrative departments. Fürst puts EPIL in the context of "using litigation to 'regulate through leverage'" (Fürst, 2016, p. 226) to pressure polluters into compliance.

Some of the authors here are concerned with the scope and evaluate EPIL as having a potential for changing the big picture and inevitably are disappointed when they evaluate the "*overrated* [emp. added] [nature of PIL] in terms of promoting and improving environmental justice" (Q. Gao, 2018, p. 74) and find out that social organizations will not fundamentally avert the course of the development. But this should be a starting point of the analysis (see p. 48) rather than a conclusion and further diverts attention from a close examination of the opportunity openings for plaintiffs that could provide the reasons why this is the individual case beyond institutional perspectives focusing on the legal requirements and from what stands out as the real innovation of EPIL: a limited number of social organizations have turned to courts in an authoritarian system for advancing interests in a given case in the name of the public. The procedure *could* also be utilized to "advance environmental protection goals by exposing potential legal problems and clarifying the law" (Q. Gao, 2018, p. 74). This assumption as well as a symbolic objective of many individual lawsuits echoes the earlier debate of legal activism to probe boundaries having a "symbolic value in challenging politics" (H. Fu & Cullen, 2009, p. 22). The symbolic aspect is present (almost by definition) in the use of law itself and with regards to the symbolic challenge in the handful of administrative lawsuits filed by CSOs despite the missing authorization and as I demonstrate in a handful of civil law cases discussed here with somewhat original claims. Finally, as the tale of any "bottom-up" legal activism in China, authors situate EPIL based on its utility as "a tool for monitoring compliance with environmental regulations" (Carpenter-Gold, 2015, p. 250), which resembles the function of the "fire-alarm" (Carpenter-Gold, 2015, pp. 254–255; Stern, 2011, 2013, p. 216)[126] in the sense of drawing the attention of higher-level officials to the local misconduct in a fragmented bureaucracy (also see the discussion at the beginning of Chapter 3). Although these lawsuits do undoubtedly function like this, it can hardly be considered the immediate aim of case filing. As already indicated, most of these studies went to publication before or right at the offset of the new EPL, and therefore their assessment is foremost based on the evidence that plaintiffs engage with a very limited number of cases – almost exclusively minor cases, with plaintiffs

[126] Strictly speaking, Stern (2011, 2013) does not talk about EPIL as the article had been written before EPIL became possible under the national law in 2015 but talks about civil environmental litigation undertaken by an individual or collective plaintiffs. She relies on extensive fieldwork between 2006 and 2009. There is, however, some resemblance in the role identified by authors between this type of litigation and EPIL, therefore the paper is included. Already in an earlier article Stern writes that "lawsuits are better as a fire alarm for extreme abuses than the potential centerpiece of a serious bid to improve environmental quality" (Stern, 2011, pp. 310–311).

becoming involved only after the pollution had occurred and with little possibility to prevent environmental harm.

Existing scholarship has also elaborated on some of the *characteristics of plaintiffs* engaged in EPIL. In one of the best studies to date that also relies on an extensive discussion of the cases Zhang and Mayer (2017) have argued that "it [public interest environmental litigation] has empowered *certain* [added emphasis] NGOs to litigate on long-lasting malpractices, thus by-passing the frequent inertia of local authorities." (p. 227). Some authors also refer to the various actors from civil society that participate in EPIL as a part of a broader "court-centered environmental movement" (Q. Gao, 2018, p. 74; Q. Gao & Whittaker, 2019, p. 328) without elaborating on the so-called *movement* and the characteristics of its participants in depth. Zhang and Mayer also categorize the plaintiffs based on their legal registration (purpose of the organization), geographical scope (national/local), and the general relationship of GONGOs/NGOs with the government including some examples and note the trend of "prevalence of GONGOs over grassroots NGOs" (Q. Zhang & Mayer, 2017, p. 214) regarding case filing. They argue that this might be due to "the support some of these organizations receive from local governments and, generally, their stronger financial capacity […] and human resources" (Q. Zhang & Mayer, 2017, pp. 214–215). Therefore, they basically outline some of the characteristics (though not all) examined in depth in this thesis derived from and embedded in the discussion of the LOS and resource mobilization studies.

Regarding the *outcome of EPIL lawsuits*, the most representative account to date that incorporates local court cases in their investigation notes that civil law EPIL cases constitute a win and plaintiffs rarely lose (Q. Zhang & Mayer, 2017). Success is defined as a legal win/loss where the plaintiff or defendant prevails.

As far as *high success* is concerned, scholars tend to favor different explanations, in general, for the sources of pressure on courts. Direct linkages between CSOs and media or even certain "non-relational channels" (Bondes & Johnson, 2017) like the public debate on the internet and outside media attention as illustrated in the context of environmental contention (J. Liu, 2016; Steinhardt & Wu, 2016)[127] could put pressure on courts as well. Undoubtedly links between media and NGOs do exist and social organizations also engage in increasing their visibility via their own channels (N. Zhang & Skoric, 2019) but the general influence media pressure (if generated) creates on courts remains unclear (Liebman, 2005, 2011) and a particular fuzzy condition to examine. It is also unlikely that the media would wage to pressure courts

[127] Steinhardt and Wu (2016) illustrate that information dissemination by NGOs can help protests by "providing vital argumentative ammunition" (p. 76) to protesters.

into a certain outcome as plaintiffs trust in the legal instruments and generally are expected to be rather careful about not disrupting the legal proceedings in lengthy cases and the media attention is short-lived and media are in addition subject to defamation litigation (on this point see He & Lin, 2017) and a range of ramped up criminal consequences[128] account for a "'chilling atmosphere'" (He & Lin, 2017, p. 395) that strongly discourages efforts to build pressure on cases by media reports before the final outcome has been reached. Therefore, the medialization of EPIL lawsuits is a complex issue with open questions on whether it takes place at all[129], when (ex-ante, during or ex post after the case was concluded), by whom (media type) and how (mere reporting, public blame put on polluters) and due to its complexity should follow a separate investigation.[130]

The characteristics of plaintiffs and choice of cases mentioned above already have some explanatory power for decoding the high success. Based on a discussion of certain major cases

[128] Criminal statutes like "picking quarrels and stirring up trouble" (寻衅滋事), "fabricating, intentionally spreading false information" (编造、故意传播虚假信息罪) and finally the harshest punishment for "subverting state power" (煽动颠覆国家政权罪, including but not limited to subversion by fabricating rumors and slandering) are commonly referred to in the legal academia as "pocket crimes" (口袋罪) to reflect their catch-all and often vague nature. Although these statutes are not entirely new and were also found in previous versions of PRC's Criminal Code in the 1990s, recent legislative changes have revamped the first two charges and have integrated them in the overall context of the still emerging cybersecurity legal framework in flux. These changes sought to appropriate the application of these statutes to suit the needs of information sharing in the digital age. To name a few recent ones that stand out among the bulk of various levels of regulatory and legislative documents the 'quarrel provision' was widened to incorporate those who incite such behavior in the revised Criminal Law (2011), to evaluate the criticality and impact of such information a quantitative threshold for consuming and forwarding this kind of information was added in the 2013 Joint Interpretation issued by the SPP and SPC (also mentioned in He & Lin, 2017) and various types of resulting situations that such information can bring about ranging from personal consequences such as mental illness to bad global implications and the damage of national image were listed there as well. 'Intentionally spreading false information' was considerably widened beyond its original limitation to economic criminality to include all kinds of situations that receive certain minimum traction by the Criminal Law Revision (2015), and the burden of responsibility for the release and transmission of such information on the part of network operators was firmly enshrined in the Cybersecurity Law (2017). Some of these challenges, the proposed and adopted solutions to cope with the consequences of rapid digitalization and the rise of platform economy are not unique to China but constitute a global regulatory struggle for striking a balance between personal freedoms, the freedom of speech while responding to "hate speech", "fake news", online fraud, etc. with a daunting task to conceptualize and sharpen the understanding of these often vague phenomena whose effect on society and state policy such regulations typically seek to mitigate. The resulting regulations have an impact on the state administrative, many areas of public life, and the way the platform industry operates and create a new form of responsibility division and interaction among these stakeholders often with transnational implications.

[129] My own observation suggests that apart from the landmark and big public interest cases filed by social organizations, most cases or issues that lie at the center of the case are not widely reported in the media aside from social organizations' own social media posts. Some cases are relevant as providing guidance and are selected as models by the SPC and thus suggest to receive certain attention among legal professionals and institutions.

[130] While gathering information on the (civil) EPIL cases, nothing suggested that the traditional media would add to any pressure by publicly shaming the defendants beyond fact-based reporting. In the very much medialized Changzhou case involving the poisoning of pupils, media pressure did not result in any significantly better legal outcome of the case. However, extra out-of-court pressure generated by the media could have prompted the local government to take necessary steps in dealing with the pollution. NGOs' own media accounts suggest that administrative litigation that basically remains a "flipping of the coin" with the lawsuit either being accepted or rejected also provides a different account of campaigning the utility of such lawsuits, thereby creating dynamic grounds for critical discourse and pushing for a change in the law as was the case in the historical development and the process that lead to the institutionalization of environmental public interest litigation.

prior to the standing granted by the EPL 2014, Wilson (2015) argues that being closer to the party-state, GONGOs enjoy preferential treatment both in terms of access to the courts and success and tend towards mediation rather than adjudication in a trial, which Wilson sees as potentially easier to succeed based on the very aim of mediation of bringing parties together and striving a favorable outcome. His discussion is based on ACEF, one major GONGO active in EPIL. It is tempting to interpret this as a settlement as showing "a degree of insecurity [of the central government with] trusting grassroots civil society organizations and activist lawyers to fight in the courts" (Wilson, 2015, p. 187). First, the role of ACEF is special even compared to other central GONGOs active in EPIL (see 6.1 Central GONGOs, p. 102). Yet, the discussion of 2009 case in Wuxi leads Rachel Stern to counter-observe that "[e]ven cases brought by the government-backed ACEF have been contentious" (Stern, 2014, p. 66). Moreover, prior to the environmental law amendment ACEF also had eight public interest lawsuits in 2013 in various places "rejected for lack of standing" (Carpenter-Gold, 2015, p. 264), which illustrates that even an organization in such a unique position backed by central ministries cannot always break the power relations in the periphery, especially in the absence of clear rules for standing. Second, EPL 2014 granted the standing to a wider range of CSOs that fulfill the requirements. Third, mediation is a general trend where ACEF does not particularly stand out by necessarily only resorting to mediation[131]. Wilson's observations offer valuable insights and guide the perspective on focusing on organizational and structural underpinnings when it comes to social organizations and litigation but as contrasted with other observations and studies need to be revisited in the larger context of the plaintiff community. This thesis takes a similar approach to Wilson and other studies by further outlining the political and other resources of organizations focusing on their relationship with the state but widens the scope of observable variables and plaintiffs. Contrary to Wilson (not doubting the distrust and of the CCP towards and caution regarding grassroots NGOs in general), the explanation that emerges is therefore that the resources identified and elaborated on by this thesis constitute crucial and necessary "haves" for organizations to succeed in EPIL. Where organizations do not possess such

[131] Mediation is somewhat of a broad term with various types of mediation existing and mostly treated as undistinguishable (for a good overview see Y. Li et al., 2018). Wilson (2015) does not specify what kind of mediation he discusses but he mentions explicitly a few out-of-court settlements and writes: "Unlike litigation, mediation receives little publicity (sometimes the parties must agree not to publicize the results of mediation) and attempts to maintain harmony in society. Such pressure is consistent with an ongoing 'model judge' campaign […]" (p. 195). However, there is also another mode of mediation, i.e., in-court mediation where the court issues a mediation agreement agreed by all parties. Such an agreement is binding like a judgment and due to the public nature of EPIL follows stricter requirements for publicity at least regarding the basic facts and points of the agreement. My sample of concluded cases shows five adjudicated cases and three mediated cases with a published mediation agreement filed by ACEF as a stand-alone plaintiff with a varying degree of success as further defined in this thesis.

resources themselves, it is important to understand sources of the resources elsewhere and cooperative efforts among the CSOs and the administration.

6 Plaintiffs

Plaintiffs in EPIL vary based on their case filing activity (see Table 3 Civil EPIL cases filed per plaintiff below). In this part I examine the background of those social organizations that act as plaintiffs in the public interest lawsuits.

In the sample analyzed in this chapter there are 27 Chinese (domestic) social organizations that act as plaintiffs in EPIL lawsuits (see Table 3, p. 101). On the most general level, they all operate long-term[132](also see footnote 136) and are registered with the civil authorities at the central/local level.

Each of these organizations is registered and therefore subject to "dual management" (双重). That means that they are registered with civil authorities on central/local level (the so-called "registration unit", 登记管理机构) and have a corresponding *professional leading work unit* (业务主管单位)[133] that I refer to as the *sponsoring unit/government sponsor* (in the case of an administrative agency). The only exception are ACEF and Yiyang RVPA[134] that according to the corresponding entry in the PSPCSO database "have already cut ties" (已脱钩) with their government sponsor. "Cutting ties" can be understood as "separation of personnel, professional, financial matters and office premises from the sponsoring unit [own transl.]" (Beijing Municipal Committee of the CCP, 2011)[135] and is concise with the policy innovations of allowing even GONGOs more autonomy from the administrative while simultaneously

[132] I did not focus on the average age of the permanent members serving on the board, but the organizational key leader is nearly always a senior regardless of the categorization as GONGO or NGO and there are only a few exceptions. This observation but even more the organizational age (senior) of the respective social organization both support the argument that most of the organizations active in EPIL are in fact senior and well-established organizations led by senior leaders.

[133] The official institution that takes on this role is and sometimes also translated as *supervisory / sponsoring work unit* and often referred to by the term *affiliated work unit* (挂靠单位) which takes the social organization wishing to register under its wings.

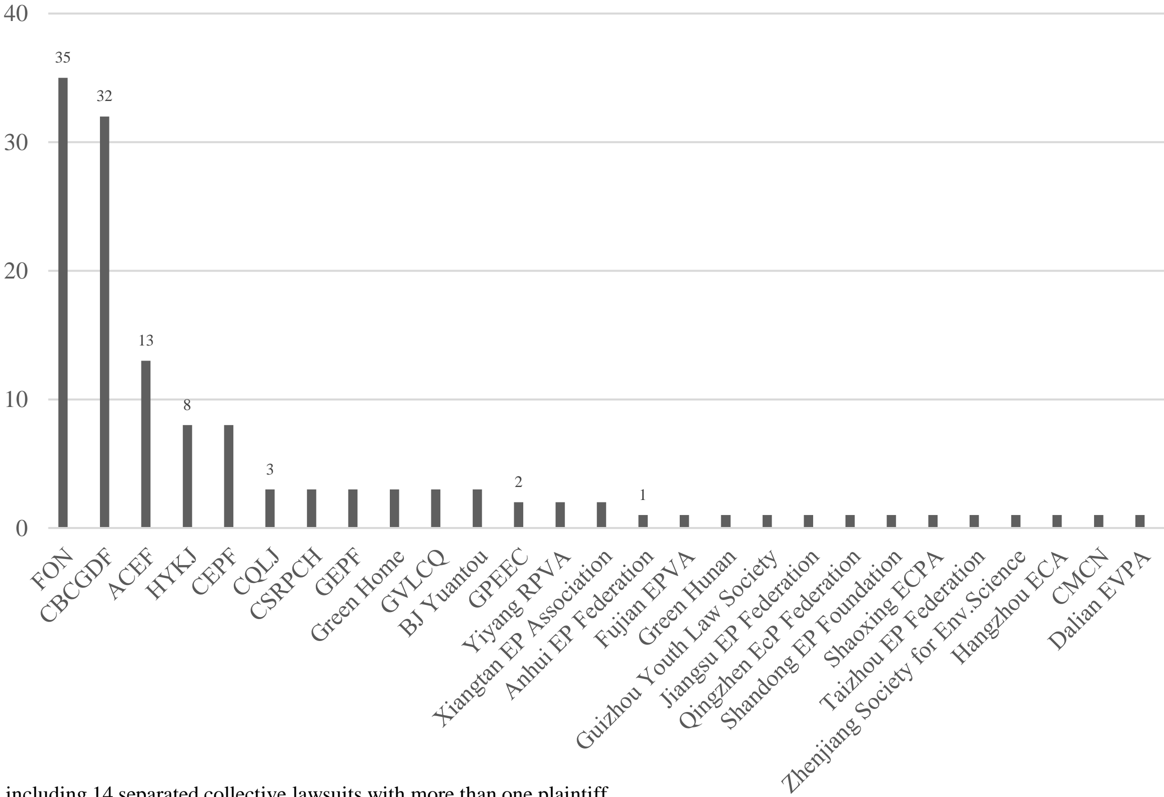
[134] Yiyang RVPA was founded in 2004 and registered in 2011 in Yiyang (Hunan province). It is one of the few organizations in the sample left uncategorized due to scarce information available. Pi Zhiwen 皮智文 is the founder, legal representative and leader of the organization in one person. Furthermore, Pi is a lawyer at Tiansheng law firm based in Yiyang (湖南天声律师事务所) that represented the organization in one of the two EPIL cases filed in Hunan.

[135] Note that there is no legal basis or mention of this in the law on registration of social organizations, this decision is solely based on the opinion of Beijing Municipal Committee of the CPC (中共北京市委) and the decisions made at the 17th Congress of the CPC in 2008. These innovations originated around 2004 and were initiated by local governments (P. M. Thornton, 2015, p. 144).

strengthening the efforts to perfect the oversight though installing party organizations as described by Thornton (2015, p. 144).

The relationship between the social organization and their sponsoring unit is not always manifested in a straightforward way and easy to assess. Whereas from structural and contextual perspective the sponsoring unit is the connection of the organization to the government and can provide a better access, the sole existence of this unit is not a prerequisite for stronger governmental ties as notably grassroots NGOs have sought to avoid too much interference in their work by the sponsoring unit (Spires, 2011, p. 29). The sponsoring unit is tasked with the review of the organization prior to the registration and other monitoring tasks as set forth by the Art. 25 of the revised *Regulations on the Administration of the Registration of Social Organizations* (State Council, 2016) and thus the organizations must build and maintain at least some kind of relationship with the sponsoring unit. As I will show below the key leader of the social organization often stays considerably close to the sponsoring unit especially in the case of GONGOs. I draw on the organizational websites, articles from Chinese press and occasionally on the court documents to find out about the current key leader of the social organizations between 2015 and 2019 and her/his position within the government or party.

Table 3 Civil EPIL cases filed per plaintiff



including 14 separated collective lawsuits with more than one plaintiff

Some of the most active plaintiffs studied here have been active in advocating public interest litigation for many years and even filed cases prior to the EPL 2014 (see Table 4 below). These four organizations have either comparatively long history compared based on their founding year (not registration) and the threshold of 2014 of 20 years (FON) and 19 years (GVLCQ)[136] (for the year of founding compare Table 18, p. 224) or government departments as their sponsoring units as discussed in more detail below. They have actively sought to establish own legal knowledge capacities to pursue litigation and maximize their chances of success. I also focus on this aspect to find out about the shared characteristics of the plaintiffs in EPIL.

Some organizations do cooperate with each other and other CSOs that are not immediate plaintiffs more actively than others. I will use the lawsuits to identify possible ties in litigation among the organizations studied here.

Table 4 EPIL cases filed by social organizations prior to the EPL 2014

Year	Social organization	Case location
2009	ACEF	Wuxi (Jiangsu)
2009	ACEF	Guiyang (Guizhou)
2010	ACEF, GPEEC	Guiyang
2011	ACEF	Guiyang
2011	ACEF, FON, GVLCQ	Guiyang
2011	FON, GPEEC	Qujing (Yunnan)
2012	ACEF, GPEEC	Guiyang
2012	ACEF	Guiyang
2012	ACEF	Wuxi

Note: based on S. Wang, 2014, pp. 29-34

6.1 Central GONGOs

Environmental GONGOs on central level in my sample include three organizations ACEF, CEPF and CBCGDF. Although they are all based in Beijing and directly registered with the MOCA, their scope of activities and organization can be undoubtedly characterized as national.

[136] 33.3 percent encompassing 9 organizations (including the 2 above-mentioned) out of 27 examined in this thesis reach equal to or more than 15 years of existence based on the same method of calculation – the average age of the organizations belonging to this group in 2014 was then 22.1 years. The oldest one is CBCGDF with 29 years of organizational history (year 2014) and the youngest one Taizhou EP Federation founded in 2014. The organizational history of half of all NGO-plaintiffs equals 10 or more years, which points to the rather well-established nature and longer operating character of the organizations (18 percent: 10-14 years). For comparison Hsu and Hasmath (2017) in their study identify longest- operating NGOs as having 12.6 years *average* age. The age of one fourth of all organizations active as plaintiffs spanned below five years in 2014 - with the exception of the Beijing-based BJ Yuantou these were all locally registered organizations.

ACEF and CEPF are registered as „community-based organizations" (*shehui tuanti* 社会团体; hereinafter *shetuan*), whereas CBCGDF was set-up as a "foundation" (基金会). The legal registration form itself does not say much about the relationship with the government, although organizations characterized as NGOs in my sample are generally registered as "private non-enterprise units" (民办非企业单位).

In the case of ACEF, the organization conforms to the typical definition of GONGO in numerous aspects. First, it is the only organization in this thesis that in the past was directly authorized by the State Council (经国务院批准), which again reflects the privilege of mass organizations with the "All China" (中华)[137] in their name (ACEF, n.d.). It was set-up directly under the MEE that acted as its sponsoring unit and received "professional guidance and oversight" (业务指导及监督管理) from both MEE and MOCA. ACEF was even evaluated as "an advanced unit under the MEE" (环境保护部的先进单位) for three consecutive years (period unknown) (ACEF, n.d.-a).

Second, despite formally "cutting off ties"[138] with the sponsoring unit in 2016, the "organizational board" (理事会) consists of veteran cadres active in important positions within central ministries, municipal government, large national SOEs as well as members of academia.

Third, the organization has a "party branch" (党支部). This alone does not give a hint that would point to the GONGO character as party branches can be established with more than three and less than fifty members. Yet more than half of ACEF's total staff are party members according to their website (共有员工 73 人，其中共产党员 39 人). Taken together with the background of ACEF, party-building is an inevitable feature of this organization.[139]

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[137] Even though it does not belong to the traditional 中华全国 mass organizations like All-China Federation of Trade Unions or All-China Women´s Federation directly represented in the CPPCC. The name prefix just like *quanguo* (全国) or China (中国) is reserved for those *shetuan* characterized as national in scope (全国性的社会团体), a provision unchanged since the regulations were promulgated in 1998. See Regulations (Art. 9., State Council, 2016).

[138] It is quite interesting that ACEF itself stresses that despite "cutting off ties" they do not want to "separate" completely from the government (脱钩不脱离) (ACEF, 2016).

[139] There is a lot of pressure on social organizations to advance their "Party building" efforts. In the thesis I also provide some examples where organizations have directly incorporated selection criteria of being a good Party member into their organizational structure (in the case of ACEF as well; upholding Party line and policies are explicitly mentioned as necessary criteria for the Board and upholding CCP's leadership for the responsible representative in the Organizational Charter) and where organizations categorized as NGOs have already voluntarily established party branches. The logics seems to be that higher involvement with the local government or certain governmental origin in general led to stronger party efforts and those NGOs that have established party branches highlight these efforts themselves and/or are praised for them in governmental media reports. There is also a set of policies aimed at Party building in private sector. At least since 2012 these policies have targeted private companies and as briefly mentioned by Holly Snape and Weinan Wang since 2015 increased efforts have been made that indicate the importance the CCP places on social organizations to set up party branches and strengthen their party work through the registration of domestic NGOs administered by state institutions (see Snape

Fourth, based on the self-introduction on its official website the organization's own understanding regarding their function is among others to "unite all social organizations and accumulate the overall strength" (团结、凝聚各社团组织以及各方面的力量) and "to assist and cooperate with [*peihe* can also mean "coordinate"] the government in reaching the national environmental targets" (协助和配合政府实现国家环境目标), thus the organization lies in this respect closer to the traditional professional *mass organizations* distinguished by vertical hierarchy with lower local level organizations being subordinate to the higher level. In the organizational charter made available on its website (valid since 2019), ACEF adds references to concrete policies (Ecological Civilization) in their scope of activities and commitment to promoting "Socialist Environmental Perspective and advanced eco-culture" (社会主义生态观和先进环境文化) (ACEF, n.d.-a). In the same part it also stresses its bridging function between government and society[140] as well as its commitment to protect environmental rights of the public through environmental public interest litigation and activities aimed at increasing legal and rights awareness of the public (Chapter 2 of the Charter).

ACEF has three "representative offices" (办事处)[141]. The respective offices are based in three cities with various responsibilities: since 2014 for South China (华南) in Guangzhou (ACEF, n.d.-c) and in 2019 for East China (华东) based in Shanghai (ACEF, n.d.-b) and for Southwest (西南) in Chengdu (ACEF, n.d.-d).

The organizational leadership of ACEF also conforms to the governmental character of the organization. Based on the earliest media accounts found, Sun Xiaohua (孙晓华) serves as the chairman (主席) since 2019, before he held the post of one the vice chairman in the All-China Federation of Industry and Commerce (中华全国工商业联合会; hereinafter ACFIC) between 2002 and 2012, a mass-organization charged with the goal to act as a bridge between the party and private entrepreneurs, directly subordinated to the United Front (统战部) of the CCP.

Sun's predecessor Song Jian (宋健) who held the position between 2010 and 2018 serves nowadays as honorary chairman of the organization. Song (born 1931) is a famous military engineer well-known for his contribution to China's space and defense missile and his role behind engineering the One-Child Policy. Song had held a post of a vice-chairman of the

& Wang, 2020). Social organizations categorized as NGOs without previous stress on Party work have, therefore, also step up their Party building work and issued corresponding statements and periodical reports on Party Work (see FON, n.d.-c).

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141 In the organizational chart they are referred to as "representative organizations" (代表机构) (ACEF, n.d.-a)。

CPPCC between 1998 and 2003 and was a member to the 13th, 14th and 15th Central Committee of the CCP (中央委员会) between 1987 and 2002 (People's Daily, n.d.).

ACEF was among the most active four social organizations that initiated EPIL cases between 2009 and 2012, even prior to the national law. Altogether the organization has filed eight lawsuits and thus account for most of the cases before 2015 compared to other social organizations (see Table 4, p. 102). In the aforementioned organizational charter the organization states a strong commitment to "actively pursuing the establishment of environmental rule of law" (积极推动环境法治建设) (ACEF, n.d.-a). This commitment is also reflected in its legal capacities, the organization has set up a legal center consisting of specialists from ministries and top universities including Wang Canfa, Lü Zhongmei, Bie Tao (for more on the role of these personalities in shaping EPIL and environmental law in China in general see 2.2 Legal discourse) and with well-known law professors serving as a chair (ACEF, n.d.-d)[142].

As much as ACEF conforms to the typical picture of a GONGO, at the same time it also stands out among other GONGOs due to its organizational history tied to central party bodies and ministerial departments and a unique role attributed to the organization during the legislative-making process of the EPIL in comparison with other NGO-plaintiffs.[143] During the process of drafting the EPL, it was proposed to write the organization into the law in order to serve as the sole social organization eligible to file environmental public interest lawsuits. These changes were later rejected during the legislative process (see Chapter 2.4 National legislation).

Another social organization CEPF is very similar to ACEF. The organizational history is very much tied to the person of Qu Geping 曲格平 (born 1930). Qu, a protégé of Zhou Enlai with experience of serving as China´s representative at UN Environment Program during 1976-77, was the first head of the earliest predecessor of the today's Ministry of the Environment, at the time of its founding called NEPA (later renamed SEPA)[144] (Economy, 2010) between its establishment in 1987 and 1993 (Zhang, 2018). In reference to CEPF Wu Fengshi wrote early on about the kind of autonomy as part of in Wu's words "unintended consequences" of autonomy of GONGOs in the sense that through the engagement and opportunities provided

[142] As of 2018 it was chaired by one of the leading civil law professors Wang Liming from Renmin University.

[143] In light of this knowledge, the organization in line with its name prefix All-China as part of the framing of law in their Organizational Charter describes its relationship to local governments as advancing compliance with environmental laws and regulations of local governments (推动地方政府遵照国家关于生态环境保护方面的法律法规认真履责和依法行政). This sounds like a very top-down phrase to reflect its oversight (监督) function in relationship to local governments and hints at the complementary function to the central inspection bodies.

[144] See Selected organizations and abbreviations, p. vi, footnote 1.

through international actors they realize their own agenda and make use of new connection to create leverage with potential to change the domestic policy dynamics (Wu, 2003). Wu's contribution to the debate is also highlighted in the view that "[b]ecause of the less restrictive institutional structure of GONGOs, elites can enjoy considerable leeway and take full advantage of their expertise, personal connections, and management innovations" (Wu, 2003, p. 37). This is precisely the kind of political resources that central GONGOs with strong political connections and elite members can make use of when clamping down on pollution elsewhere and, if necessary, resort to personal connections within the administrative to clamp down on polluters without channeling issues through the administrative system that often failed to bring about the desired result.

CEPF was established with the MEE acting as their sponsoring unit. Qu Geping had served repeatedly as the director of the organization since the establishment of the organization in 1993. Between 2012 and 2017 the board was chaired by the director (理事长) Fu Wenjuan 傅雯娟. Prior to joining CEPF, Fu had worked as the Leader of the Inspection Group of the Central Commission for Discipline Inspection to the MEE (中央纪委驻环境保护部纪检组). Her leadership period (2012-2017) covers all the cases filed by this organization.

Since 2017 CEPF had been led by Xu Guang 徐光 who had been an active member of the organization since early 2000s also serving at numerous lower positions at the MEE. In 2019, Xu was stripped off his last post as a vice party secretary of Henan during the Anti-Corruption Campaign, the effect on his leadership of the organization remains unknown but the organization has not filed any new cases between 2017 and 2019. In year 2017, out of 18 members of the organizational board, five were retired cadres (退休干部) and one (Xu Guang) active cadre (CEPF, 2018, pp. 4-5). The rest of the organizational board of CEPF consists of a wide pool of members representing different elites from various backgrounds. Apart from many retired and one active cadre and government officials, there are representatives of the Alibaba Foundation, leading technology company Tencent (腾讯), outspoken specialists in environmental law from Beijing´s top universities, UN delegates and representatives of large media outlets (CEPF, 2018).

Based on the annual reports between 2014 and 2018, the organization had not received any government subsidy (政府补助收入) and was financed mostly through donations (捐赠收入) and other income (其他收入). The annual budget income between 2015 and 2018 reached on average 99 million RMB (CEPF Yearly Report, n.d.), on average 14 times higher than the yearly income achieved by FON (major "national" NGO in this sample) during the same period

of time (FON, n.d.)[145]. CEPF set up a party branch and in 2017 and in 2018 the organization had been repeatedly praised for setting an example of party building (党建工作) among social organizations. Its 2012 Charter available on its website is neutral with no references to ideology/party/special framings of rule of law or law. Instead, it mainly describes collection and management of funds as the foundation's core activity.

As far as the geographical scope of activities is concerned, CEPF had established altogether six "representative offices" (代表处) out of Beijing. First in Shenyang (Liaoning), Taiyuan (Shanxi) and Shanghai in 2008, then in 2015 it opened an office in Guilin, followed by Xiamen (Fujian) in 2016 and in 2017 an office in Urumqi (Xinjiang).

The third and last national GONGO CBCGDF was among the earliest social organizations in China devoted to environmental protection. It was set up in 1985 as *China Milu Foundation* (中国麋鹿基金会) by the veteran general of the People´s Liberation Army Lü Zhengcao (吕正操, 1904-2009). Originally devoted to the protection of the endangered *Milu* deer (hence the original name), the organization started promoting cooperation with foreign NGOs and experts immediately after its founding.

Following a name change in 1997, CBCGDF nowadays engages in a wide scope of activities including policy advocacy, public interest activities (rights protection), training and other educational activities as well as providing technological assistance to the industrial sector. In year 2017 in had twelve working committees (工作委员会) (CBCGDF, 2018b) with specialization based on different area of expertise in environmental protection (legal, wild species protection, biology conservation, cultural heritage protection etc.). and another twenty-two specialized funds established for various purposes.

CBCGDF's legal engagement is strengthened by its own capacity building to coordinate policy advocacy and legal action. Among the committees, the CBCGDF Working Committee for Legal Affairs (中国生物多样性保护与绿色发展基金会法律工作委员会)[146], founded in year 2015 demonstrates these efforts. In addition to law firms, the organization often dispatches

[145] CEPF - 2015: RMB 51,043,688, 2016: RMB 84,927,872, 2017: RMB 125,856,607, 2018: RMB 130,656,833 (see CEPF 2015, 2017, 2018 annual reports); FON – 2015: RMB 3,558,016, 2016: RMB 4,844,545, 2017: RMB 9,059,019, 2018: RMB 9,913,631 (see FON 2015-2018 annual reports). Note that the budget of CEPF varies quite substantially from year to year, in year 2015 CEPF annual income was almost half of that of previous year, so that 2014 number is not included here. FON provides a more stable picture in terms of the income and received a big push in income between 2016 and 2017.

[146] Note that the committee is chaired Ma Yong 马勇 who is one of the founders of the predecessor organization of FON and also a vice director of ACEF's legal center for environmental law (People's Daily, 2015).

its own specialized legal personnel (法务人员/法务部工作人员) to represent the public interest at court.[147]

The foundation had been headed by Hu Deping 胡德平 between 2010 and 2019[148]. Hu held high posts in the CPPCC, in his last position he worked as the first vice chairman of the All-China Federation of Industry and Commerce (ACFIC) between 2003 and 2008, thus partly overlapping with the above-discussed ACEF´s Sun Xiaohua time who served at ACFIC as vice chairman too (2002-2012). Based on the 2018 report, sixteen out of twenty-five members on the organizational board were retired cadres with the rest but two members being ordinary party members and one being a member of the eight minority parties (CBCGDF, 2019a, pp. 4-5). The stronger governmental character of the organization is also hinted at in the organizational charter where the organization articulates a strong commitment towards the political ideology and the CCP in their mission statement (CBCGDF, 2019a)[149]. This is rather unsurprising given the fact that the organization has a party branch and relating to the environmental ideology is common under those circumstances where the organization maintains a close relationship with the government. CBCGDF frames its mission in the Organizational Charter as to "assist the government" (协助政府) (Article 3, 2019a) and by invoking official legal discourse typical for many of the established plaintiffs in EPIL in one of its core-activities described as "advancing the construction of the environmental rule of law" (推进我国环境法治建设) (Article 8(5), 2019a). This had been repeatedly highlighted in lawsuits by the organization itself in the recorded in the description of the litigation parties by the court in the introductory part of the judgments submitted by the plaintiff[150].

The financial situation suggests that the foundation does not receive any governmental subsidy on permanent basis, although it had received some funding from the government in the year 2015 amounting to RMB 1,200,000 and RMB 1,690,000 in the year 2016 (CBCGDF,

[147] Several judicial decisions confirm that (for one directly cited in the thesis see Changzhou Intermediate Court, 2016). Persons active in the legal department of CBCGDF participate in many more cases filed by the organization.
[148] Like Hu (who continues to serve as the party secretary of the organization), the new director Xie Boyang 谢伯阳 who is also referred to as an advisor (参事) to the State Council (CBCGDF, 2020) held a high position in ACFIC (CBCGDF, 2018a).
[149] In the Charter (Article 3, Mission Statement) it says: "With the guidance of Xi Jinping's Thought on Socialism with Chinese Characteristics in the New Era mobilize the care and whole-hearted support of the society […and] protect the environmental rights of citizens and societal public interest" (以习近平新时代中国特色社会主义思想为指导, 广泛动员全社会关心和支持[...]维护公众环境权益和社会公共利益[…], 促进生态文明建设和人与自然和谐, 构建人类美好家园) (CBCGDF, 2019a). Similar to ACEF, upholding Party's comprehensive leadership (坚持中国共产党的全面领导) is explicitly mentioned in the Charter but here as one of the guiding principles and not as a selection criteria for the Board.
[150] For example, in Xuzhou (Case #18.1, #18.2).

2018a, p. 4). The government subsidy is non-systemic[151] and quite low ranging from 9 to 13 percent compared with the overall budget income of the organization in the year 2015 (RMB 13,582,572) and 2016 (RMB 13,016,015). Unlike CEPF and ACEF that have established formal representative offices, CBCGDF can be characterized as national based on its practice to transcendent the boundaries of Beijing and the self-characterization as "national" (全国性) even extending its activities successfully beyond China.

6.2 Provincial GONGOs

Eleven local GONGOs in my sample include provincial and prefectural-level GONGOs. It is worth stressing again that during the round of second draft of the Environmental Protection Law the ACEF and provincial-level environmental federations should have been solely eligible to initiate EPIL (see 2.4 National legislation, p. 29). In terms of active participation in EPIL lawsuits, the local GONGOs have been very passive in the period covered by the thesis (08/2014-07/2019), only filing one case each including three collaborative lawsuits, namely one together with the provincial government, CBCGDF (central GONGO) and FON (central NGO).

A closer look at the *Public Service Platform for Chinese Social Organizations* reveals that there are altogether 31 social organizations all registered as *shetuan*, apart from Anhui and Jiangsu there are other federations with the suffix *huanbao lianhehui* (环保联合会) in additional seven provinces as well (see Table 5 Provincial Environmental Federations, p. 113). They were established between 2006 and 2014, so in theory many fulfill the standing requirements. Despite that, they were not "activated" to actively pursue environmental agenda through litigation and engage in EPIL. On the sub-provincial level there are another 21 such organizations where the majority was established after the year 2012, thus not fulfilling the five years requirement set forth by the EPL to qualify as plaintiffs after the law came into effect. The potential of these organizations remains to be seen. The EPIL procedure is new, however, the current inactivity of local GONGOs suggests that no active mobilization has taken place so far.

Such provincial-level environmental federations such as Anhui and Jiangsu EP Federations share several similarities. Both were set up with the formal approval (批准) of the provincial governments and registered with the provincial-level EPB (环境保护厅). The person

[151] None was received in 2017 or 2018 (CBCGDF, 2019).

in charge, at least at the time of their creation high ranking EPB officials, were directly incorporated into the organizational structure (Anhui, Jiangsu). The key leaders are senior cadres in high positions within the provincial government. Information is scarce but the structure suggests that while the national GONGOs serve as an organization mostly for retired cadres, the provincial-level GONGOs are much closer to the administrative at the respective level of government but also directly represent a broad constituency that includes technology company representatives and other stakeholders active in environmental protection in the province.

Their scope of activities is limited to the province as they are tasked with "uniting" (团结) volunteers and social organizations within the province (Anhui, Jiangsu) and concentrate on the "bridging and linking [government and society]" (桥梁和纽带作用)[152]. That implies that they foster cooperation and pertain more to the character of what in the Chinese context is referred to as "pivot social organizations" (枢纽型社会组织) in the sense that they are tasked with "bridging" the society and the government (People's Daily, 2013). ACEF, Jiangsu EP, Anhui EP Federation all have this same provision in their charter, and this also shows the similarity between these organizations and ACEF on the national level. They are also engaged in numerous other activities like recommendation on policy-decisions (决策建议) to all levels of government and EPB within the province, educational (环境宣传教育活动) and rights protection activities in relation to the environmental protection. Anhui also partly handles environment-related citizen complaints in the sense of being an addressee for unsolved complaints or environmental complaints in general and facilitating the exchange to the EPB/other departments responsible and active in environmental affairs, thereby taking on some tasks of the local administration.

Guangzhou-based GEPF was founded in 1996 and registered in 2003 with the provincial MOCA and the EPB acting as its governing since (PSPCSO, n.d.). Many honorary directors in this organization have held high posts in Guangdong´s provincial government such as the former provincial governor of Guangdong Zhu Senlin 朱森林 (1991-1996) and many other high-ranking leaders within the organization. The organization describes its goal as "mobilization of public participation and advocacy of Ecological Civilization" (动员公众参与、倡导生态文明). Its relationship with the government is described as mutually beneficial as the organization claims that GEPF's objective is to "complement the work of the government

[152] 发挥政府与社会之间的桥梁和纽带作用 (Anhui) / 发挥政府与社会之间的桥梁和纽带作用 (Jiangsu).

with [their] work" (广东省环境保护基金会的工作成为政府工作的重要补充)[153] (GEPF, n.d.). The current director (理事长) Huang Zhenda 黄振达 (unknown period) is a billionaire entrepreneur and the chairman of Lian Tai Group (广东省联泰集团有限公司) (Forbes, n.d.), a large infrastructure company active in various business areas including environmental protection. Further the retired former head of provincial EPB chairs the supervisory board (监事会) of the organization.

GEPF has spent considerable efforts since 2014 in widening its legal capacities and public interest promotion (GEPF, 2014), it has set up and operates its own legal service center (法律服务中心) with members occasionally representing the organization at court.[154] It typically engages in lawsuits within Guangdong province (thus also the apparent geographical limitation) but in two out of three lawsuits they sued together with another national organization, which shows openness to cooperation and its inclusiveness in regard to the CSO support network.

CSRPCH based and active in Henan is headed by a person with no explicit government background. Although it is less likely that the involvement of the "key leader" was ever anything beyond symbolic, the organization's honorary director was the former vice-chairman of Henan´s CPPCC later sentenced to 15 years sentence and financial penalty for fund embezzlement in a criminal trial (People's Daily, 2019). Contrary to most of the GONGOs, this organization is set up as "private non-enterprise unit" and is currently led by Lin Bin 林彬, "expert consultant for Corporate Social Responsibility (CSR) and public interest strategy" (企业社会责任与公益战略咨询专家) (CSR Henan, n.d.) with doctoral degree in law. Strictly speaking, the leader has no governmental background although he simultaneously leads and is active in some governmental centers[155] but this speaks more to the "expert nature" of this organization. However, the board consists of members from various departments such as the provincial Propaganda Department, NDRC and Chinese Academy of Social Sciences (CASS). In addition, rarely is the relationship between the organization and its sponsoring unit (in this case the provincial ACFIC) exhibited in such a direct way as here. The organization was set up in a top-down manner as an "expert organization" (专职工作机构) (CSR Henan, n.d.) of the

[153] Based on the available reports from 2017-2018, the organization has not received any government subsidy (GEPF, n.d.-a, n.d.-b).
[154] See Qingyuan Case #24 in concluded cases.
[155] The corresponding centers/universities and titles are as follows: Vice-Director (中国社会科学院企业社会责任研究中心副主任), Director (中标民营企业综合标准化战略指导中心主任)，Committee Member (中国社工联合会企业公民委员会专家主任委员)，Guest Professor (郑州大学客座教授)，Researcher (河南省高级人民法院环境司法理论研究员) (CSR Henan, n.d.).

provincial branch organization of ACFIC. The main purpose of this organization is to provide the provincial branch organization with research input and provide services to companies. As the acronym CSR already implies, many company representatives but also economists are members of this organization (based on the organization´s website). The charter of the organization is filled with references to CCP policies and slogans such as "advancing societal harmonious development" (促进社会和谐发展) or "advancing the construction of Ecological Civilization, together building a harmonious community" (促进生态文明建设、共建和谐社区).[156] The finances come partly from the government (政府资助) according to the charter, but no real numbers supporting this statement could be found.

Information on Fujian EPVA, another provincial-level GONGO is scarce. The founder Deng Dijian 郑棣健 works as a secretary of the organization and of the corresponding organization at prefecture-level (Fuzhou) in 2006 (Fujian EVPA, 2010), even though it is unclear whether she currently holds that post. She had previously worked at a senior position and cadre in China Unicom (中国联通) this background might also explain why the sponsoring unit is the provincial enterprise and entrepreneur association (福建省企业与企业家联合会). The current leader Wang Xinyan 王新颜 of the organization since 2018 is also a president of Fujian Environmental Protection Group (福建省环境保护集团) (Sohu, 2018), large provincial group originally established directly under the provincial EPB in 1992 that specializes in offering technical solutions in environmental matters (FJEP Co., n.d.).

The incentive for the establishment for Fujian EVPA was reportedly a speech of Wen Jiabao stressing the importance of environmental protection earlier in 2006 (Fujian EVPA, n.d.)[157]. According to a slightly different version of organizational history published on a web set up by the Office for Ecological Civilization of Fujian's provincial Party Committee, the organization had been set-up following a typhoon in 2005 *by itself* (自发组织起来) before officially registering with civil authorities shortly thereafter in 2006 (Fujian EVPA, 2012). According to its own description, the organization aims in a rather careful formulation (as opposed to the more self-confident typical GONGO frame of acting as a "bridge") to "explore

[156] Charter could be downloaded on the official website of the organization (CSR Henan, n.d.). The url or the Charter are not available anymore.

[157] Although not mentioned in the article, it probably hints at the speech of Wen Jiabao in 2006 regarding the environmental goals in the 11th Five Year (2006-2010) with a new set of priorities for reaching environmental targets and some criticism of earlier environmental policy (China Daily, 2006). Strong environmental rhetoric was already firm part of Government Work Report delivered by Wen Jiabao at the NPC Session in March 2005 (Wen, 2005) mentioned when decoding the strategic framing found in writings by legal scholars promoting the relevance of EPIL.

the ways of building a jointly-planned bridge for Ecological Civilization between the association, the government, companies and the society" (探索搭建协会与政府、与企业、与社会公众共谋生态文明的桥梁) (JICA, 2011, p. 49) and also understands its mission consistently as "above for the government to share burden, below for the common people to obtain benefits" (上为政府分忧，下为百姓谋福) (JICA, 2011, p. 49). The strong cooperation between the organization and the government is hinted at by the organization itself, highlighting the achievements of receiving praise from provincial leaders for various awareness-raising campaigns (e.g. promoting public transport on behalf of local administration) and their modus operandi described as "Local Government + Public Interest Groups + Community volunteers" （地方政府+公益组织+社区志愿者） (Fujian EVPA, 2012, p. 2), which reflects the more traditional role of mass organizations in mobilizing volunteers and awareness-raising on behalf of the government. Like some of the above-mentioned organizations it participates in handling and assisting the public in using the environmental complaints hotline (Fujian People's Congress, 2009), which suggest some delegation of governmental functions to the organization.

Table 5 Provincial Environmental Federations

Province or province-level environmental federation (环保联合会)	Year of registration
Zhejiang	2014
Inner Mongolia	2012
Guangxi	2010
Jiangsu	2009
Henan	2007
Jilin	2006
Hebei	2006
Anhui	2006
Ningxia	N/A

Source: data compiled based on PSPCO database search

6.3 Subprovincial GONGOs

Local (municipal or county-level) GONGOs include Shaoxing ECPA, Dalian EPVA and Zhenjiang Society for Environmental Science. Two other organizations belonging to this category, namely Taizhou EP Federation and Qingzhen EcP Federation, filed cases on the onset before the new law went into effect as they would not have fulfilled the five years requirement

for the case filing afterwards as the respective founding year was 2014 (Taizhou EP Federation) and 2013 (Qingzhen EcP Federation) and hereby those two organizations would not have met the standing requirements at the time when the law went into effect.

The organizations here are all registered with the Civil Affairs Bureau (民政局) at the local level and the EPB acting as their sponsoring unit (except for two organizations - in Zhenjiang and Qingzhen, see below) at the corresponding level. While evidence on some provincial-level GONGOs was scarce, finding information to classify the organization below the provincial level gets even more difficult.

Zhenjiang Society for Environmental Science (based in Zhenjiang, Jiangsu), was founded and registered in 1987 (PSPCSO, n.d.) and is thus the oldest organization among all plaintiffs in this thesis. Contrary to the trend with local GONGOs, its sponsoring unit is the local Association for Science and Technology (科学技术协会) and not the EPB or other administrative departments. There were no clues regarding the activities or organizational history but its current director (理事长) is Sun Jiying 孙纪英 (Zhenjiang Intermediate Court, 2016). Based on media sources, she has held the position since 2008 after her retirement as the head of the Zhenjiang EPB (Zhongguo Huanjingwang, 2016) which might also explain why the EPB staff was present during the single case filed by this organization in 2016 and supported the plaintiff. She is also a sort of local celebrity known as "iron lady" (铁姑娘) referring to her engagement as a brigade leader (队长) in the famous Dazhai model commune during the Mao era (Zhongguo Huanjingwang, 2016).

The experience of having served as EPB leader is true for the "legal representative" (法定代表人) He Weishi 何伟仕 of another organization called Shaoxing ECPA that shares the office space with its official sponsoring unit – the city's EPB (based on PSPCSO, n.d.). Despite its registration in 1991, this organization maintains very little online presence (except for the mandatory entry in the PSPCSO database)[158]. The name that contains reference to the promotion of Ecological Civilization (生态文明) suggests some form of relationship to the *China Ecological Civilization Research and Promotion Association* that was set up in 2011, only after the concept of Ecological Civilization had been popularized by Hu Jintao around

[158] The organization had set up a new webpage sometimes between 2020-2021 (the first post on the website is from June 2021). The local EPB is also listed as a formal member of the board together with some some city-managed environmental companies (Shaoxing ECPA, n.d.). Moreover, the tradition of the EPB head being appointed as the head of council of Shaoxing ECPA has persisted as this function was carried out by a person called Fang Limiao 方林苗, head of the city's EPB (Shaoxing Government, 2021). The organization frames its function as "assisting the government" (协助政府) with its scope of activies loyal to its name filled in every line with Ecological Civilization mentioned 16 times in many thinkable combinations making up 14 percent of the overall description of its activities (Shaoxing ECPA, 2021).

2007 and further under Xi Jinping. The founding of the organization in the 1990s and the renewed relevance of the concept of Ecological Civilization likely prompted the organization to establish a separate unit with a changed name in 2014 to better fit the reality - originally the organization used to be called Society for Environmental Science of Shaoxing City (绍兴市环境科学学会) (Shaoxing Government, 2020), nowadays replaced by Shaoxing ECPA but with still existing separate organizational entity on the provincial level with the suffix Society for Environmental Sciences (环境科学学会), which in turn is vertically managed by the umbrella social organization Chinese Society for Environmental Sciences on the national level.

Although the local EPB is a sponsoring unit of yet another *shetuan*, the Xiangtan EP Association (湘潭环境保护协会) based in Xiangtan in Hunan province, first two organizational leaders were retired cadres serving at leading functions of the local people's congresses and the local consultative conference.[159] Song Houyuan 宋厚源 (born in 1953), leader of the organization between 2014 and 2019 (Xiangtan EP Association, 2014a, 2019)[160] is a former chairperson of the city's consultative conference (Hunan Government, 2012) with the experience of leading Xiangtan's United Front Work Department (Xiangtan Morning Post, 2011). This particular background probably has to do with the history of founding the organization that emerged after three representatives to the Xiangtan´s local people´s congress were concerned by the rising pollution levels in the Xiang River and after receiving support from the administrative decided to register the association in 2007.[161] Year 2007 is also the founding year (although registered in 2011) of another Hunanese NGO with specialization in river protection, Green Hunan (see p. 126) based in Changsha. It is quite likely that the organizations maintain some ties and cooperate on certain initiatives[162], yet organizationally

[159] Liu Delian 刘德莲 (based on earliest media accounts in function between 2009-2014), served as the head of local people's congress in 2007 (Hunan Government, 2007), Song Houyuan 宋厚源 (born 1953, in function at Xiangtan EP between 2014-2019) (Xiangtan EP Association, 2014a).

[160] Note that the new leader since 2019 is a former bureau chief of the city´s Department of Education and Party Committee Secretary in the same department Xia Guohua 夏国华 (born in 1957) (Xiangtan EP Association, 2014c).

[161] One of them (Wang Guoxiang) later became the vice-director of the Xiangtan EP Association (Xiangtan EP Association, 2014b). According to Katinka Fürst who interviewed Wang for her doctoral thesis, the organization was found as early as 2004 with the motivation being the "mistrust of state environmental authorities" (Fürst, 2016, p. 241). She treats the organization as an NGO, does not focus on the background of the leaders but also mentions the more cooperative relationship between the NGO and the state administrative (EPB) over the years (see Fürst, 2016, p. 425, p. 242). With its strong ties to other NGOs Xiangtan EP is somewhat a border case between a much embedded service provider-NGO with the local government as a client and a more task-assuming GONGO to highlight the local government to pollution problems with a higher degree of autonomy from the administrative over their own agenda.

[162] For example the volunteer and local environmental star Mao Jianwei 毛建伟 who holds an official post in Xiangtan EP Association is a member of Green Hunan and volunteer in the so-called "Riverwatcher Initiative", a coalition of various ENGOs, foundations with a volunteer network designed to monitor water quality and pollution

they are separate from each other. The city´s high-ranking representatives regularly take part in the general assemblies of Xiangtan EP Association (Xiangtan EP Association, 2020). The closeness of the EPB and Xiangtan EP Association is also physically highlighted by the fact that the organization's office was located in the same building as the district EPB based on the PSPCSO database (PSPCSO, n.d.), and still at least as of year 2012 based on a media report reposted on the website of China Development Brief (Xu, 2012).

Based on the above-discussed evidence that there is a pattern of the organization serving as a place for retired cadres from lower city-level legislative, the organizational character of Xiangtan EP is more that of a GONGO. Yet, this organizational background should also be seen against the self-presentation of the organization and the scope of activities undertaken by it (as funding and other parameters that would provide more contextual knowledge are not given) that is analyzed in more detail below.

Xiangtan EP sees itself as an independent entity capable of effective mobilization of volunteers that maintains the relationship to the people and closely cooperates with the city´s administrative through consultation and participation in problem-solving and policymaking. The 2015 report to the general assembly of the Xiangtan EP Association states many "promotional" (宣传) activities in relation to the environment as the main goal of the organization is "the promotion of laws and regulation as well as national policies" (Xiangtan EP, 2014b). The concrete promotional and educational activities described in the 2015 work report covering the year 2014 are outsourced to the organization by the city's administrative (Xiangtan EP Yearly Report, 2015). The target audience of these educational and promotional activities varies based on the different needs of the multiple departments in charge (EPB, Bureau of Urban Management and Law Enforcement, Bureau of Land and Resources, Bureau of Forestry, Commerce) and precise tasks or campaigns (Xiangtan EP Yearly Report, 2015).

In addition to the short-term projects with governmental departments, the organization was delegated some long-term tasks by the Bureau of Urban Management and Law Enforcement (城市执法局) and the Department of Rural Work (农村工作部) such as part of the communication with the public and the task of directly reporting to the district-level party and government administrative leaders (地县市区党政一把手)[163] (Xiangtan EP Yearly Report,

in various parts of Hunan (for more see p. 126). Xiangtan EP has no formal membership in the Riverwatcher Initiative but aside of Mao Jianwei being the direct link between multiple organizations, some intersection between the activities of the Initiative and Xiangtan EP is very likely based on geographic proximity, year of founding and the interest in water resources at the center of activities of both subjects.

[163] For this purpose, it set up and manages a WeChat group that according to the brief (highlighted) mention in the above-cited Work Report should work both ways: gathering information from the public but also informing

2015), among others it partly supports the city´s complaint hotline by handling unsolved environmental complaints (Xiangtan EP Association, 2015). The report stresses the function of the organization to "bridge" (桥梁纽带作用) (Xiangtan EP Yearly Report, 2015) government and society (for other GONGOs see p. 110) including industry and claims that the organization represents the broad public constituency concerning environmental problems and provides the government with information on "public opinion" (民意) (Xiangtan EP Yearly Report, 2015), which lies closer to a claim and mission inherent to a GONGO.

The fact of providing policy recommendations to provincial and prefecture-level governments also discussed extensively in the 2015 report resembles those NGOs that have a high-level interaction with the administration. These organizations have been able to win the trust of the administration as "service providers"[164] to inform the administrative on how to deal with pressing problems. The report repeatedly highlights the organization's credibility and recognition by the government, which seems to be a very important organizational priority. Summarized, the local government is a client and might even be a major or even an exclusive one, which in turn speaks to the high cooptation of the organization into the local administration.

Such close relationship can bear financial risks in case the government contracts are the sole basis of existence and pose constrains on activity, but it can also be mutually beneficial in various ways. Aside practical advantages of outsourcing certain tasks to the organization and receiving feedback by the organization, the symbolic added-value for local administration is that it can boast its successful management and cooptation of societal will through a well-recognized social organization that it supports and maintains close ties with.[165] The benefit for the organization and the belief that support from the government is needed might lead to a higher efficiency (in EPIL this proves relevant as the local EPB or administrative can assist the organizations in evidence collection) and organizational resources, yet it might also prove difficult to remain independent where priorities of environmental protection and economy clash together.

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the members of the steps and measures to take against air pollution and raise awareness of environmental protection and "Civilized City" (文明城市) campaign.

[164] Even for established NGOs like FON that do sell a certain amount of their services to the government, this item only contributes by 1 to 2 percent to FON's annual income (based on 2016-2018 reports) (FON, n.d.).

[165] The 2015 Work Report mentions several times the organization was praised by provincial and city leaders. The quotes by the leaders support the self-identity of the organization and how it is seen by the leaders. In 2020 (which jumps the scope of the cases filed by this organization), this social organization was on the list of "model social organizations" (示范社会组织) from Hunan, title reserved almost exclusively to organizations that have a governmental character with a prefix of the geographical unit in their name, the mentioned organization Green Hunan also officially also having Changsha in its Chinese name (see Selected organizations and abbreviations, p. vi) is not on the list (Changsha Evening Post, 2020).

The relevance of EPIL is described by the organization's secretary in the Work Report in regard to the context of the background to one of the first of two cases filed by Xiangtan EP. After failed consultation with the company, Xiangtan EP Association sued the polluter, therefore EPIL emerges as a useful procedure where repeated negotiations with the polluting firm have failed (Xiangtan EP Yearly Report, 2015). This supplementary character of EPIL is concise with the practical understanding of the EPIL outlined by the Fujianese NGO, Green Home, in their 2015 Annual Report as "the last guarantee for public participation" (为公众参与提供最后一道保障) (Green Home, 2015, p. 3)[166]. In the context of the organizational mission to disseminate laws, Xiangtan EP Association refers to the relevance of EPIL as "promoting environmental protection via legal means" (用法治化的方式推动环境保护 [underlined]) (Xiangtan EP Yearly Report, 2015). This reflects why and when do some organizations find it interesting to file EPIL lawsuits as part of larger ideological and education activities they fulfill and finding a perfect instrument to add legitimacy to itself, the state, and the law. At the same time, EPIL allows them to pursue goals on their agenda that includes wide mobilization capacities and efforts spent on their own at holding polluters accountable and probably making use of increasing their own level of importance in reference to the type of tasks delegated to the organization by the city's administrative and further opening the door to influence environmental policy and its role vis-à-vis government departments involved in environmental protection.

Another organization active in the city of Dalian is a volunteer association. According to Dalian EPVA's website it has about 100 work units (*danwei*) as members, over 10,000 registered members and 120,000 volunteers (Dalian EPVA, n.d.). The leader of this organization Yang Baixin 杨白新 retired in 2013 with some previous work experience in Urban Management Bureau and a Committee for Population, Resources and Environment of the Local Consultative Conference (Dalian EPVA, n.d.)[167]. A verified position[168] is his former post as the deputy head of Dalian's Bureau of Information Industry (信息产业局) and according to the same announcement proposed as director of the aforementioned Committee in 2007 (Dalian Government, 2007). Among the scarce information available that provide an insight into the

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[166] This part of the report provides a small infographic on participation with EPIL following only after mobilizing the public and monitoring and setting up early warnings for polluters. The final step after EPIL is the "environmental co- governance" (环境共治), a frequently found keyword and the expectation to be involved in policy dialogues directly with the responsible government departments.

[167] Precise official titles in these and other bureaus are not mentioned.

[168] Age and some other details including education are comparable between this and the earlier media source that fails to mention the Bureau of Information Industry.

work and personnel of this organization, an article from China Business Morning Post republished on the organization's blog argues that based on the organization's past honorary directors coming from *various administrative bureaus* the organization despite registered as *shetuan* is "strongly supported by the government" (其背后有着官方的强力支持) (Dalian EPVA Blog, 2015). In its mission statement, the organization highlights that it is an independent legal entity and frames its function as "assisting the government departments with solving environmental conflicts among companies, among companies, among citizens and among companies and citizens" (协助政府部门协调) and offering the government its "policy services" (决策服务)[169]. This description is with a few general references to (environmental) ideology and some mission framing regarding law and legal development but without special framing of legal channels (Dalian EPVA, n.d.)[170]. Given the low filing activity in EPIL with just one case in 2015 that was concluded by mediation (Case #10, see Table 13 List of concluded cases for analysis, p. 214), these particular frames seem quite irrelevant for this particular organization. In the report by China Business Morning Post quoted earlier, the leader of the organization Yang is quoted saying: "With filing the first environmental public interest lawsuit [here the first refers to first such lawsuit in Liaoning Province], suing, deciding, compensating and fully using the funds [here it is a reference to the money received as a result of the lawsuit used by the locality after the final court judgment was issued], it is a step to increase the environmental awareness (环境意识) and rule-of-law awareness (法治意识) of citizens *(shimin)* " (Dalian EPVA Blog, 2015) again partly supporting the conclusion that EPIL is also seen by some plaintiffs as one way to increase visibility and is a part of environmental propaganda work especially with filing first exemplary cases against big companies (here Dalian Riqian Motor Co., Ltd.) in otherwise for EPIL quite unpopular Northeast with only two additional cases filed by national GONGOs (also see Table 11 Overall cases by , p. 213). The exemplary character of the lawsuit can happen regardless of the outcome of this concluded case analyzed in the second part of this thesis.

Qingzhen EcP Federation (Guizhou province) is described by the media as a "county-level non-profit public interest social organization" (县级非营利性公益环保组织) (Y. Wang, 2018). With the Bureau for the Construction of Ecological Civilization (生态文明建设局)

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[169] This is a common feature of the function profile of social organiations active in policy advocacy.

[170] The mission statement (year is unknown) mentions "advancing the Construction of Ecological Civilization" (促进生态文明建设) and restricts itsels to the abstract mentions of "environmental propaganda-educational activities" (环保宣传教育), which in the Chinese context can simply be understood as promotional awareness-raising activities and a somewhat neutral mention of "rights protection" (维护各自的合法权益) (Dalian EPVA, n.d.).

being its sponsoring unit (PSPCSO, n.d.)[171], it is unsurprising that the main line of work includes such general aim as "the supervision of and assistance to the government in achieving Ecological Civilization" (Y. Wang, 2018). The differentiation between NGO and GONGO gets further blurred as the organization acts as a service provider for the government – it offers third-party supervision to the government and companies in exchange for money (Y. Wang, 2018). Some distance to the government is therefore necessary to be able to perform this service. The organization's leader is quoted describing that the organization has become a "'referee'" ("裁判员") with the government and industry being the "'sportsmen'" ("运动员") put under quotes (Y. Wang, 2018).

The only case filed by Qingzhen EcP was together with FON (who joined the lawsuit later) and accepted just a few days before the newly enacted law went into effect as Qingzhen EcP Federation would not have qualified for standing as a plaintiff afterwards due to the strict standing requirements. Qingzhen EcP due to the five-year requirement already mentioned at the beginning of this chapter.

This filing on the offset of the new EPL was similar to another case filed by a local GONGO in Jiangsu, the Taizhou EP Federation. The lawsuit had gained a widespread attention of the media, academics and the public mostly due to the "sky-high compensation" ("天价"赔偿) (Lü, 2016) achieved. The only information of Taizhou EP Federation is regarding its secretary Tong Ning 童宁 (PSPSCO, n.d.) who had served as the vice-chief of the EPB still after the founding of the organization as quoted by the media (Southern Weekly, 2014). The organization was registered the same year (February 2014) just six months before it filed the environmental public interest lawsuit. Although not mentioned explicitly but together with other social organizations organized at the government's behest, the "city's environmental association" (here: 市环保联合会) was mentioned in the context of "guiding the public participation and the construction of Ecological Civilization" (引导公众参与生态文明建设) in a notice issued by the local government (Taizhou Government, 2017). It is likely that the only purpose of founding the organization (just on the onset of the new law coming into effect)

[171] There is no information at which administrative level this Bureau resides in the mandatory entry in the PSPCSO database but probably at the corresponding or prefecture-level (Guiyang). The responsibilities of this administrative bureau seem to include the general oversight over the implementation of Ecological Civilization at various levels. There was no verifiable information regarding the background of the current leader (会长) Zhang Xingquan 张兴权 or the deputy, secretary and legal representative Zhong Yong 钟勇 (based on available court records, media and the entry in the PSPCSO database) or regarding the organizational charter. The only evidence apart from the reference to Ecological Culture (生态文明) that points to the direction of GONGO is that all kinds of administrative departments and companies take part in council meeting of the organization that is also hosted physically in the rooms provided by the sponsoring unit (Kang Zhu Holdings Group, 2016).

was to prevent other NGOs from filing a lawsuit in this location. After initially turned down by the local court before the EPL, Friends of Nature filed the case again and got accepted by the local court after the new EPL. The main motivation behind the lawsuit filed by FON was that the Taizhou EP Federation omitted certain defendants responsible for the pollution as argued by FON (see Case #14.1, #14.2).

6.4 Central NGOs

Unlike provincial and sub-provincial GONGOs the scope of work of NGOs is usually not limited to the place of legal registration and in the absence of any officially registered branches and large population of volunteers difficult to evaluate. There is also the clear tendency to work together despite large geographical distances. The national and local NGOs are quite difficult to separate from each other as even those NGOs registered in the periphery often claim that their scope is "national" (全国性), therefore I adhere to where they are registered and understand their scope through their activities and lawsuits filed.

The NGOs are much more flexible in this respect than sub-provincial GONGOs whose activities are bound to a certain province or place, which is also often reflected in the case filing. Even some small NGOs in the sample have ties to the international community, yet I do not focus on the international cooperation and its implications for the scope of work of Chinese NGOs in China. The flexibility of both national and local NGOs is seen at their case filing activity; therefore, I provide a simplified account here where national NGOs like national GONGOs are treated as those registered in the center (Beijing) and with a national scope of activities as observed with case filing in at least two other provinces than the place of registration (as those from Beijing typically engage in activities outside the capital, they are national almost by default). This is yet another case of where the static perception cannot account for the reality as compared to the local GONGOs. The fluid character cannot be fully accounted for in the case analysis (for more see footnote 115, p. 87).

In my analysis I show that NGOs are typically registered as private non-enterprise units and do *not* have a key leader with strong governmental background. However, at least in many cases of the environmental NGOs they utilize the participation channels such as CPPCC and NPC as well as local consultation sessions to pressure for policy changes.

The most prominent example of a well-established environmental "grassroot NGO" (草根组织)[172] is FON that was found in 1994 as the Green Culture Branch of Academy of Chinese Culture (中国文化书院·绿色文化分院) by the academic Liang Congjie 梁从诫 (1932-2010). FON registered much later though (in 2010) with the MOCA and the district-level Commission for Science and Technology (科学技术委员会) in Beijing's Chaoyang District as its sponsoring unit. The organization is well-connected both internationally and in China. As far as its presence both through case filing and presence is concerned, its scope is national as it has even established twenty-two member groups (会员小组) in the provinces[173] and relies on volunteers and partner civil organizations around whole China. In 2013 it established a national-wide private foundation aimed at training and fostering cooperation among NGOs (FON Fund, n.d. -b) discussed in more detail in Chapter 6.7 CSO support network (p. 131 et seqq.).

FON has filed the most cases in this thesis and also lists "use of legal action" (通过法律行动) as a tactics in its short bio published on its official website (as of 2019)[174]. Accordingly, FON has actively sought to develop their own legal knowledge capacities. This involves their own internal organizational capacities by actively hiring and training its own public interest lawyers as well as close cooperation with *external* experts such as the lawyer Liu Jinmei (FON, 2015, p. 5) from a Shanghai-based law firm whose associates have represented FON-as-plaintiff in public interest lawsuits (for more on such collaboration see 6.7 CSO support network, p. 131) or universities to hold courses and educate and possibly recruit talents from law schools[175]. FON's own Legal and Policy Advocacy Department (法律与政策倡导部) is led by its director Ge Feng 葛枫 and joined by the legal graduate Wang Huishihan 王惠诗涵, both with top specialization and experience in environmental law. They both appear at the lawsuits representing FON[176] alongside other external representatives and facilitate the contact to a broader legal community.

In this context, "legal and policy advocacy" (法律与政策倡导) accounted for the biggest item in terms of the expenditure, namely 29 percent of its overall yearly expenditure

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172 That is also how the NGO refer to their own organization by themselves.

173 Based on the 2015 report, there were 19 of these groups in 9 provinces including Beijing and Shanghai municipalities (FON, 2015, pp. 20-21).

174 The search in internet archives shows that the older version of this same short bio did not contain this channel (legal action), which also explains some of these framings and law missing in the considerably earlier organizational Charter. From the available archives this provision replaced the "law, rights protection and other means" (法律维权...等方式) used between 2016 (earliest archive frame available) and 2018.

175 Such cooperation initiatives include for example Environmental Law Clinic at Renmin University (for more see FON, 2019, p. 9).

176 As a few examples see cases #3, #4, #14.1, #14.2.

(total expenditure: RMB 4,065,334.15) the year 2015 (FON, 2015, p. 23). The high proportion aligns well with the high activity in lawsuits and illustrates that this might be an obstacle for other NGOs that are not in position to designate such financial resources towards pursuing legal action. The organization's leadership continues to have a strong academic background as its current director in 2019 Zhang Shiqiu 张世秋 (since 2017) (FON, 2018) as well as the former director Yang Dongping 杨东平 that continues to serve as honorary director of FON are both professors at Beijing´s top universities, experts in their fields of environmental protection or technology (FON, n.d.).

Other Beijing-based NGOs in the sample have far less public outreach than FON. HYKJ registered in 2010 at Chaoyang District with the local commission for S&T just like FON (PSPCSO, n.d.). The founder of the NGO was a biology teacher at the middle school and environmental volunteer since 1996. Based on media accounts, in the year 2000 she had entered another NGO and later found HYKJ under the previous name of named "Eco-Friendly Public Interest Association" (环境友好公益协会) around 2005 (China Development Brief, n.d.) or in 2006 (People's Daily, 2016). Since its founding, HYKJ has focused on "offering other NGOs [environmental] data support and acting as proxy" (提供信息支持和事务代理) (HYKJ, 2017). The "proxy-characteristics" is not only limited to exchanges between NGOs but also points to the functional connection between the NGO sector and the corporate sector and at least in one instance between an NGO and a government briefly mentioned in the self-introduction at the official website. In this case HYKJ acted as a mediator between another NGO registered outside of Beijing and a local county government in Tongbai county, Henan province (河南省桐柏县地方政府) (HYKJ, 2017). There was a sudden surge in the EPIL lawsuits filed by this NGO as it filed (all of their) eight cases for the time period covered by this thesis in 2018 in the following order in Xinjiang, Yunnan, Hunan, Chongqing, Jiangsu and Chongqing[177].

The last among three Beijing-based organizations is BJ Yuantou which filed all of their cases in 2018 as well. Two were filed in Guangxi[178]and one major case filing occured in Jiangxi in 2018 which resulted to a settlement at RMB 30 million by both parties (ThePaper, 2018). In 2018 it got rejected by the Xinxiang Intermediate Court in a lawsuit filed in Henan. The Court stated in its ruling that the organizational charter (章程) submitted by the NGO-plaintiff does not meet the requirements set forth in Article 4 of the SPC 2015 Interpretation[179] (Xinxiang

[177] Most of these cases were not concluded at the time of writing this thesis.

[178] Both cases were on the docket at the time of writing this thesis.

[179] Article 4 stipulates that NGO's mission (宗旨) and scope of activities must include (rather factually than literally in word) "protection of societal public interest" (维护社会公共利益) and the organization must be

Intermediate Court, 2018). BJ Yuantou was set up and registered in June 2012 by an environmentalist and journalist working for Guangming Daily, Feng Yongfeng 冯永锋 together with another environmentalist Zhang Xiang 张祥[180] with previous experience of volunteering for ENGOs (Zhongguo Wang, 2020). Based on the information obtained from documents issued by courts in various localities (Luyang District Court, 2015; Xinxiang Intermediate Court, 2018)[181], Zhang serves as the director of the organization. The establishing of the NGO was merely an effort to differentiate between the work of another NGO co-founded by Feng together with the investigative journalist Ma Jun in 2006 and registered in 2008 as the Institute of Public and Environmental Affairs (北京市朝阳区公众环境研究中心, IPEA) (Feng, 2014).

Feng and Zhang are also associated with Green Beagle Environmental Institute (北京市朝阳区达尔问环境研究所), another green NGO registered in 2009. All three organizations (BJ Yuantou, IPEA, Green Beagle) have a strong connection to FON and the EPIL Beijing-based NGO community, although those organizations other than BJ Yuantou have not filed any lawsuits since the new EPL took effect in 2015. The low activity of BJ Yuantou in EPIL could also be due to the decision of some influential donors to withdraw funds (Ai You Foundation, 2018) following a sexual harassment scandal of one of its founders in 2018 (Climate Home News, 2018).

6.5 Local NGOs

Local NGOs are understood as those registered in the periphery (outside Beijing). Whether their scope is local or national is based on the case filing activity in other places than the place of registration and I provide an account of that in the summary (see Table 14, p. 217).

engaged in environmental protection to fulfill the requirement set forth under the Article 55 of the Environmental Protection Law (*Interpretation I*, SPC, 2014). The court at this particular locality interpreted the provision in rather restrictive terms and based its reasoning on the organizational charter where such a mission statement would be expected. Other courts with previous cases with statements issued before this case have not identified this as a problem and explicitly affirmed that the plaintiff did fulfill the requirement of "protecting societal public interest" alongside other requirements for standing (Jiujiang Intermediate Court, 2018).

[180] The story of founding the NGO written by one of the founders can be read here at China Development Brief (Feng, 2014).

[181] Note that whereas the case in Xinxiang is a public interest case concluded by mediation, in Luyang the social organization BJ Yuantou sued the Anhui Provincial Forestry Bureau for failing to disclose information upon request submitted by the NGO. Here, the information from the court document is used to establish the position of Zhang Xiang within the organization. Based on a search in Beida Fabao, there are multiple documents issued by Hefei Intermediate Court surrounding this particular case that started as a request for information disclosure and as BJ Yuantou filed an appeal, filed for administrative review and appeal to the administrative review at the higher instance court after not being granted the request – the nature of the request seemed to have been the focal point of the conflict between the plaintiff and the department it sued.

There are two NGOs in this sample based in Chongqing (CQLJ, GVLCQ). Being the older one of these two, GVLCQ was founded in 1995[182] and the current leader Wu Hong 吴虹 is the daughter of Wu Dengming (Probe International, 2013), a well-known Chinese environmentalist and one of the two founders. It is worth pointing out that the founders have contacts to other NGOs, notably FON as the original intention was to establish a branch of FON as mentioned by Elisabeth Economy (Economy, 2010, p. 157). Prior to the revised EPL the NGO participated together with ACEF and FON in an EPIL lawsuit filed in Guizhou in 2011, thus being one of few organizations that have a pioneering experience in EPIL.

CQLJ's founder Xiang Chun 向春 had previously worked for GVLCQ (Narada Foundation, 2012) and in 2010 established CQLJ, which also points to the connection between these two Chongqing NGOs. Apart from Chongqing, CQLJ has been active after the Environmental Protection Law came into effect and after it fulfilled the new requirements for standing in Guangdong together with GEPF and together with GVLCQ it has filed cases in Anhui, in Yunnan or sued companies in Beijing. The leaders of both NGOs do not have any governmental background in the sense of the GONGOs.[183]

There is evidence that CQLJ has curbed their own legal capacities. Xu Shaobo 许少波 had represented the organization in a lawsuit in various cases as "legal staff" (法务工作人员)[184]. The overall annual budget of CQLJ in 2017 amounted to RMB 888,897 (CQLJ, 2017, p. 13), which compared to other major NGOs only represents a minor fraction (FON, 2017: RMB 9,059,019)[185] and gives insight into how limited financial means shape the capacity for legal action. This might also explain why the organization was active only in collective lawsuits together with another GONGO (GEPF) and in another instance with the Chongqing Municipal Government where the litigation costs amounted to RMB 278,000 and the expert appraisal to another RMB 300,000, thus more than half of the organization's 2017 budget spent on one lawsuit.

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[182] The story of the founding is described in Economy (2010, p. 157).

[183] See a rejected lawsuits as the NGO-plaintiff did not meet the five years criteria (Hanjiang Intermediate Court, 2016).

[184] Mentioned in a case filed in Maoming together with GEPF (Maoming Intermediate Court, 2017) and the already mentioned case in Hanjiang (Hanjiang Intermediate Court, 2016). In both cases, the plaintiffs were rejected, in the Maoming case due to the fact that the case involved sea pollution, an area that is generally reserved for and falls under the authority of a special administrative departments tasked with marine protection (海洋环境监督管理权的部门). After the plaintiffs appealed the higher instance court ruled that the pollution is not only tied to the sea but also involved the coastal areas, wetlands and mangroves (并不单纯破坏了海洋生态环境，同样破坏了陆地生态环境), and therefore the case can be established. The previous decision was revoked and a retrial ordered in Maoming (Guangdong High Court, 2019).

[185] Based on FON 2017 annual report (FON, 2017, p. 24).

Another NGO GPEEC based in Guiyang and active in Guizhou is somewhat a border case of what constitutes an NGO and what a GONGO. The organization had been established by a journalist working for Guiyang Daily (贵阳日报) named Huang Chengde 黄成德 and registered with the civil authorities in 2009. Although the leader himself has no government background, the board consists of many professional researchers affiliated with government-related departments, lawyers and even one staff member of the Guiyang EPB (GPEEC, 2016).

GPEEC constitutes the only "NGO" examined in this thesis that has the local EPB as their sponsoring unit, which suggests at least some form of established relationship with the local administration (characteristic for many organizations in this sample as well) and a choice of preferred model for interaction. The NGO is a frequent partner of the government in environmental policy. Their "Non-Confrontational Environmental Governance Model" (非对抗环境社会治理模式) (Z. Yu & Huang, 2017) has received much attention in the media and gained the attention of the authorities as the article from party-led official newspaper for reposted on the NPC Website (Legal Daily, 2016). It describes an approach by which the NGO provides supervision and monitoring to industries within local government´s jurisdiction and supervises government agencies and thereby fosters cooperation among NGOs, governments, courts and neighboring communities. This NGO is an example of how partnerships between local government and NGO work and although it keeps its own identity, it is well integrated in the environmental agenda of the government and is regularly directly consulted on local environmental regulations. GPEEC was among those that prior to the enactment of the new EPL participated in two EPIL lawsuits in 2010 with ACEF and again with FON in 2011 (see Table 4 EPIL cases filed by social organizations prior to the EPL 2014, p. 102) and in 2013 and 2015 in lawsuits against administrative departments (Z. Yu & Huang, 2017). The cooperation is unlikely to be merely a coincidence as the NGO regularly works with ACEF among others on long-term projects (EGP-Guizhou Project, 2015) and has participated in further cases together with FON as plaintiff again in 2017 (Case #49).

Green Hunan based in Changsha is an organization specialized in river protection and only filed one EPIL case in Changsha concluded by mediation. Its founder Liu Sheng 刘盛 is a native Hunanese whose last job was a consultant in a Beijing-based consulting firm specialized in offering CSR consultation services to companies (Green Hunan, 2015). Green Hunan had set up a foundation in 2018 in Beijing named Beijing Watcher Environmental Protection Foundation (北京守望者环保基金会) where Liu is a vice-secretary. The foundation is also connected to another Hunan-based NGO *Riverwatcher* (河流守望者发展中心) that was

formed in 2017 with the support of the Alibaba Foundation and where Liu serves as director. The board of Green Hunan consists also of representatives of Alibaba Foundation, one other company, lawyers, and local media outlets (Riverwatcher, n.d.). Based on yearly reports issued by the organization, Green Hunan had received some government subsidy between 2017 and 2018, albeit so insignificant that it only accounted for 1 to 2 percent of the organization's yearly income.[186]

Green Home, an NGO based and active in Fujian, was found by Lin Ying 林英, producer of an environmental TV program (SEE Foundation, n.d.). According to the JICA database the organization had around 5 full time employees but more than 5000 volunteers (out of which 2000 were active participants) in year 2011 (JICA, 2011, pp. 50-51). The organization also employs legal staff in a small one-person "EPIL and legal department" (公益诉讼与法律事务部) (Green Home, 2015, p. 21) and based on the same report also cooperated on legal expertise with at least four other external lawyers from law firms/CLAPV who also work together with other NGOs (notably with FON that Green Home has a strong connection with too) with some of them representing the organization at court (Green Home, 2015). The organization is not financed by the government.[187]

Another organization classified as NGO called CMCN is based in Fujian´s Putian and refers to itself as a "student organization" (学生社团) found by students from the Xiamen University and specializes in the protection of mangrove trees in Xiamen and surroundings (保护厦门及周边的红树林). It was registered under the name *Putian Green Sprout Coastal Wetlands Research Center* (莆田绿萌滨海湿地研究中心) (PSPCSO, n.d.) but both the court and the organization itself refer to the NGO as CMCN (中国红树林保育联盟). CMCN filed only one case together with the national GONGO CBCGDF concerning mangrove trees protection in Hainan, therefore outside of Fujian or the immediate surrounding of Xiamen but within their field of expertise.

[186] The budget of Green Hunan - 2015: 2,415,658 RMB; 2016: RMB 2,221,938; 2017: RMB 5,638,666 (2 % gov. subsidy); 2018: RMB 7,496,554 (1% gov. subsidy) (Green Hunan 2015 - 2018 annual reports). In this period apart from 2017 and 2018, the organization had not received any government subsidy.

[187] The budget of Green Home – 2017: 1,424,312; RMB 2018: 880,976 RMB (Green Home 2015 – 2018 annual reports). In terms of the expenditure, Green Home reported that it spent around 35 % of its overall budget in 2018 for environmental public interest litigation only, which was the second biggest expenditure item on the budget after water observation programme and accounted for 16.8 % in 2017. The financial reports were not made part of the 2015-2016 reports.

6.6 On the borderline between NGO and GONGO

Organizations discussed in this chapter exhibit some elements of the GONGO and NGO and suggest a more flexible category in a way similar to Shandong EP Foundation (see p. 130) and GEPF (see p. 110) which are both categorized as GONGOs because of the role played by large companies in their respective constituencies and corresponding framing that speaks more to the "GONGO-like" organization setup.

6.6.1 Hangzhou ECA

The name of Zhejiang-based organization registered as Hangzhou ECA (also known as "Green Zhejiang" 绿色浙江) also contains a direct reference to ecological culture (生态文化) with these references to official green ideology (Ecological Civilization 生态文明) also contained in the organizational charter valid since 2010 (Green Zhejiang, 2015)[188]. The co-founder Xin Hao 忻皓, who according to the information obtained from the court decision in a case filed by this organization serves as a secretary of the organization (Zhejiang High Court, 2018) and also acts also as a vice-director of another province-level environmental youth organization and as a regular member (not suggesting a leading position of any sort) tasked with some Party discipline and "work style" (政风行风) related oversight work to the Zhejiang EPB's among others (People's Daily (Zhejiang), 2014).

Strictly speaking Xin neither holds a position within the government nor is he a retired government official or cadre. Xin is more of an expert with some experience of working closely with the government (Institute of International Education, n.d.). Xin is a former student of the key leader (association director, 会长) of the organization, Ruan Junhua 阮俊华 and both are connected and active in the party branch at Zhejiang University and the communist environmental youth organizations (共青团) at the provincial level where Hangzhou ECA has its roots (CECA, 2010).

The organization was officially registered in 2009 with the assistance of the Zhejiang Province Eco-Culture Association which in turn is a provincial branch of the national organization CECA (China Eco-Culture Association, 中国生态文化协会) (CECA, 2010).

188 According to the charter the organization also receives part of its finance through "government subsidies" (政府资助) and "takes on the government functions and assists the government and relevant departments" (承办政府委托的事项，协助政府和有关组织做好相关工作) (Green Zhejiang, 2015).

CECA is directly run by the Ministry of Forestry (CECA, n.d.). It is worth noting that Hangzhou ECA was found much earlier (in 2000) (EU-China NGO Twinning Program, 2015) than the national umbrella organization CECA (2008), which speaks rather to the cooptation of Hangzhou ECA into the city-level and national-level organization.

Hangzhou ECA is internationally well-connected and among others part of the international Waterkeeper Alliance (Waterkeeper Alliance, n.d.)[189] and was notably among the first ones to have a party branch in 2012 (Baidu Baike, n.d.-b), its sponsoring unit is the city-level EPB. The organization was featured in a case study in previous research on environmental governance (X. Gao & Teets, 2020) and the authors write that "it is Green Zhejiang's connection with the party-state, rather than solely experts, that paved the way for its development" (X. Gao & Teets, 2020, p. 9) and share some insights on the difficult path of the organization to find a government sponsor. Nevertheless, the Gao and Teets treat Hangzhou ECA and Green Zhejiang separately that to a certain degree might have incorporated or at least taken the unregistered Green Zhejiang under its wings.

The financial situation points out to a certain fading governmental support over time. Based on available reports, the organization had received 38 % of its funds by the government, yet next year government subsidy was only 6 % and in 2017 the government only accounted for 1% of the total income. This might be a case where probably a grassroot university-based organization has received major temporary financial support by another GONGO and might have been partly coopted into the larger organization whereas the earlier Green Zhejiang became Hangzhou ECA while the founding personnel of the organization still remains in charge.

6.6.2 Guizhou Youth Law Society

Guizhou Youth Law Society was established by Guizhou Minzu University in Guiyang and describes itself as a student organization. The only key leader whose name is mentioned in multiple sources is a law professor Sun Guangquan 孙光全 (Sina, 2014) who works as director of other centers and as legal counsel for some administrative departments. The university-background of the organization is further reflected in its sponsoring unit which is the provincial youth federation (贵州省青年联合会) (PSPCSO, n.d.), which in turn is a member of the All-China Youth Federation.

[189] Note that another above-described organization (Green Hunan) is also part of the network.

The suffix “law society” (法学学会) implies organizational belonging to another umbrella organization. The youth organization is organizationally embedded in the larger provincial law society, which in turn is a member of the nation-wide China Law Society (中国法学会), another mass organization under the leadership of the Party that facilitates coordination among the Party, government and legal academic profession.

6.6.3 Shandong EP Foundation

Shandong EP Foundation constitutes a difficult border case between GONGO and is difficult to access due to low transparency as also suggested by available ratings – the organization scored 36 out of 100 points based on a Foundation Transparency Index in 2019 (China Foundation Center, n.d.)[190] The provincial-level organization Shandong EP Foundation is based in Jinan and constitutes one of the oldest *provincial-level* organization examined in this thesis and differs from the above-mentioned organizations in several aspects. Originally established in the early 2000s as the “Shandong *Qu Geping* [emphasis added] EP Foundation” (山东曲格平环境保护基金会) (Sina, 2018) under the provincial EPB and named after Qu Geping (see CEPF, p. 105), a famous native from Shandong and co-founder of CEPF, another national GONGO, Qu only holds a symbolic post as honorary director (名誉理事长) within the organization as a brief reference to the organizational history. The first director was Zhang Ruifeng 张瑞凤, former vice-governor of Shandong and vice-director of the provincial NPCSC (Baike Baidu, n.d.-a). Therefore, from this point of view the organization can be categorized as GONGO.

Information on this organization is insufficient but the current leadership suggests that it is quite different from other organizations belonging to this category and also follows a slightly different development path than upon its foundation. Since 2016, The organization is headed by a Shandong private entrepreneur Yan Jingjiang 颜景江 who donated RMB 100 million to the establishment of a natural scenic spot in Zouping, Shandong (Li et al., 2016) (for similar role played by large entrepreneurs with connections to the government compare GEPF, p. 110). For this activity, he was awarded an environmental prize by CEPF in 2014 (Zhongguo Wang, 2004). He also founded and continues to serve as the president of an important manufacturing company praised by the provincial governor of Shandong in media as “a key

[190] Note that the index value is not available anymore at the website.

enterprise with links to export" (重点联系出口企业) (Zhongguo Huanjingwang, 2011a). This fact points to the specific economic structure of certain locations and the role played by large entrepreneurs in GONGOs. Based on Baidu, other members of the organization includes city-level governmental leaders (Baidu Baike, n.d.-c), other Shandong-based entrepreneurs, academics (Shandong University, n.d.) and environmentalists without any apparent governmental affiliation (Baidu Baike, n.d.-a).

The secretary (秘书长) is the second most important person in the organization has a background as secretary and vice-director of Shandong Environmental Protection Propaganda Center (山东省环境保护宣传中心), essentially a work unit of the EPB devoted to the promotion of environmental knowledge and training (Qilu Wang, 2012a, 2012b). The draft of the organizational charter from 2016 states that the sponsoring unit together with important donors and founders participates in selecting the board (Shandong EP Foundation, 2016). Furthermore, there are some general mentions that the organizational board pays attention to Party qualities when selecting personnel[191] but there no mention of specific policies that the organization pledges support to. At the same time, it forbids personnel from the government to simultaneously act as director of the organization[192]. Moreover, the Article 29(4) of the organization's Charter mentions that foundation´s financial resources *can* stem from money allocated by the government (政府拨款) (Shandong EP Foundation, 2016) but concrete financial statements are not available.

Summarized, the anecdotal evidence suggests that the board members partly have some connection to the lower levels of government, but it is not that directly manifested as in the cases of some of the above-mentioned provincial GONGOs. The foundation is therefore for the benefit of the doubt and in the light of avoiding confirmation bias left uncategorized despite its organizational history around its establishment and that it is probably well-connected and supported by leading business circles in Shandong. The relationship between the government and this organization is not exhibited in such a direct way (but rather via the business elites).

6.7 CSO support network

Some NGOs work closely with each other and have invested considerable efforts into building support networks that span beyond the immediate cases including academics, volunteers and

[191] In Article 8 of the Charter, it says that in order to quality as a Board member one has to among others "uphold the Party line, plans, policies and political qualities" (坚持党的路线、方针、政策、政治素质好) (Shandong EP Foundation, 2016).

[192] Article 24 of the Charter (Shandong EP Foundation, 2016).

media representatives, thus producing networks of mutual support (collaboration) and over time the sustained collaboration lead to an alliance (Lu & Steinhardt, 2020). Enhancing support network capacities among CSOs such as the Zero Waste Alliance (零废弃联盟) founded in 2011 (FON, 2011) have contributed to knowledge and resource sharing among like-minded NGOs with similar interests.

Directly focusing on EPIL both as means and as a goal, FON established an EPIL Support Network (环境公益诉讼支持网络) in 2017 with the goal of "supporting more ENGOs to use the law in order to defend the nature and the right to health" (支持更多环保组织用法律手段捍卫自然和健康的权利)[193] (FON, 2017, p. 1). The promotion of law as a means towards solving the environmental problems is also evident in naming the parallel agenda and rolling out a support system (支持体系) for "Nongovernmental Action Network for Environmental Rule of Law" (中国环境法治民间行动网络) briefly mentioned in FON's 2018 annual report (FON, 2018, p. 5). The Network has its financial basis through the FON Foundation (自然之友基金会) established by FON in 2013 for the purpose of "supporting EPIL at the community-level of other public interest organizations" (支持其他公益组织在社区的环境公益行动) (FON Fund, n.d.-a). The Network was supposedly officially set up in 08/2014 (China Development Brief, 2015) just on the onset of the revised Environmental Protection Law. The project has received support from Ford Foundation and Alibaba Foundation (Alibaba Foundation, n.d.) and includes well-established players in environmental litigation and long-term partners of Friends of Nature such as CLAPV (see below).

According to FON´s own annual report, there were over 65 social organizations and 52 lawyers that had joined the aforementioned Network by 2018 (FON, 2018, p. 5). The number of NGOs and lawyers far greater than the number of plaintiffs and parties directly involved in all EPIL lawsuits gives a hint that some members operate in the background and are tasked with supporting functions such preparing cases, gathering evidence or broader functions such as awareness-raising about legal redress, talent acquisition etc. whereas others are directly involved as parties to the lawsuit. There is no extensive list of organizations belonging to the network, nor is there any further evidence that would illustrate the vertical and horizontal ties among the organizations and point to their respective roles occupied by them within the network.

[193] The "network" is not listed in the study by Lu & Steinhardt on NGO alliances (Lu & Steinhardt, 2020). The full name of the project launched by FON is 中国环境法治民间行动网络支持体系建设项目, which reflects the aim and rather preparatory phase.

By focusing on the immediate actors active in EPIL such as supporting units (支持起诉方) from the civil society sector (CLAPV, HiNature, Lüse Jiangnan, Green Qilu) and law firms in this thesis, it is evident that some networks among the plaintiffs are stronger and that there is a connection even beyond single cases and in multiple localities.

Mobilizing and interlinking efforts contribute to connecting the organizations, thereby escaping resource constraints by pooling resources (Lu & Steinhardt, 2020) in order to fully utilize the opportunity opening through the new EPL. The relevance of this cooperation lies in alleviating the financial burden of plaintiffs in EPIL, supporting them with evidence-gathering and especially with cooperation between national and peripheral stakeholders in the combination of their expertise. More importantly, the issue for formation is two-fold, one is obviously environmental protection and centers around the issue-specific qualities just like the epistemic communities formed around zero waste in the case of the Zero Waste Alliance (Lu & Steinhardt, 2020), the other is the utilization of the law and judicial channels.

The descriptive account provided here supports the claim that the plaintiffs but also certain public interest lawyers and other NGO-affiliated organizations active in EPIL form an interconnected "common legal community" (H. Fu, 2019b, p. 86)[194]. Fu´s argument is rooted in the concept of "legal complex" (Halliday et al., 2007a; cited in H. Fu, 2019b, p. 86) that regards legal occupation, primarily lawyers, judges and to a lesser degree also legal academics and other members of the extended legal *profession* and their professional identity as a central units of analysis, in other words "[t]he legal complex constitutes the cluster of legally-trained occupations who act collectively on specific issues because that is the way actors define their own commitment." (Halliday et al., 2007b, p. 9). Halliday et al. find that that the legal complex they investigate in a cross-country case comparison is rarely internally unified and as shown in the case of criminal defense lawyers in China and the All-China Lawyers Association (Halliday & Liu, 2007) could hardly prompt the emergence of interconnected (partly) formalized networks beyond individual lawyers in the potentially sensitive area of criminal defense traditionally dominated by the state bureaucracy.[195] The CSO support network in this case is

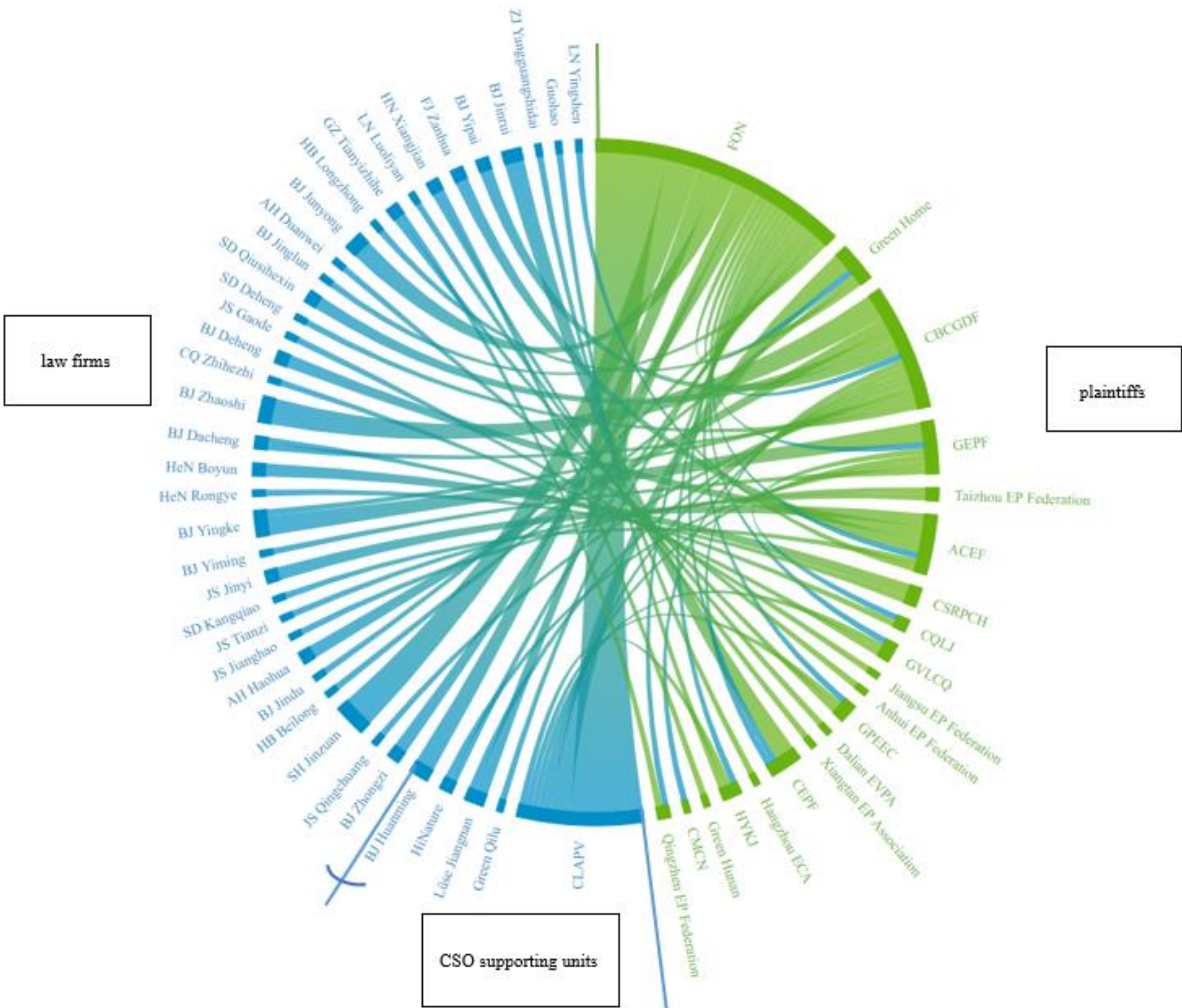
[194] Note that Fu (2019b) also counts the procuratorates as stakeholders in this network. Here I am concerned with the civil society organizations and their immediate alliance. However, local governments that act as plaintiffs together with social organization, parts of local administrative, judges, even companies and expert witnesses and notably procuratorates also directly participate in the in the extended community, albeit with less networking going on and only marginally given their other tasks – I focus more on the role of procuratorates role in the lawsuits and judges' influence on the outcome of the lawsuits in the second part of the analysis.

[195] This obviously does not exclude the possibility of mobilizing solidarity among legal professionals triggered by high-profile cases (in the case described by Sida Liu, Terence Halliday and Lily Liang directly involving another lawyer) and violations of procedural justice in their "fight against populism and a defense of professionalism" (S. Liu et al., 2014, p. 81).

distinguished by actors with a certain minimum legal capacity suited for participating in EPIL lawsuits and concentrated around a shared objective of and commitment to achieving environmental justice through judicial channels, alias by collectively mobilizing the law to influence outcomes of the respective disputes.

The CSO support network exhibits in some cases stronger connections, in others none and where cooperation ties do exist it is likely that they are more than just loose ties articulated in the legal complex. The activity and emerging cooperation network among the various stakeholders that make up the CSO network around EPIL dates back to the promotion of environmental law and legal discourse propelled by legal academics and NGO-affiliated personnel many years prior to the national law in 2014 but has also evolved through increased litigation activity since the law went into effect in January 2015.

Figure 2 Participation of NGOs, supporting units and law firms in EPIL



The network that emerges from the cases where a decision regardless whether first-instance or final was available shows the intensity of the existing immediate ties among civil society actors in EPIL – namely the plaintiffs, supporting units (limited to CSOs) and law firms (see , p. 134). 16 lawsuits were filed by multiple plaintiffs (14 by social organizations and 2 with the participation of a local government and a social organization). A closer look at these collective lawsuits reveals that national NGOs cooperate more among each other and together with national GONGOs. National NGOs cooperate more with local organizations based in the place of case filing as well. National GONGOs rarely cooperate, and only rarely do they cooperate with local organizations – the only instance of local organization and national GONGO cooperation being a lawsuit by CBCGDF and CMCN. CMCN although a small NGO was helpful as the lawsuit in Hainan (CMCN is based in Fujian) evolved around the pollution of mangrove trees - narrow specialization and a gap that CMCN happened to fill with that rare expertise. I examine the implication of the concluded collective lawsuits in the chapter on the degree of success.

It is evident that the connection among social organizations (plaintiffs) as observed in the final litigation activity is quite limited.[196] Apart from 14 collective lawsuits filed by social organizations, vast majority of the lawsuits are filed by one plaintiff. Regarding the collective filings the plaintiffs either complement each other or raise the same demands, so that the demands are harmonized. The cooperation is therefore implied. Below I illustrate the nature of this implied cooperation by discussing two counterexamples that rather than cooperation show a clash rather than cooperation among multiple plaintiffs that sued in one case.

One EPIL lawsuit filed in Huainan (Anhui) shows signs of competition among social organizations and instead of implying stronger cooperation points out to the limits thereof. In January 2017 CQLJ, a local NGO from Chongqing, sued a chemical company in Huainan for causing pollution (Huainan Intermediate Court, 2018)[197]. The court document presents an

[196] Larger networks among social organizations are exhibited in the meta-level formalized networks of the support networks and funds discussed earlier and, on another layer albeit less formalized, also through direct interaction with such organizations like CEPF or ACEF by participating in events and initiatives as part of their wider law mobilization efforts. On another level, social organizations also interact with central ministries and other organs and local governments and administrative, some of these connections are formalized (through membership in commissions and as experts or service providers), other remain informal but take place on a recurrent basis beyond one-time interactions.

[197] Although not mentioned in the decision, it is clear that CQLJ could not have filed the lawsuit in 2015 as they only registered with civil authorities in Chongqing in August 2011 and therefore would not have met the five years requirement set forth by the EPL. In 2016 the organization tried (unsuccessfully) in another case filing in Hubei (Anjiang) in 2016 despite not fulfilling the five-year requirement in a lawsuit demanding compensation for losses amounting to RMB 900,000 among other demands claiming that the defendant had not halted the pollution following an administrative penalty and decision to close down production (Hanjiang Intermediate Court, 2016). Note that this lack of enforcement of administrative decision is similar reason to another case filed by CQLJ described below.

interesting story narrated by the plaintiff: In 2014 CQLJ discovered that the company emits strangely coloured smoke, investigated the matter and reported the finding of exceeding emissions to the provincial EPB in Anhui who passed an order down to the city´s EPB for investigation. The city´s EPB fined the company for RMB 80,000 in April 2014 and after seven month of no change once again (administrative penalty amounting to RMB 80,000). In March 2015 CQLJ had returned to the site multiple times and found out that the administrative penalties had not resulted in any change regarding the pollution (被处罚后仍拒不改正) (Huainan Intermediate Court, 2018). It sued for four million and further RMB 16 million among other demands. The High Court of Huainan, however, rejected (驳回, *bohui*) the lawsuit citing an ongoing mediation (Case #38)[198] between the defendant and CEPF, major GONGO from Beijing.

After the mediation agreement was reached at High Court of Huainan with both parties settling at over RMB 10 mio., CQLJ filed an appeal (12/11/2018) against the initial rejection alledging that the case is not the same as the previous one closed by mediation (Anhui High Court, 2018). Further the plaintiff questioned the objectivity of the assessment in the mediation agreement arguing that the sum (also determined by a third-party) has been proposed by the company and therefore lacks objectivity. Finally, the NGO claimed that the organization had not been notified of the outcome of the agreement and therefore could not have raised any objections. The appelate provincial court in Anhui rejected the claims.

In another case CQLJ first filed a case in Chongqing and later the Chongqing Municipal Government (重庆市政府) decided to step in the case (Case #43, see Table 13 List of concluded cases for analysis, p. 214). The case was subsequently merged by the court (First Intermediate Court of Chongqing, 2017).

In the case of CEPF the ties to the EPIL immediate plaintiffs' community as outlined before is quite weak whether through plaintiffs, law firms or supporting units. This limited evidence points out to the fact that cooperation is in fact dependent on (possible) coordination and that the court can play a decisive role in giving preference to certain plaintiffs or even merge single lawsuits filed by various plaintiffs in the same matter, hereby creating new coalitions who participants are forced to negotiate their demands and harmonize their legal strategy.

Focusing on the supporting units it is evident that there are only a very few, again on the central level registered and operated from Beijing there is the CLAPV and locally active supporting units such as Green Qilu (济南市绿行齐鲁环保公益服务中心; Jinan, Shandong),

[198] See Table 13 List of concluded cases for analysis, p. 214.

Lüse Jiangnan Public Environment Concerned Center (苏州工业园区绿色江南公众环境关注中心; Changzhou, Jiangsu) and HiNature (The Society of Canton Nature Conservation, 广州市越秀区鸟兽虫木自然保护育中心; Guangzhou, Guangdong) that all acted as supporting units in cases with participation of FON (collective lawsuits with GEPF/CBCGDF) that were supported by CLAPV as well. In one case (supported by CLAPV as well) filed in Beijing, a law firm (北京环鸣律师事务所律师) that has ties to FON, has acted as a *supporting unit*. A detailed inquiry is not needed to establish that close ties between the supporting units are a by-result of a strong tie between FON and CLAPV.

When it comes to the law firms that represent the plaintiffs, the relationship is much more exclusive and less connections are observed, and patterns are not that straight-forward Some plaintiffs prefer local law firms (ACEF) or one specific law firm (CEPF-BJ Jinrui) with little ties to other plaintiffs[199], others cooperate with rather a few law firms that have a national or regional presence (strong tie: FON-BJ Junyong; FON-SH Jinzuan). Where resources of environmental law knowledge are scarce, different plaintiffs in different cases cooperate with the same law firm (Hunan: Xiangtan EP/Green Hunan – HN Xiangjian; Guizhou: GPEEC, Qingzhen EP – GZ Tianyizhihe), which also signals a possible closer connection and resource sharing among the plaintiffs in different cases. Similarly, it is quite likely that law firms of plaintiffs that are well-connected to each other such as Green Home and FON share resources – BJ Junyong who has close ties to FON represented Green Home in a sole lawsuit against a small polluter in Fujian. Just like this the connection between the supporting unit CLAPV and Green Home is strong as well. Parallel to the law firms many organizations have developed their own organizational legal capacities and knowledge to engage with legal professional. This enables them to represent themselves as described above with the induvidual characteristics of the plaintiff.

Participating or aspiring to participate in EPIL also leads to the establishment of new connections and networking within the administrative and judiciary. Green Home, an NGO based in Fuzhou had drawn on its experience with FON as co-plaintiff after the Nanping case was decided in its favor. With the help of its sponsoring unit, Fujian Province Association for Science and Technology, it reached out to Fuzhou University and their law school and together with other institutions invited judges from the provincial court, procurators, EPB

[199] The collective lawsuit in Kunming filed by CEPF was joined by FON a month after its acceptance by the court but information is scarce. Another case that was concluded by a mediation agreement (see #22, Table 13 List of concluded cases for analysis, p. 214) were in fact two mediation agreements that were merged by the court. Therefore the collaboration in these two lawsuits is very weak and not as understood in the typical case here where two organizations jointly initiate a lawsuit.

representatives to a joint meeting on Environmental Co-Governance (环境共治) (Green Home, 2015, p. 2). I focus more on the role of the administrative and especially the procuratores in the second part of the analysis.

6.8 Summary of findings

Table 6 Organizational Type of Social Organizations

	Key Leader	Current Leadership	Funding	Values	Result
	Government background (yes/no)	Government background (yes/no)	Funded by the government (yes/no)	Government reference (yes/no)	GONGO/NGO/ Uncategorized
ACEF	yes	yes	*n/a*	yes	GONGO
Anhui/	yes	yes	*n/a*	yes	GONGO
CBCGDF	yes	yes	yes[3)]	yes	GONGO
CEPF	yes	yes	no	no	GONGO
CSRPCH	no[2)]	no	partly (self-described)	yes	GONGO
Dalian EPVA	yes	yes	*n/a*	yes	GONGO
Fujian EPVA	party cadre	partly[2)]	*n/a*	yes	GONGO
GEPF	yes	partly	no	yes	GONGO
Hangzhou ECA (Green Zhejiang)	*n/a*	no	yes[3)]	yes	GONGO
Qingzhen EcP Federation	*n/a*	n/a	*n/a*	yes	GONGO
Shaoxing ECPA[1)]	*n/a*	yes	*n/a*	yes	GONGO
Taizhou EP Federation	*n/a*	yes	*n/a*	partial[5)]	GONGO
Xiangtan EP Association[1)]	yes	yes	*n/a*	yes	GONGO
Zhenjiang Society for Env. Science	*n/a*	yes	*n/a*	*n/a*	GONGO
BJ Yuantou	no	no	*n/a*	no	NGO
CMCN	no	no	*n/a*	no	NGO
CQLJ	no	no	*n/a*	*n/a*	NGO
FON	no	no	no	yes	NGO
GPEEC	no	partly[4)]	*n/a*	yes	NGO
Green Home	no	no	no	yes	NGO
Green Hunan	*n/a*	no	yes[3)]	*n/a*	NGO
GVLCQ	no	no	*n/a*	yes	NGO
HYKJ	no	no	*n/a*	yes	NGO
Guizhou Youth Law	no	no	*n/a*	*n/a*	Uncategorized
Shandong EP Foundation	yes	no	*n/a*	yes	Uncategorized
Yiyang RVPA	no	*n/a*	*n/a*	*n/a*	Uncategorized

1) Sharing office space with the local EPB as auxiliary criteria pointing to GONGO-character
2) The organization/its leadership is part of another GONGO or the administrative (EPB)
3) Government funding very low (1-2 percent of total budget) or received on non-systemic basis.
4) Regular member of city's EPB active on board, unique interaction model with the government.
5) Referenced in official document in the context of guiding public participation and constructing Ecological Civilization.

Six central (Beijing-based) organizations account for 75 percent of the cases (99 lawsuits) as opposed to the rest of the local organizations (34 lawsuits). Taken together 12 provincial and subprovincial GONGOs account for 44 percent of all social-organizations-as-plaintiffs and are, therefore, the strongest group in terms of the number of organizations represented in EPIL. Yet, they have only filed a handful of cases compared to the *central* GONGOs/NGOs and with a few exceptions remain even less active than some local NGOs. Few central and local organizations have been pivotal in environmental public interest litigation. They include organizations that have engaged in environmental public interest litigation much time prior to the EPL 2014 during the local experimentation phase[200] (see Table 4 EPIL cases filed by social organizations prior to the EPL 2014, p. 102) and possess the necessary legal knowledge capacities to engage in EPIL and frame their mission accordingly. Few local (mostly) NGOs with ties to those pivotal pioneer organizations in terms of EPIL have followed.

Regarding the background of the plaintiffs, information on funding was only available for 30 percent of all organizations more or less evenly spread between both organizational types of GONGO and NGO. Where information was available, even organizations where the classification by aggregating multiple criteria resulted in the classification as GONGO were not supported by the government on a systemic basis and only with low one-time financial support.[201]

All organizations were assessed on an individual basis. The result of general categorization between NGO/GONGO (for the categorization central/local based on the place of registration see Appendix Table 11) including their scope seen in case filing and regional organization presented in the above table. Results summarized on *discursive, political, and legal knowledge resources* are summarized in Table 7 below and further discussed in this Summary. For a detailed overview of results regarding these resources and the coded parts refer to Table 15 in the Appendix.

[200] For more on the local experimentation refer to Chapter 2.3 Local experiments.

[201] The situation might be different for most of the local GONGOs tied to the administrative but even there the tendency seems to be the separation of financial resources between governments and organizations and making organizations self-sufficient relying on donors rather than a government subsidy. This is well illustrated by the case of Hangzhou ECA with the government withdrawing its financial support over time as the organization established a funding basis through its own members and donors.

Table 7 Typical Distribution of Resources by Social Organizations-as-Plaintiffs

	Political Resources	**Discursive Resources**	**Legal Knowledge Resources**
GONGO	key-leader or organizational leadership with government background (e.g. elite party veteran, government leader, leading position in administrative/party or mass organization)	*Mission* is typically framed with references to "green ideology" (e.g. contributing to Ecological Civilization) or other explicit references and values echoing party-official ideology. Foundations that explicitly highlight funds management or less active NGOs are less concerned with highlighting these attributes. *Function* in relation to the government typically proclaims a positive attitude and is framed as completing/ assisting or supporting the government with typical task of bridging the society and the government. Foundations tasked with funds management are less concerned with highlighting these attributes. NGOs include brief reference to ideology/assisting the government or both with some remaining more neutral and mostly local NGOs highlighting their assistance to the government similar to those of GONGOs. *Law Framing* is less common with grand statements missing, typically only GONGOs typically proclaim to advance the environmental rule of law, development of new regulations or framing their mission as rights protection (*weiquan*), legal aid and legal propaganda regardless of the rate of filing activity. NGOs remain typically more reserved with such grand commitments towards building the rule of law. Friends of Nature is an exception emphasizing "nature's rights" and stressing the use of legal channels for dispute resolution. The newly set-up FON Fund clearly steps up the commitment to nature's rights and the right to health.	Only few pioneering (pivotal) organizations have sought to curb their legal capacities (lawyers on board, special organizational committees or formalized legal agenda departments) or operate their own legal (aid) centers. There are efforts of fostering and formalizing cooperation among social-organizations-as-plaintiffs (strong existing ties especially among national centrally registered organizations) but also among local-central organizations to overcome low budget problem and as seen through case filing with external law firms, other (social) organizations focused on legal aid and the administrative/judiciary. These networks are still in their infancy with a few clusters emerging.
NGO	key-leader or organizational leadership with no leading function in the government (e.g. academic, non-profit, media, private consultant)		

As for the organizational history, central GONGOs active in EPIL all have a veteran figure, a veteran party/state elite that the organization is tied to. The current leadership of these organizations is headed and includes former leaders of the Ministry of Ecology and Environment (MEE) or mass organizations such as the All-China Federation of Industry and Commerce or directly the United Front Work Department (UFWD) of the CCP. As discussed in Chapter 6 two major central GONGOs ACEF and CEPF are related to each other through the MEE as their former sponsoring unit (and CEPF having a strong direct connection to the MEE themselves through their organizational history and founder) and ACEF and another central GONGO CBCGDF are connected partly through overlapping times of their current leadership being active in leading positions of ACFIC. The ties of these central GONGOs to their sponsoring units are strong but more auxiliary to other connections to the high-level administrative as they are not directly integrated into for example the MEE's work but rather constitute organizations with autonomous agenda and separated line of personnel.

For provincial and subprovincial GONGOs, on the contrary, the involvement and affiliation to the EPB or other sponsoring units on the corresponding level is exhibited in a more straightforward way of relationship and with the key leader in a government position[202] typically serving on the board of the organization or a direct inclusion of the organization into the work of the sponsoring unit or at least sharing some resources in provincial organizations. Subprovincial GONGOs share this characteristic feature of being part of the administrative but lack the high-level political resources of their counterparts at the province level. Provincial GEPF (categorized as GONGO) and Shandong EP (left uncategorized but tendentially closer to a GONGO) constitute interesting examples with current key leaders tied to major private corporations. In both cases, the organizations show strong direct high-level connections to the government or the Party.

The stronger connection to the administration is also reflected in the self-described function that the subprovincial GONGOs take on. Many of them partly assume administrative tasks and see their functioning as mobilizing and bridging society and government or guiding (引导) the public. They refer to their role as "complementing", adding an aura of representing the society to the governmental decision-making, providing policies with practical feedback. Where mission statements or similar accounts on values were available, both central and local GONGOs directly refer to the official "green ideology" (such as Ecological Civilization) in their mission statements and organizational charters echoing the vocabulary used in the state

[202] Hangzhou ECA is an exception with no connection and low-level weak connection of the key leader to the administrative.

discourse on environmental protection. Whereas the activity of central GONGOs is national in scope, the scope of the local GONGOs is in line with their proposed scope of action not exceeding the borders of the province or even city or county of registration with some of them being more active and mobile within the province (e.g. GEPF) than others but overall their mobility remains tied to the locality.

The background of the key leaders from the NGO scene is more varied with key leaders coming from the environmental non-profit sector, media or with student/academic background. Such organizations as FON are not tied to the administration directly through their current or former leaders but have cultivated strong ties to the legislative bodies and the Chinese People´s Political Consultative Conference (CPPCC) but contrary to the GONGOs through NGO representatives being regular members or engagement through policy advocacy and suggestion to legislative bodies regarding environmental law-making rather than serving at a leading position or with ties to former leaders within these political institutions.

As discussed throughout the chapter, many NGOs studied have a strong focus on policy advocacy or act as service providers for the government like Guiyang Public Environmental Education Center (GPEEC) offers third-party oversight and monitoring services to the local government or openly highlights their close ties to the local administration, which is reflected in the higher involvement of city EPB members and administrative staff in the NGO itself. Just like GONGOs the mission statement of these NGOs (GPEEC, GVLCQ) strongly resembles the state discourse with explicit references to “green” ideology.

Other NGOs are less direct in their framing and prefer neutral function framings like “environmental research”, which is especially true for the central NGOs with all three having some form of reference to research already contained in the organization’s name. The relationship with the government is highlighted by the NGOs in the corresponding bottom-up framing as “assisting” (协助) the government or coordination (配合) even in cases where NGOs remain neutral and avoid explicit references to CCP ideology, the framing roughly resembles the “complementing” function as framed by local GONGOs.

The importance of legal channels is highlighted in the function/value statement (protection of environmental rights and interests 维护环境权益) of some organizations but also in direct legal knowledge-building capacity. Not all organizations have been active in case filing to the same extent and even where legal capacities are given, the resulting capabilities should

not be overexaggerated with some organizations essentially only employing one or two people[203] but laying an important basis for more engagement via legal channels.

Legal knowledge capacities are rather undeveloped with local GONGOs who might also count on their government sponsor to allocate or share such resources but as the case filing activity shows these legal resources are also crucial in navigating the path for more inclusion in EPIL – if the organization lacks the basis for understanding & researching the procedure (EPIL), it might as well be more reluctant and less confident to actively engage in EPIL. For example, GEPF, the most active local (provincial) GONGO compared to the other provincial/sub-provincial GONGOs operates its own legal service center with legal experts specialized in environmental law on board. As social organizations utilize the law, they also educate the public and help the state disseminate legal knowledge (普法) while using the law in line with its organizational goals as a tactic to reach environmental outcomes. National GONGOs and local NGOs have sought to curb their legal resources either by establishing such specialized institutionalized centers or departments within the organization or acquiring some key personnel to increase the in-house legal knowledge and maintain contact with the legal community.

This is also where the resource-sharing becomes useful exhibited through connections observed in the CSO support network but not including all plaintiffs based on the case filing with more information such as first instance judgment or a detailed media report on parties involved available. FON (see Figure 6 CSO network: FON, p. 223) and CLAPV (Figure 7 CSO network: CLAPV, p. 223) show the most connections to other plaintiffs and law firms and the mutual connection between those two Beijing-based organizations is also strong and goes back many years prior to the year 2015 (see 2.2 Legal discourse). FON is also organizationally the backbone of the efforts to institutionalize the network as described above (see 6.7 CSO support network). As the analysis shows with the discussion of concrete cases, the cooperation should not be taken for granted as some cases (here excluded from the network graph) are merged by the court or new settings of a plaintiff applying to enter the case emerge ad hoc even without prior coordination. The cooperation with local GONGOs (apart from a few exceptions) seem to be especially undeveloped as local GONGOs are generally not involved in cooperation. Central

[203] Some NGOs' staff and financial capacities are very limited. Fuzhou-based Green Home for example has been an active local proponent of EPIL with a slight increase in their case filing activity between 2015 and 2017 but their budgetary income dramatically decreasing since 2017. Within this two-year period, the budgetary income has decreased by 41 % to RMB 830,000 in 2019 (for annual reports see Green Home 2017, 2019), which is slightly than one percent of the average budget of CEPF, a major central GONGO. This difference is illustrative of the enormous difference between various organizations in EPIL.

GONGOs are also less connected *among each other* through the case filing but do have strong organizational ties among each other through their history and key leaders as discussed above.

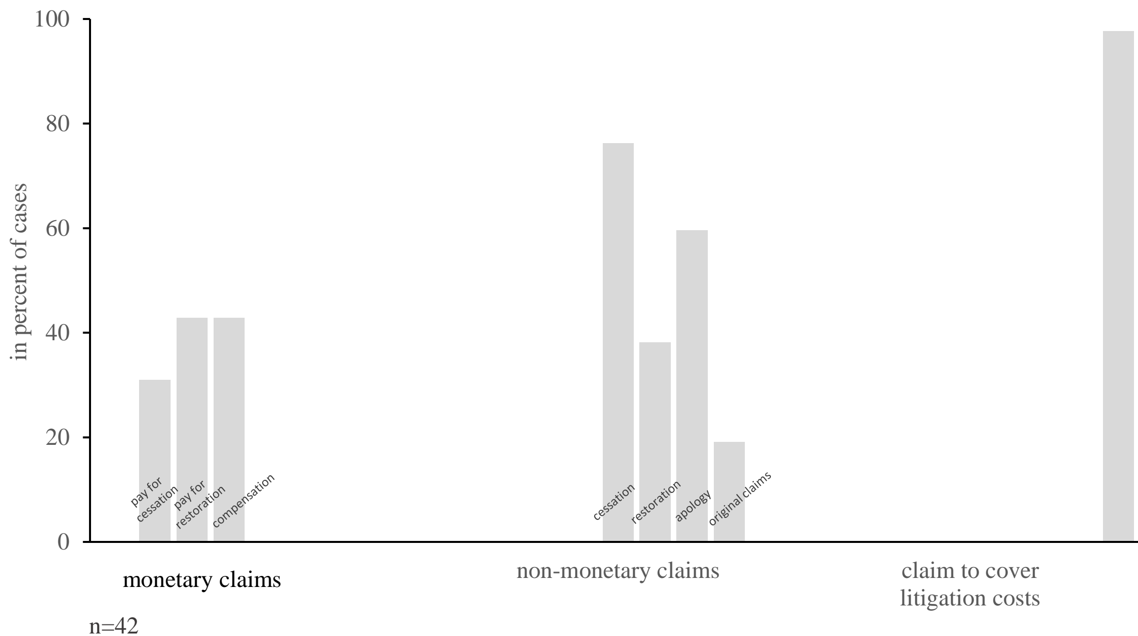
Summarized it can be said that organizations active in EPIL therefore typically share a certain discursive commitment to helping the government and supporting it, albeit via legal channels, and place importance on and highlight the rule of law. Thereby they fit into the state official legalistic discourse on rule of law. This is the common ground for plaintiffs engaging in EPIL. The ties to the administration are closer in the case of GONGOs directly through their key leaders but NGOs are also actively utilizing the potential either through cooperative governance models or new partnerships with the administration as illustrated in a handful of cases. Legal resources become crucial and those plaintiffs most active in case filing have curbed their organizational resources or sought the assistance of external partners. The plaintiff community is closely interlinked, and the interlinking relies on a few main pillar organizations with fewer clusters and stronger connection emerging also between some law firms, social organizations as plaintiffs, and other CSOs. The scope and mobility remain more restricted for local GONGOs who are bound by the respective level (province/city) with a few local NGOs having more autonomy to file cases elsewhere and therefore their scope can be classified as national. The biggest advantage in terms of mobility lies for national GONGOs in this regard that rely on the organizational backbone to file cases elsewhere.

7 Outcomes

7.1 Claims

The success rate in this thesis is directly made-dependent on the claims raised by the plaintiffs. The complexity of EPIL lawsuits can be differentiated by the claims that plaintiffs raise. When claims are decomposed, the simplest differentiation is done by differentiating between monetary and non-monetary claims with litigation fees featuring as a separate demand raised in nearly every case (see Figure 3 Split demands, p. 146). It is evident that non-monetary demands dominate at least nominally the claim structure and even after subtracting the non-pecuniary form of remedy such as formal apology, the proportion is more equal but non-monetary claims still prevail. Although quite illustrative, such distinction does not say anything about what combinations of claims (demands) are voiced by the plaintiffs and what these combinations imply. Therefore, I go by the number of demands and analyze the various categories of claims based on their complexity.

Figure 3 Split demands



I exclude the claim to cover the litigation costs (demand E) on behalf of the plaintiff. Plaintiffs are not allowed to make any profits from the lawsuits and litigation costs do not provide any insights about the objective of the lawsuit. Apology only adds to the overall number of demands, yet it does not influence the core objective as apology though important and in theory equal to other demands is only raised together with other demands and never as a stand-alone objective of the lawsuit.

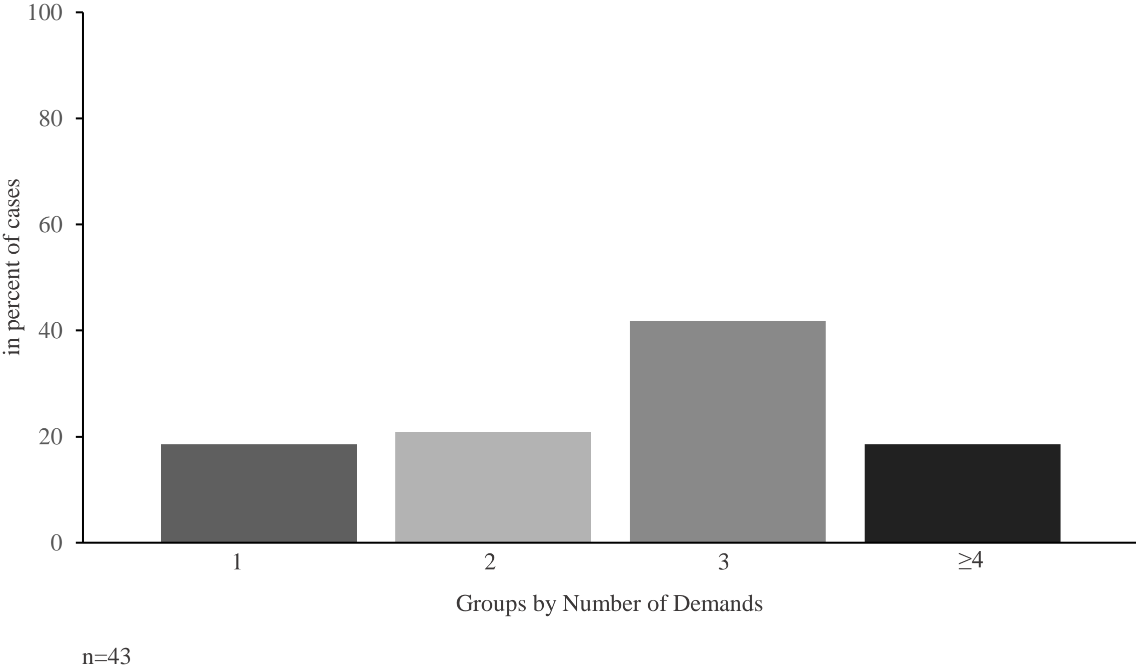
The composition of demands points to the objective of the lawsuits pursued by the plaintiffs. I categorized the claims as they emerge from the cases into two basic groups, i.e. a) *claims that directly recover costs on behalf of the administrative* and b) *more substantial claims that primarily seek to better the state of the environment*, hence on behalf of the "environment" (see below) and c) *both a) and b)*.

The differentiation is not dogmatic as one could, of course, argue that the *compensation for the loss of ecological function* which although monetary in nature is a very complex demand based on a precise method of calculation and might be useful to the administrative in saving costs as well. I would not doubt that but based on the assessment of the success (which I will go into more detail in the second part of the analysis) it shows that the jurisdictions where these cases take place are also more open to fulfilling such demands that are directed at bringing more

advantage to the environment. In places where the rational is that environmental priority means also political gains, it fulfills both. The more claims, the more the case fulfills both purposes and thereby belongs to both groups – its purpose as formulated by the social organization in its claims conforms to the dual nature of EPIL and the basic formula of high success rate of environmental public interest litigation, i.e., to ideally recover costs on behalf of the administrative and simultaneously help to ameliorate the state of the environment without directly challenging the administrative. Inasmuch this assumption is correct will be tested in the following chapter.

7.1.1 Claim what? On behalf of whom?

Figure 4 Groups of Cases by Number of Demands



In the above-depicted Figure 4, Group 1 with only one demand (aside from the demand to cover litigation expenses on behalf of the plaintiff) is at the core of the lawsuit mostly local GONGOs and in one case the local government seek monetary compensations for cleaning up the pollution or the compensation of efforts undertaken, or costs spent to control the pollution

incidents. The only exception is the case filed by a national NGO (FON) in Taizhou (#14.1)[204]. In this case, FON was not the first social organization to tackle this issue and argued that chemical companies responsible for pollution were not included in the original pending lawsuit but was the case was rejected in November 2014 by the local court because NGOs still did not have the right to initiative EPIL under the EPL. The court instead admitted Taizhou EP Federation, local GONGO affiliated with the local EPB and likely founded for this purpose (see p. 120) to file the case (#1) on the basis of the ambiguous wording of the CPL[205] in August 2014, not a half year before the new EPL went into effect. The plaintiff in the initial lawsuit would not have qualified under the new strict requirements for *locus standi* based on the EPL. FON had therefore no other option but to wait until the new EPL came into effect in January 2015 and following an appeal by FON, the Higher Court of Jiangsu Province ordered the Intermediate Court of Taizhou to hear the case filed by FON based on the new provisions in the environmental law. The lawsuit by FON had a low success rate and FON had received no support from the locality that had already closed the case almost a year prior to hearing the case filed by FON[206]. FON had finally settled with one accused company for a far lower amount (#14.1) in a lengthy case[207] and achieved only a slightly more favorable outcome against the rest of the defendants in a related case at the same locality but directed at benefitting the environment (#14.2).

Based on the demands (refer to Figure 3 Split demands, p. 146) it is therefore rare for plaintiffs to merely demand monetary compensation of costs on behalf of the administrative. Nevertheless, in a few cases belonging to Group 1, the plaintiff typically tries to recover the expenses on behalf of the city (case #50) or punish the polluters for wrongdoings without holding them further accountable for pollution such as in the case filed by Taizhou EP Federation and even that of FON despite the difficulties in connection to partly reopening this case as discussed above. Two Panyu-based manufacturers that engaged in unlicensed metal plating were made liable for the costs of handling the pollution (#50) and thus the high costs of over RMB 3.5 million on behalf of the administrative were recovered from the defendants, which was the main aim of the lawsuit. Cases with high monetary sums demanded, once

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[204] For a full list of case references refer to #<number> in the Appendix, Table 13 List of concluded cases for analysis.

[205] For a discussion of standing requirements under the Civil Procedure Law refer to the discussion in Chapter 2, 2.4 National legislation.

[206] The Taizhou EP Federation in #1

[207] Both cases in #14 took more than a year to achieve some outcome. Compared to that the case filed by Taizhou EP Federation was concluded in a speedy trial in the first instance court. Following an appeal by the defendants to the higher instance court, the decision was reached very quickly in 147 days. Given that six defendants were ordered to cover RMB 160.6 million the speed is rather surprising.

enforced, potentially help the government with balancing the account of government finances used for cleaning up the pollution and thus partly shift the financial burden for pollution to polluting businesses. This is in line with one of the main motivation drives explicitly articulated in policy documents regarding environmental public interest in the context of the introduction of environmental compensation lawsuits (for a more detailed explanation see 2.5 Post-EPL development, p. 35).

The cleavage in the demands raised by various plaintiffs is well-illustrated in the collective lawsuit initiated by the Chongqing Municipal Government that was joined by another, in this case, NGO-plaintiff (#43). The compensation demand lied at the core of the lawsuit that belongs to Group 2 (see Figure 4 above). As a local NGO based in Chongqing, the CQLJ demanded formal public apology in addition to the monetary demand already raised by the government in this case.[208] Despite achieving some high sums, the sole financial objective as pursued here in the public interest by the plaintiff is only feasible in case the plaintiff has the power to influence the administrative or is to some extent itself part thereof. The lawsuits belonging to this category are merely another way of punishing the polluters in addition to fines levied by the EPB, i.e., by relying on the civil law procedure and the authority of the court with a purpose that speaks more to the deterrent (rather than restorative) aspect of EPIL. The more direct-stake financial interest and higher involvement of the plaintiffs closer affiliated with the administrative explains why these demands in the name of "public interest" (recovering the costs) are articulated more, rather than utilizing the full potential by raising more complex demands such as restoration of the environment to its original state or compensating the losses of ecological function.

Despite the prevalence of local GONGOs and the corresponding policy imperative, the one-sided focus of GONGOs on recovering costs is not an overall aim in pursuing the public interest. Upon closer inspection, the analysis shows that in 30 cases, i.e. nearly 70 % (including those that belong to both categories of retrieving the costs and "on behalf of the environment") out of 43 lawsuits that seek to predominantly benefit the environment and out of those 19 feature a GONGO[209], that is nearly 63 percent. However, more than half of these lawsuits (10 out of 19) have one or a few components *of demands that aim at direct cost recovery*, but they also pose multiple demands including those that seek improvements more on behalf on the "environment". There are 10 concluded cases brought by GONGOs that belong to both

[208] In another case filed just a few days before the new law came into effect by a local GONGO Qingzhen EP, the plaintiff was more concerned with the actual damage control. The case was joined by a national NGO from the center (FON) that posed additional demands focused more on the overall restoration including public apology.
[209] Two lawsuits where the government acts as a plaintiff are also counted here.

categories and therefore seek to fulfil both objectives to a certain degree. With more demands raised (see Group 4, for reference see Figure 4 above), it is less likely that demands are only targeted at one objective only – this is especially striking in contrast to Group 1 with higher involvement of the administrative. Moreover, in lawsuits with the demands solely *directed at the restoration on behalf of the environment* with a participation of a GONGO account for 36 percent (11 out of 30 cases) or 19 cases (with cases belonging to both categories excluded). In turn, it can be said that GONGOs pose demands on behalf of the administrative more than NGOs generally would do as cases filed by NGOs only rarely seek this sole purpose[210]. Instead, NGOs sought in seven cases and in additional two collective lawsuits with a participation of a GONGO to fulfill demands that sought to benefit the environment in a more direct way with less gains for the administrative. However, it cannot be said that GONGOs do not raise demands to restore the environment as they explicitly seek benefits beyond the simple recovery of costs. This shows the overall trend of EPIL, the kind of commitment to bettering the state of environment especially in the case of national GONGOs and points out to the respective environmental awareness of the administrative/court and the plaintiffs in the locality of case filing.

In terms of the organizations and the objectives of the lawsuits, CBCGDF is the national GONGO that filed more environment-centered lawsuits[211] than any other GONGO and less lawsuits with dual objective[212]. The dual objective category conforms to the trend that tendentially social organizations that are organizationally close to the government seek both objectives. In 11 dual objective cases the plaintiffs were for all but one case GONGOs with 4 local and 2 national organizations (ACEF, CBCGDF) acting as plaintiff. Based on the concluded cases the national GONGOs ACEF and CEPF seem to especially care for the point of cost recovery.

One possible explanation is that as "outsiders"[213] coming from the center to the periphery, the plaintiffs registered with authorities in Beijing must prove their lawsuits useful and beneficial to the local administration and/or it is generally their mission to provide a bridge

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[210] In only three cases (#14.1, #23, #34) without a participation of a GONGO/local government, social organization FON classified as an NGO posed their demands directed at sole recovery the costs (of the administrative). In #14.1 discussed in the text this might have been the only way to basically re-open a closed case by adding further defendants, yet similarly to the other two not a particularly successful one. The share of cases with dual objective is not high either (see case #2).

[211] Cases #16, #46, #21, #22 w. CEPF, #28, #47.

[212] Cases #18.1, #18.2, #30.

[213] This was the case for all national GONGOs in the dual-objective cases and all the cases belonging to the recovery cost filed by national GONGOs with one exception of the Beijing-based CEPF reaching a mediation agreement with a Beijing-based company for pollution caused in Beijing.

between society and government. In case of a local GONGOs this might be similar, although they might simply take it as their duty to bring back or retrieve part of the costs to the administration as already strongly echoed in the mission and function framings analyzed in Chapter 6 on Plaintiffs. It is still worth saying that even such lawsuits have the potential to benefit the environment in a substantial way.

7.1.2 Original claims

In the structure of the demands raised by the plaintiffs that aim primarily at restoring the environment and ecology in a broad sense, it is important to point out that some claims raised by the plaintiffs are highly original in nature and stand out from the rest. On the one hand, these include cases where the plaintiffs (NGOs and CBCGDF as a single GONGO) pressure the defendant(s) to make active changes on their part and prevent or reduce the likelihood of future pollution. Such pressure for long-term solutions often referred to in court documents as "substitute measures" (替代性修复措施) include amending the equipment and halting the production (#8) or construction (#12), "greening" the activities (# 3, #9) or adopting ex-post measures to protect cultural relics (# 16, # 28). In another case concluded by mediation in Qingzhen (Guizhou) the parties reached an original agreement that included some form of oversight exercised by the social-organization-as-plaintiff in a form of a three-party relationship with the inclusion of an administrative department and a reporting duty by the defendant, a mechanism backed by the agreement and the power vested in the court in case of breach of agreement. On the other hand, this group of cases includes demands that clearly exceed the scope of the civil law public interest lawsuits and typically include cases where NGOs demand the court to *compel* administrative departments to take a certain action or be made responsible for the oversight.

One rare case that tried to introduce obligations on administrative departments was the first lawsuit after the new EPL came into effect filed by two NGOs in Nanping, Fujian (see # 4). Due to the foreseeable nature of the demand, the plaintiffs were likely to know that these demands will not be met. Nevertheless, in an otherwise strong case against minor polluters and receiving support from the local procuratorate and other CSOs they decided to test the boundaries of law. Hereby social organizations can expose the imperfect design and their criticism of the insufficient room given to social organizations in China to pursue administrative litigation, directly trying to widen the legal opportunity granted by the law without necessarily jeopardizing the core of their (civil) case.

In a case in Henan, the court held administrative departments accountable for the destruction of cultural relics (see detailed discussion of this case further below). In another case (#29) filed by Anhui provincial environmental federation the county government and four other administrative departments were sued for their failure to perform check-up, the court saw the administrative as one of the polluters as it signed a contract with one of the defendants regarding the illegal waste disposal. The list of defendants was rather long together with nine other civil defendants and the administration was hold liable in case the defendants are not able to pay or fulfill other duties (连带责任) despite the administration‘s objections that they could not be sued in a civil lawsuit (Huainan Intermediate Court, 2016).

7.1.3 Formal apology

Another factor is that certain organizations put weigh on certain demands. This can be observed with raising of the demand of formal apology (coded as demand D, see Table 17 in the Appendix) as one of the civil liabilities raised in 25 concluded lawsuits. Particularly illustrative is the case filed in Zhengzhou (Henan) by a national GONGO against a district and county governments and administrative departments that were held responsible for the destruction of cultural relics in a civil law case where the original demand of apology was dropped in the final mediation agreement as a trade-off for “good behavior“[214].

It is also another reverse trend found by looking at cases with one substantial demand at the core (Group 1) and those plaintiffs that aim at cost-recovery in the broad sense and do not demand public apology as observed in the case filed by the Chongqing Municipal Government and later joined by a local NGO (see p. 136) that added the demand of public apology with the case belonging to Group 2 (refer to Figure 4, p. 147).

As mentioned earlier, formal apology is raised in combination with other demands. Plaintiffs often demand the apology to be made in a public way such as in local or national newspaper. It is, therefore, clear that apology can only be observed in cases with more than 1 demand (Group 2, 3 and 4, ibid.).

In cases where the guilt of the defendant has not been established for example by previous criminal judgment (#23) or in cases that harmed the public in a direct way or were

[214] In the agreement it says that the plaintiff decided to drop the demand to publicly apologize in national media due to the “earnest and diligent work attitude” (工作态度认真勤恳) of the administrative (defendants). The defendants including the village committee (村民委员会) of Magu village and the district-level administrative agreed to the renovation and construction of a local museum for some of the partly destroyed relics, partly enforced already before the mediation had been concluded (Zhengzhou Intermediate Court, 2015b).

otherwise medialized[215], the public apology serves as means of acknowledgment by the defendant. Therefore, the apology is important as it establishes a kind of guilty aura despite a formal criminal judgment missing in some cases. It is unclear to which extent this could really form a prerequisite for a criminal trial. In some, albeit minor cases against multiple polluters, the plaintiff demanded a public apology despite a verified criminal judgment in the series of lawsuits against 12 defendants (#18.1, #18.2). Such cases speak more to the need to set an example in an area like the one in villages located in the Fengxian County in Jiangsu, an area densely populated with small electroplating (family)[216] businesses that as selected individuals/defendants are unlikely to make a big contribution to the economy but collectively with other such business add to production with little added value in their chain of production but collective taken as a whole also cause much environmental harm and high environmental costs.

Contrary to the case of the NGO in Chongqing mentioned in the introduction of this subchapter, however, the formal apology is with minor exceptions mostly demanded in cases filed by GONGOs or at least with a participation of one GONGO in most cases[217]. This might, however, be less of a systematic part of the case filing vocabulary inherent to GONGOs as it is raised in cases with higher number of demands and as such also consists part of the repertoire used by NGOs s well (FON explicitly added this demand in one collective lawsuit filed with another GONGO that focused more on battling the causes of the problem rather than the immediate effect of the pollution in case #3) (Qingzhen Court, 2015) and is very much dependent on the context of the case as explained.

The formal apology collides with another performative manifestation of "blame-taking", namely taking on public activities that almost resemble some self-assumed functions of certain environmental GONGOs on behalf of the government as discussed in Chapter 6. As defendants do not strictly speaking voluntarily assume these tasks but accept it as price for their non-compliance with environmental regulations, it draws a connection to the original demands and

[215] Both public harm and medialization has occurred in the pending case filed by FON against multiple companies responsible for the historic pollution that caused health problems for the nearby school pupils in Changzhou in Jiangsu, a case that has made national headlines as "Changzhou poisonous soil case" (常州毒地案) („event") and lead to a series of protests by parents in Jiangsu province and also inspired environmental protests in other provinces in 2016 with social media posts belonging to theses protests directly relating to the "event", such as in Shenzhen, Haiyan (Zhejiang province) (based on Wickedonna search).

[216] This case is related to one circle of the defendants of "three Bo's" (卜宪果、卜宪全、卜宣传). Their argument for justifying the pollution is that they are according to the words of their attorney as summarized in the court document arguing that the defendants (villagers) have "a rather low cultural level" (文化水平较低) (Xuzhou Intermediate Court, 2015, p. 4), a synonym for lower formal educational level received.

[217] In total 25 cases with apology being demanded, formal apology is demanded by GONGOs in 20 cases, in 6 cases by NGOs. In #24 both plaintiffs (one NGO, one GONGO) demand a public apology as explicitly stated in the court document, therefore the case is counted twice.

agreements discussed above. Such performances are not included here as a form of demand or decision/agreement as it merely forms an auxiliary content, yet it is still worth mentioning as one of the performative elements that are not directly manifested by fulfilling the duties towards the environment/administration. One case (#58 by ACEF) is illustrative in which the parties agreed that the defendant, managing director of a shoe factory located not far from Zhangzhou responsible for water pollution due to improper waste management, should carry out "educational activities" such as environmental propaganda and distribution of leaflets with contents related to environmental protection[218]. Therefore, this idea of accepting one's blame and its public exemplary acknowledgment in addition to the trial or publicly available mediation agreement is an indispensable part of the culture found in some of these lawsuits in the sense that the court mediation can introduce tasks aimed at raising public awareness for environmental protection and engage polluters in ideological environmental campaigns included in them beyond any extra attention awarded by the media (by reporting on the case), courts (by publishing the decision or contents of the mediation agreement), others somehow affected by the case or plaintiffs themselves (by reporting about the case on their social media profiles) – which in minor cases is unlikely to make into big headlines.

7.2 Degree of Success

On average the final outcome of 42 concluded cases reach 0.79 (0.78 when the demand to cover litigation expenses is excluded) of demands as defined above (see p. 88). The score in terms of demands is still quite high and, overall, varies considerably (standard deviation = 0.24 / 0.28 after exclusion of the litigation expenses) but provides a good basis for accessing the reality of EPIL beyond a simple won/lost dichotomy.

Overall, more than half of all concluded cases (22 cases) examined here, plaintiffs reach their demands exactly as demanded or with minor adjustments (>= 90%) with the majority of these cases closer to 100 %. Only 5 cases reach the success below 50 % of fulfilling their original demands. In a few cases, the demands were already partly fulfilled during the case or even before the case was tried in a court or mediated with the help of court. The combination of demands or the objective alone do not lead to a higher success of the cases.

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[218] "Carry out propaganda *(xuanchuan)*, print out 200 educational leaflets of environmental protection, propagate, mobilize […] companies and masses to protect the environment and [help to] build Beautiful and Rich Zhangzhou"[…] (宣传、印制环境保护宣传资料 200 份，宣传、动员[…]企业、群众保护环境、建设富美漳州) (Zhangzhou Intermediate Court, 2016, pp. 5-6).

Below I provide a more detailed explanation on how success varies and test for factors that likely exert an influence on the degree of success of the case. The descriptive findings are summarized below and discussed extensively in the following subchapters.

Table 8 Degree of Success of Concluded Cases

	Ø Degree of Success*(max=1, min=0)	Number of Cases	% Cases
All Concluded Cases	0.78	42	100
Level of Registration		45	100
Central organizations	0.73**	28	62
Local organizations	0.90**	17	38
Organizational Type		43	100
GONGO	0.84**	29	67
a) central GONGOs	*0.82*	*18*	*42*
b) local GONGOs	*0.88*	*11*	*26*
NGO	0.69**	14	33
a) central NGOs	*0.56***	*10*	*23*
b) local NGOs	*1*	*4*	*9*
Support		42	100
All supported cases	0.89	19	45.2
a) by procuratorate	*0.86*	*15*	*35.714*
b) only by the EPB	*1*	*2*	*4.761*
c) government as co-plaintiff	*1*	*2*	*4.761*
Non-Supported cases	0.70	23	55
Objective		42	100
Cost-Recovery (adm.)	0.71	12	28.6
Environment	0.82	19	45.2
Dual Objective	0.80	11	26.2

* Excluding the demand to cover legal expenses (incl. this demand the degree is 0.79).
with the participation of another organization

** 2 collective cases with the participation of social-organizations-as-plaintiffs from various levels (central/local org.) and types (GONGO/NGO). They are included in both scores. Collective cases with the two plaintiffs of the same type (e.g. both GONGOs) are counted as one.

7.2.1 Support

In 20 cases out of 42 in the sample of concluded cases, the plaintiffs received support from the administration and/or state organs (procuratorate). The support by the administration for the plaintiff is counted in those cases where the procuratorate or the local EPB acted as a supporting unit[219] for the plaintiff (ENGO) during the first trial or in two cases with the direct participation of the local government as one of the plaintiffs.[220] Thus the support as counted here is explicitly voiced during the trial and part of an institutionalized court-centered procedure.

The dichotomy between local or national organization regardless of the NGO/GONGO characterization shows that the support variable is slightly in favor of local organizations[221], yet it cannot be said that local organizations are more likely to receive support. For local GONGOs and local NGOs who file cases within the scope of the place registered, they receive support more frequently than national organizations.[222] This is probably because local organizations are more under the influence of the locality but also have the advantage of existing ties within the locality. This resource is difficult to mobilize for "outsiders" without ties to the locality that come from the center to the periphery to sue local polluters.

Plaintiffs in cases that have received support are tendentially suing in their place of registration or close to it. This is not the case for national social organizations that operate out of Beijing – they have received support by the local administration in 8 cases and one of these cases was a collective "test" lawsuit filed together by a coalition of national and a local NGO including all possible supporting units from such as other civil society organizations and the local procuratorate[223].

It is difficult to understand why the locality decides to support a social organization coming from the center, but it might be because those cases with central NGOs/GONGOs with

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[219] The role as a supporting part (支持起诉方) is written in the decision or mediation agreement.

[220] In Case #53 the local EPB and the district-level government assumed several duties as "third parties" (第三人) in the mediation agreement. This is not counted as support because in this case the district-level government and the city EPB were likely prompted to act following a Notice (指示) from the provincial leader and were responsible to report on the result of their activities to the NGO. Where only the final decision following the appeal by the defendant was mentioned and the support role was not mentioned I manually searched for the term "supporting unit" in connection with the case. According to media accounts, the support was provided by the procuratorate in case no. #35, although the court documents do not support that statement.

[221] Cases with participation of a local organization that received support vs. cases with a participation of a national organization are in 12 : 9 case ratio. By only looking at the category of cases with no support received the ratio is confirming: 4 : 19 (=national organizations).

[222] Especially in the category with *no support*, there are no cases concluded that were filed by a local NGO.

[223] As this was the much celebrated first case in Nanping that was filed after the EPL came into effect, the case also has a certain "trial" character to it. The court decision is unusually long for quite a simple case, which shows the need to try out the EPL for the newly established coalitions and the court to familiarize itself with the complexity of environmental PIL as mentioned in detail elsewhere in this thesis.

non-CSO supportive units take place in East China and in one instance in Hebei, thus in regions where EPIL is generally more common (on the geographical case distribution see Table 11, p. 213). Related to that and much more logical is that the plaintiffs from the center might have been able to advance cooperation with local actors in the respective localities. This is a general explanation frame that should be further tested in a more qualitative way by examining the activities of the organizations and their historical activity in the given locality. It is logical that the procuratorate supports the plaintiff in cases with a prior criminal judgment as they have a direct stake in the case and often contribute with the evidence for criminal charges (Q. Zhang & Mayer, 2017) as pointed out in the literature on EPIL, yet by randomly searching for criminal verdicts in supported cases, not all supported cases have a prior criminal verdict. By the same logics in some cases with a prior criminal judgment, the procuratorate did not step forward as a supporting unit.

The support is not a constant factor but rather dependent on time and the interaction between the social organization and the procuratorate. For those local GONGOs that filed cases in their localities but nevertheless received no support, qualitative evidence from chosen cases shows that they too have had to gradually established ties to the procuratorate and that such cooperation was not given based on the organizational background and closer linkage to the administration. In case #25 the plaintiff, a local GONGO in Hunan called Xiangtan EP filed its first case in June 2015 without the support of the procuratorate. In June 2018 it filed a case backed by the procuratorate (#19). The latter was much highlighted by the organization itself that applied for this support and the SPP promotion itself (SPP Website, 2019). In the account of the case depicted by the SPP, the procuratorate highlights its ability of reaching out to different ends of the local administration including local NPC representatives, police department and the EPB and lower-level (county) party organizations.[224] In another case (#32) another local organization classified as a GONGO called CSPRCH registered in Henan filed a case in August 2016 and a month later despite no criminal charges levied against the defendant prior to the civil case, it filed a civil law EPIL with the support of the procuratorate (#35). The vice-president of the local procurator in Luoyang was quoted in Henan's People's Daily stressing the ability of the procuratorate to exert crucial support in gathering evidence and its

[224] 湘潭市检察院受理该案后，迅速组织相关行政机关多次到现场调查勘验并联系专业人员对污染情况进行鉴定；同时走访相关村委会负责人、人大代表了解情况，调取证据；多次协助原告到湘乡实地调查取证，找国土资源、环保、安监等部门调取相关资料。积极主动与法院沟通联系，加强与原告方律师的对接，及时解决出现的困难和问题，并对案件的办理方向提出了建设性的意见。为全面解决问题，还牵头组织召开镇党委、政府、被告方法定代表人、村干部代表、环保协会代理律师等参加的协调会，为统一认识、查证事实、依法处理该案打下了坚实基础 (SPP Website, 2019).

contribution to the case.[225] Therefore, at least for certain lower-level organizations including GONGOs these two cases serve as a reminder that support provided by non CSO-supporting units is dependent on the ability of the organization to cultivate ties and procuratorate to offer such assistance as the supporting unit. In fact, these coalitions are quite new as at least the case in Hunan was the first such case in the whole province.[226]

The "support" signifies a trend towards working in close cooperation with the administration and especially procuratorate organs that are better equipped than NGOs to negotiate among administrative departments and bring together parties within the administration with often colliding interests. It echoes the often-echoed aspiration of central institutions in environmental governance to create a "coordinated interlinked mechanism" (协调联动机制)[227] with respect to judiciary where local courts work as a central coordination authority for facilitating better information-sharing among local supervisory committee of the discipline inspection committee (纪委监委), police, procurators, EPBs and within the "Pluralistic Co-Governance Framework" (多元共治机制) social organizations.[228] Such newly blended coalitions between local procurators and social organizations and the local administration are an addition to the support networks of CSOs presented above (see 6.7 CSO support network, p. 131) and similar initiatives coined by NGOs themselves (see the "Non-Confrontational Environmental Governance Model" by one local NGO with close ties to the administration, p. 126) influence the chance of realizing the full potential of the legal opportunity.

For an organization coming from the center partnering with a *local* social organization and filing a collective lawsuit might be a viable alternative to the support by the administration. This was the case with FON in two cases with no administrative support received (#3, #24), respectively with Guangdong´s provincial GONGO GEPF and a local GONGO Qingzhen EcP that is very much embedded in the local administration at the place of registration. Although

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[225] The passage (source not available anymore) starts with the problem-assessment of social organization and goes as follows: "'环境公益诉讼中，社会环保公益组织调查取证时可能会遇到阻力，面临证据难以获取、难以固定等困难。' 洛阳市人民检察院副检察长刘志强说，'检察机关的支持可以有效发挥组织优势和专业优势，帮助公益组织调查取证，有利于其诉讼权利的行使及案件审理的顺利进行。'" (Henan People's Daily, 2016).

[226] 湖南省检察机关首例支持起诉的生态环境保护公益诉讼案件 (SPP Website, 2019).

[227] Such brief reference can be found in the Report delivered by the Vice-President of the SPC Jiang Bixin at the press conference regarding the five-year anniversary since establishing the Environmental Resource Division of the SPC (see Jiang, 2019).

[228] (发挥体制优势，加强与纪委监委、检察、公安及生态环保职能部门协调联动，深化长江流域环境资源司法协作，发挥公益诉讼作用，加强司法宣传，引导公众有序参与生态环境保护) This part on the information facilitation together with the examples is mentioned in the report on the High Court in Sichuan. The rest is echoed also in other parts of the report, foremost in part 5 (Jiang, 2019).

these cases were not explicitly supported by any of the supporting units as understood here, they were filed with the participation of a provincial/subprovincial GONGO that if close to the administration[229] should have been able to substitute the administrative support. Both cases were concluded by mediation and very successful.

7.2.2 Support and success

The support variable leads more favorable outcome beyond the general average success in general as 19 cases supported by the procuratorate reached 0.87 average degree of success. In the non-supported cases the success is significantly lower and if two cases filed with the provincial/municipal government as one of the plaintiffs are excluded, the score of non-supported cases reaches 0.67. Most supported cases at least based on the concluded cases are within the category of cases that benefit the environment or both categories (meaning also including but not solely limited to the environment).

There is also a case outlier in this group of cases. The case had received support by the local procuratorate that stated its resolute support in an unusually long one-page for the demands exactly as formulated by the plaintiff but only reached a fraction of the original demands. Dalian EPVA, an organization closely affiliated with the administration in Dalian, filed a case concerning sea and soil pollution (#10) against Dalian Riqian Motors Co., a large manufacturing company. The plaintiff demanded that the defendant shall pay RMB 7.2 million fee for ecological restoration based on the illegal profits of the project made at the expense of pollution the environment, halt the pollution, and publicly apologize. Both parties settled at a lower amount as set forth in the mediation agreement in a short time (only 186 days) in what looked might otherwise been a long trial and without the public apology. This might be aided by the fact that the Northeast in general is not a very popular location for EPIL cases (see Table 11 Overall cases by , p. 213) and the fact that the defendant is an important manufacturer in the locality. In the mediation agreement this was stressed by explicitly highlighting that the project was worth RMB 50 million and its contribution to the export business (the company's most important target export country was Japan).

It is generally difficult to measure the effect on cases where a variable is missing in a small-N case study. The only fully lost case (#12) in the sample filed by FON in Beijing (their place of registration) offers an insight into a clash of a support coalitions composed of CSO

[229] For rather strong evidence reflected in the organizational design of GEPF and Qingzhen EcP refer to Chapter 6 on the background of the plaintiffs.

supporting units on one hand and an administrative cohort including various departments on the other hand explicitly supporting the defendants. The case, although situated in the for EPIL quite unusual urban setting, also illustrates how the large time span can be utilized by the defendants to make use of the time span between case filing (here 立案) and the final decision as this case took more than 3 years to decide (1189 days).

The case was filed in Beijing against two defendants, real estate developer and property management company that were sued for the destruction of the ecosystem in scenic lake area located in Beijing's Changping District in July 2015. FON had made the full use of the strong cooperation ties between the NGOs and other CSOs and law firms. It was represented by the Beijing Zhongzi law firm and with participation of other law firms that FON works on other cases as well. CLAPV that supported FON in this lawsuit also brought two further law firms on board. Thus a coalition of five parties on side of the plaintiff had emerged.

Various administrative departments were notified by the court about the case and asked to submit statements and investigation results. Seven district-level administrative bureaus and other various municipality-level offices including both the city-level and district-level EPB submitted written letters (函) with some of them backing up the defendants, others just stating the actions taken by the relevant department in connection to the case. The contents and some selected statements from those responses by the administrative departments were discussed by the court as parts of the reasoning[230].

In the meantime, the defendants carried out greening activities aimed at restoring the area and it is quite possible that the administration sought another solution to reduce the effects of the pollution while at the same time finishing the construction which FON demanded to halt. Based on a media report (Xin Beijingbao, 2015), local administration had already received complaints from residents in the area prior to the case filing, the lawsuit did not fit into the plan of the administration/construction business of finishing the construction first and then deal with the environmental effects later.

EPIL cases generally omit any concrete references to public polls or concrete viewpoints of the local population[231]. Contrary to that, the dispute over whose public interest should be

[230] These included: 北京市昌平区园林绿化局, 北京市城市管理综合行政执法局, 北京市规划委员会, 北京市昌平区环境保护局, 北京市园林绿化局, 北京市市政市容管理委员会, 北京市环境保护局. The core of the argument by the city-level EPB was that the lake is an "artificial lake" that dried out and thus not fall under the protection of environmental law (Fourth Intermediate Court of Beijing, 2018).

[231] Most cases if at all only include vague references to human actions pollution triggered. Such references include references to the pollution leading to aggrieved residents petition-filing (引发当地人民群众不满和上访) in Case #35 or references to effects on a non-specified group of "nearby residents" (周边居民). Comparatively more details in court records on the effects of pollution on health are included in Taizhou (Zhejiang) and Changzhou

supported was a focal point and to a certain degree also a legal requirement for this lawsuit with both parties trying to persuade the court about their respective interests they represent[232]. FON submitted a list with around 100 signatures of homeowners opposing the construction project and used the documents submitted to the homeowners' association by the defendants to argue that the companies had failed to submit relevant information and details on the excavation of the lake. The concrete steps of the administration were in a similar fashion also very much aided to supporting the opposing claim of the defendants that "the project benefits the interests of the homeowners and beautifies the environment" (是为了满足业主的生活需求和美化环境) (Fourth Intermediate Court of Beijing, 2018, p. 5). The defendants who were supposed to be held liable for pollution even conducted a survey (民意调查) by the phone (电话调查, p.11), according to which "73 percent of the homeowners agreed to reconstruct the lake" (有 73%的业主赞同填湖改造) (Fourth Intermediate Court of Beijing, 2018, p. 22). This piece of evidence submitted by the defendant had been accepted by the court, whereas the signatures and other pieces of evidence regarding the failure of the defendant to adequately informed were rejected by the court for failing to display enough relevance (关联性) and authenticity (真实性) in connection to the case.

The plaintiffs utilized the full potential of legal possibilities except for filing an appeal against the final decision. Upon the request by FON, the court commissioned an appraisal unit based in Beijing to carry out the investigation but later the court rejected the first results as flawed (in the decision it doesn't say precisely why but based on the court records the decision of the court was not objected by both parties)[233] and ordered another investigation.

Finally, the court affirmed that the defendants played a positive role in greening the lake and are further responsible for its maintenance (负有维护义务). The court thus uphold the decision that the defendant had defended the public interest, namely that of the homeowners. The court substantiated its reasoning by resorting to the safety (小区住户的人身安全) and necessity of the transformation of the lake that based on the explanation of the administration had allegedly dried out earlier in 2008. In a quite rare almost anthropocentric statement echoing the language of party documents and Ecological Civilization, the Fourth Intermediate Court of

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(Jiangsu) cases that were previously medialized and both include school children but do not go beyond the well-known facts as the various injuries suffered due to pollution are not the primary focus of these cases.

[232] This was mainly because the case evolved around property rights of homeowners, therefore the lake fell under the collective ownership of the common areas and the changes made to the environment by the property management thus relied on the consent given by the majority of homeowners.

[233] 本院认为鉴定评估报告所依据的检材存在瑕疵，要求鉴定中心补充鉴定，双方当事人对鉴定中心补充鉴定均无异议 (Fourth Intermediate Court of Beijing, 2018, p. 9).

Beijing (2018) offers some insight into the guiding principles behind its reasoning by stating the following:

> Given the progress of the society, people need to continuously change the environment in order to seek the harmonious development between people and the eco-environment (在社会发展的过程中，人们需要不断改变环境，以谋求人与生态环境的和谐发展) (p. 30).

In this setting, the defendants had relied on the public interest aura and were strongly supported by not just one but multiple administrative departments, a different form of support than discussed in the above-mentioned support provided by the procuratorate. The plaintiffs' efforts, on the other hand, failed to cultivate this source of public legitimacy. The court had no incentive to disrupt the outcome of the construction and held the defendants accountable to what might have been a brief period of using the lake as a landfill for construction waste from another construction site[234]. Instead, it set the agenda by ruling out on the scope of accepted evidence and relied on the administration's opinion. The investigation commissioned by the court after the construction project had already been finished and a new round of greening quickly carried out by the defendants had left little room to objectively assess the existence of the "wetland" and the ecological function it had played in the past as claimed by the plaintiff. The plaintiff was likely not to file a further appeal in what seemed to be a rock-solid lost case, it had to carry the costs for the investigation prior to the case, legal expenses and the expert appraisal commissioned by the court in total amounting to over RMB 500,000. The financial burden was likely to be partly reduced and shifted among the supporting unit and some of the law firms.

7.2.3 Organizational type

Success in cases filed by organizations classified as GONGO regardless of whether they are national or local in score equals the overall average success. With less than half concluded cases of their governmental counterpart, NGOs, on the other hand, meet 0.60 of their demands raised in EPIL lawsuits. The distinction becomes more pronounced when one zooms in on the cases

[234] Based on the bids of written replies by administrative departments quoted in the judgment, the opinions differed on the points of the lake serving as a landfill with some claiming that such action never occurred (北京市昌平区园林绿化局) and others not ruling out on the question but merely stating that the action of filling the lake had already came to halt (北京市规划委员会). In the judgment the court pays no attention to these microscopic differences, probably because they were dealt with in another way.

filed by GONGOs and NGOs classified as "central" with national scope. Whereas *central* GONGOs in the sample reach impressive score of 0.82 (80% of their demands fulfilled) of their demands, cases filed by *central* NGOs (without a participation of any local NGO, other GONGO etc.) with only 7 cases reach 0.42 success rate. Similarly, in accordance with the trend of GONGOs being rather successful, cases filed by local GONGOs seem to achieve the most favorable results.

Table 9 Success based on Support Sorted By Receiving Organization

	% Cases with Support	% Cases with No Support	Ø Degree of Success with support (without support); max=1, min=0
GONGO	32.56	34.89	0.87 (0.81)
a) central GONGOs	*16.28*	*25.58*	*0.88 (0.78)*
b) local GONGOs	*13.95*	*4.65 (only 2 cases)*	*0.84 (0.80)*
NGO	11.62	20.93	0.93 (0.55)
a) central NGOs	*2.3*** *(1 case only)*	*20.93*	*0.65 (0.55)*
b) local NGOs	*11.6*	-	*0.92 (-)*

N=43 (100 %)

* includes 2 cases filed by central NGOs together with a local GONGO both reaching the maximum degree of success

** together with another local NGO

Table 10 Success by Objective and Filing Organization

	Cost-Recovery Ø Degree of Success (% Cases)	**Environment** Ø Degree of Success (% Cases)	**Dual Objective** Ø Degree of Success (% Cases)
GONGO	0.86 (19 %)	0.87 (26 %*)	0.78 (23.8 %)
a) central GONGOs	*0.75 (9.5 %)*	*0.79 (16.67 %)*	*0.88 (16.67 %)*
b) local GONGOs	*0.99 (9.5 %)*	*1 (9.523 %*)*	*0.56 (7.14 %)*
NGO	0.39 (9.5 %)	0.78 (21.4 %)*	1 (1 case only; 2.38 %)
a) central NGOs	*0.18 (7.14 %)*	*0.72*,** (16.67 %)*	-
b) local NGOs	*1 (2.38 %; 1 case only)****	*0.88** (7.14%)*	*1(2.38 %; 1 case only)*

N=42 (100%)

Ø Degree of Success (max=1, min=0)

* includes 2 cases filed by central NGOs and a local GONGO together with both cases reaching the maximum degree of success

** includes 1 case filed together by central and local NGOs

*** supported by the provincial-level government as one of the co-plaintiffs

Lower success rate achieved by national NGOs is further affected by the distribution of cases based on whether they predominantly seek to benefit the locality in partly retrieving costs or seek to benefit the environment at large or both. In line with the expectations NGOs are more

interested in the cases benefiting the environment as the proportion NGO proportion here is quite high (NGO:GONGO, 7:9) in this category despite the clear dominance of GONGOs in the overall sample of concluded case (NGO:GONGO:uncategorized, 11:27:1). There are only three cases (all filed by FON) where the cases by national NGOs is categorized as sought to (solely) benefit the locality but achieved low success (0.19). GONGOs and especially local GONGOs were very successful in this category of cases. This is likely because they lie closer to the state and/or to the local administration. When broken down like this, NGOs achieve results close to the average with 0.72 in the slightly more filed cases more focused on the environment based on the analysis of demands but the success of central NGOs (3 cases by FON, one by BJ Yuantou) is still quite low (0.53) as opposed to central GONGOs (0.83).

With cases that have a dual benefit in mind, they overall perform above slightly above the average (see Table 8, p. 155). They include only one case (#2, case success 1.00) that was filed by a *local NGO*, GVLCQ from Chongqing in their place of registration a few months before the new EPL came into effect. The case was supported by the supported by the Chongqing procuratorate. Other cases in this category are mostly filed by GONGOs (3 local, 7 cases by two national GONGOs ACEF and CBCGDF).

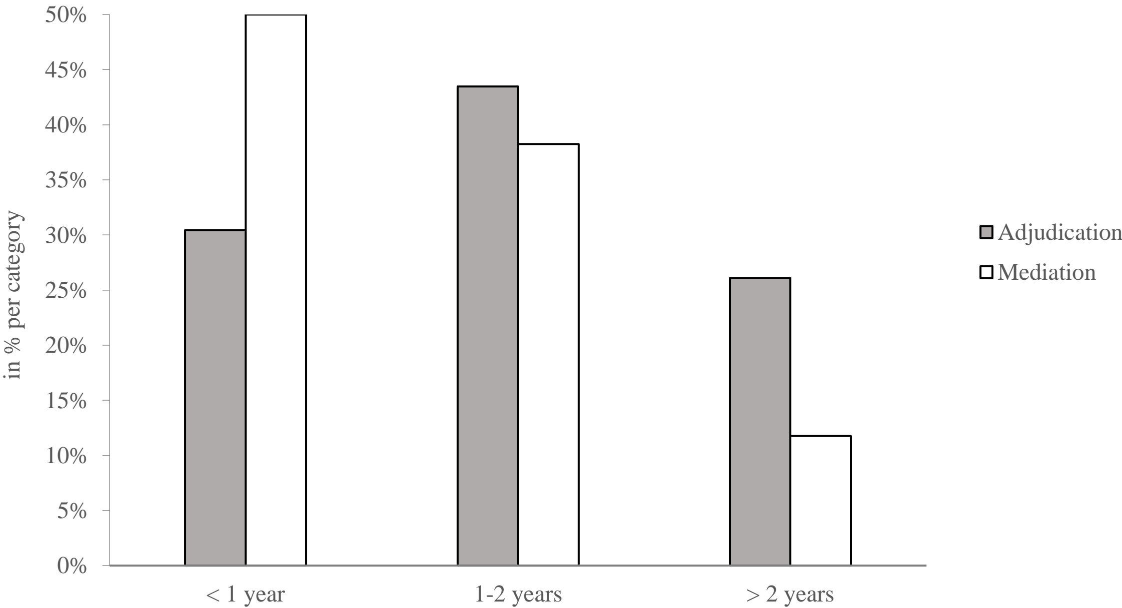
7.2.4 Type of outcome

The type of concluding a case, i.e., whether the case was adjudicated or mediated does not directly exert influence on the success of the case based on the demands. The sample of (coded) concluded cases is slightly more balanced, with the number of adjudicated/mediated cases differing only by one case. The overall trend of mediation should be slightly prevailing over adjudication (see Table 2, p. 218). One of the advantages of court mediation over adjudication is undeniably that it can bring parties together to agree to a solution that is likelier to be smoother to implement, often in connection to lower publicity in exchange for dropping the formal apology (see 7.1.3 Formal apology, p. 152). This is also reflected in the willingness of certain defendants to agree to additional very detailed implementation mechanisms and the activity of NGOs to watch over the case and bring it to the court in case the defendant fails to perform as agreed (see 7.1.2 Original claims, p. 151).

Another advantage from the perspective of the plaintiff or the defendant is that mediation can save parties including courts from costly and lengthy trials. While cases concluded by mediation take on average slightly more than a year (392 days), adjudication takes significantly more (537 days). This is seemingly a significant difference; however, the mean

values lie much closer to each other with the difference between adjudication and mediation with the latter being shorter by merely 74 days. That and the standard deviation of more than 9 months shows that in both groups (mediation/adjudication) there are many significant outliers that influence the case length. This signifies that arriving at an agreement with another party in highly complex cases of environmental pollution and vested interests of many parties it is not always easy and partially refutes the general understanding of mediation as time and cost-saving practice.

Figure 5 Length of concluded cases (in percent per category)



Note: 10 cases out of 12 (n=57) were concluded in less than half a year by mediation. On average cases took 15 months to decide and only 23 percent were decided by the appelate court and with the exception of 3 cases mostly following an appeal by the defendant.

Based on the complexity of the demands rather than on the universal length without any differentiation, the data collected from the (final) concluded lawsuits where demands were also coded (here 42 cases) shows that case length weakly correlates with the success (correlation coefficient: -0.08) and in the group with the second highest complexity (3 demands) slightly more (correlation coef: -0.16). The first group with the least demand complexity there is a slight positive correlation (coef.: 0.12). This suggest some weak relationship between cases that are decided quickly and better result (based on the less complex demands) on one hand, on the other hand the longer the case takes and the more complex the demands, the unlikelier that the demands might be met.

The longer *adjudication* takes, the more likely that the success is going to be lower (corr. -0.40). The longer *mediation* takes, the more there is a slight chance of a more favorable outcome (0.19). The correlation coefficient values are so low that the weak relationship only hardly qualifies as a valid explanation. These trends do follow a certain not quite unexpected direction and bear some resemblance to the cases: the longer the trial at court takes (hence *adjudication* is the result), the less successfully are the original demands met. This is not necessarily bad news for the environment. The longer the time span, the more time is allocated to the defendant to handle the pollution as the pressure from the trial rises. Therefore, some of the demands are met before the trial is concluded, hence the lower success based on the demands. With quicker adjudications the time span for the defendant to act is limited.

7.2.5 Court´s receptivity

The bigger room for courts to maneuver in many cases is enhanced by the fact that many plaintiffs do not know the precise sums or compensations without prior investigation. Courts are also in a position to directly influence the financial burden placed on parties in adjudication by setting high case acceptance fees (案件受理费)[235] or through the expenses that need to be covered by the losing party. But courts also play a role beyond these points.

Five companies were sued by ACEF for causing water pollution following the “Xiannü Lake pollution incident” (仙女湖水体污染事件) in west-central Jiangxi (Case #45). The water in the lake was found to contain high portion of heavy metals (cadmium, nickel), which made the water highly toxic and totally unusable. Two of the defendants from the first trial filed an appeal against the first decision at Intermediate Court of Xinyu City and ACEF appealed as well with the support of the procuratorate (there was a prior criminal decision in this case). Based on a different method of calculation ACEF demanded the defendant to pay between RMB 86.1 and 96.8 million, substantial change compared to 22.6 million as the result of the first trial. The High Court of Jiangxi had not questioned the amount of pollution. Instead, the court based its reasoning on its power of discretion (*zhuoqing*, 酌情), which it explicitly cited, and grounded its final decision in the firm commitment to striking a “balance between the environment and

[235] The Intermediate Court of Changzhou ordered CBCGDF and FON to cover the acceptance fee of 1,89 million RMB on the basis that the government has started implementing the necessary steps (Changzhou Intermediate Court, 2017), which was revoked by the High Court of Jiangsu. The case is not included here as the case was still pending at the time of writing this thesis. Plaintiffs have argued that the government cannot replace the responsibility of the polluting companies based on the principle of “those who pollute, those are responsible” (谁污染、谁担责) (Jiangsu High Court, 2017) and filed an application for retrial at the SPC.

local economy and the environmental rights and interests of masses"[236] which is the exact wording of Article 2 of 2018 opinion (意见) issued by the SPC focused on learning the Thought of Ecological Civilization by Xi Jinping also explicitly referred to by the court[237]. The reasoning reflects the embedded nature of EPIL lawsuits whose successfulness of the claims under EPIL depends on the prevailing economic model in certain local economies and remains embedded in larger political and economic considerations.

In a less political but also practically grounded explanation, the court as was likely to weigh different priorities against each other while guiding the parties towards reaching an agreement via mediation. Conflicting public interests were evident in a case in Dongying, Shandong province (#23). The contents of the mediation agreement are very brief, but the defendant argued that it had to supply heat to local population and that is why the public apology should be omitted. In this case the defendant Shandong Jinling Chemical Co.山东金岭化工股份有限公司 had received 13 administrative penalties[238].

The upper cases are all high-level cases where the plaintiff demanded high million sums as compensation for the damages and where economic and environmental priorities clash. Except for the same plaintiff but otherwise unrelated to each other, in both instances the respective court viewed the changes in equipment on part of the defendant as sufficient to prevent future harm. Although such agreements likely owe to the fact that a court cannot force a factory to shut down[239] and might benefit the environment in the long run and pressure

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[236] 江西省系经济欠发达地区，企业的经济承受能力相对较弱 [...] 故一审法院酌情判决有其合理性，与江西省的现实经济发展水平相契合，注意到了环境保护、经济发展与人民群众环境权益之间的平衡。(Jiangxi High Court, 2018, pp. 23-24). Note that *qiye* in this context refers more to the overall economic situation rather than the defendants (mostly from heavy industry) themselves.

[237] 《关于深入学习贯彻ＸＸＸ生态文明思想为新时代生态环境保护提供司法服务和保障的意见》In the court document "Xi Jinping" is replaced by XXX. Article 2 of the Opinion addressed to all levels of courts is found in the first part of the document on guiding ideology (Xi Jinping Thought on Ecological Civilization) for adjudicating environmental cases. Article 2 deals with striking a balance between environmental protection and economy and is a pledge by the SPC to realize "clear water and green mountains are as valuable as gold and silver mountains" (see SPC, 2018). The local court interpreted the vague words of the policy document (the rest covers many points regarding the development and mode of environmental policy) as a restriction to environmental protection and utilized this part accordingly in their search for justification of the restriction.

[238] It is common for large polluters like that to receive numerous administrative penalties. In another case filed by FON (#34) against a large SOE, the Jilin branch of PetroChina 中国石油, subbranch of one of the largest oil and gas company in China and in the world, the defendant had received ten administrative penalties prior to the case amounting to RMB 6.5 million in total. The penalties in these cases show the limit of the EPB´s capacity to alter the behavior that leads to pollution and make the polluter responsible for the damage caused. In the aforementioned case in Dongying (#23), the court has additionally confirmed that the company had "secretly falsified the monitoring data" (私自篡改检测数据) (Dongying Intermediate Court, 2016, p. 3).

[239] As Fürst (2016) writes: "Chinese courts do not have the legal grounds to demand that a factory cease production. The courts may demand elimination of danger, payment of compensation, and apology, but their obligations do not extend to forcing a factory to shut down. In this way, litigation can only demand *a change in the manner of production* [highlighted], rather than its continuance" (p. 223). This is also in accordance with the civil liabilities

companies to alter unfitting parts of equipment, the "public" in public interest litigation gets blurred – the focus on assuming responsibility for pollution caused is accounted for by past investments in green technology and reduces the responsibility burden on part of the polluters. The attitude of the court and its ability to strike a balance between certain conflicting interests is crucial towards influencing the outcome of the case.

Although the evidence among multiple cases is scarce, these cases illustrate the decisive influence and the power of the court to balance certain goods against each other and arrive at a certain proportionality with an argument grounded in policy documents issued by central judicial authorities as quasi-regulators. The adaptive quality of the law and the courts vis-à-vis local development is an inherent feature of the Chinese legal system and the judicial profession (see Chapter 3.3.2 Judicial Receptivity on page 62). This attribute is integral in the party official meta conceptualizations of the law as a "guiding and driving force" (deLisle, 2017, p. 69) including the contribution of the law to the economic reform under the label of the Socialist Rule of Law. The importance of proportionality principle and the law & judiciary that pays respect to various local conditions and varied degrees of economic development (and therefore also the intersecting interests of local and central leaders). Departures from the law were theoretically advanced in legal scholarship already during the Hu-Wen era[240]. The flexibility

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set forth under the civil law. The ability to shut down a factory rests with the local administrative (EPL 2014, Art. 60).

[240] Donald Clarke briefly mentions an example of the scholarly concept of "benign violations of the constitution [良性违宪]" (Clarke, 2007, p. 23) in his report written for the Asian Development Bank. In Clarke´s (2007) words: "According to the theory of "benign violations of the constitution" (liangxing weixian), given the persistent and inevitable tensions between the rules of the constitution and the great changes taking place in China, certain constitutional violations should be countenanced where certain conditions are present" (p. 23, ft 27). The aforementioned concept has its roots in the mid-1990s controversy among law scholars which formed the basis for Clarke's understanding of the concept. Roughly a decade later, the constitutional scholar Zhang Qianfan discussed this concept based on three examples of local *fazhi*-experiments (地方法治试验) at their early stages in absence of constitutional or even other explicit legal backing (household responsibility system, collective land use rights transfer and village elections) (Zhang, 2007). Zhang (2007) refers to the benign violations that occured at the time as "constitutional pragmatism" (宪法变通) (p. 73) and concludes that these minor violations (note that these are violations in the sense of advancements in the context of the reform agenda, not just mere violations of the present order) were far outweighed by the merits of the experiments and legitimated by their overall contribution to the reform agenda while keeping the risk of failure tied to the experimental zone. Zhang's argument is illustrative of the idea of flexible legal development as it moves further from the basic positivist stance on the hierarchy of legal norms (in which the higher norm always forms the basis for the lower). Furthermore, Zhang is in favor of the developmental model that allows for experimental bottom-up modification of (even basic) laws vis-à-vis their proportionality and rejects the formalist uniform application of the law. Zhang (2007) borrows a well-known reform (*gaige*) basic credo of "crossing the river by touching the stones" (摸着石头过河) (p. 68) arguing that is necessary for the reform path to allow for some minor departures from the law alongside the development path. In this model, the nationwide application and legal basis take place either in the form of additional ex post regulation or less regulation (for example in the Constitution) instead of amending the Constitution ex ante (Zhang affirms that the amendment itself is technically not much of an issue). For more on the constitutionalism debate after Xi Jinping had become the General Secretary of the Party in 2012 see Creemers (2015).

with regards to local conditions has also found its way into the official law ideology[241] that should be differentiated from steps aimed at centralization and uniform implementation of the law, also found in the official discourse, with the task of overcoming local protectionism.

7.2.6 ‘Leveraging’ compliance[242]

Fürst (2016) has focused on ‘regulation through leverage’ via numerous activities. In her words “Levers are applied by NGOs to use the power inherent to fulcrums. A fulcrum is the entity in which the NGO bases its regulatory efforts” (Fürst, 2016, p. 226). In a handful of cases discussed in this thesis, the NGO-plaintiffs ‘levered’ the courts to pressure companies into compliance and were able to reach their demands in the litigation despite not getting what they were after based on the formal judgement issued by the court. How is it possible? The demands in these cases were typically satisfied during the longer case hearing phases and either ex post affirmed in the decision or dropped by the plaintiffs during the litigation phase in exchange for compliance. To avoid this technical result and to address the limitations of the measurement of “success” in this thesis as technically the demands were not reached as outlined by the plaintiffs.

Further research would be needed to zoom on these cases. It can be noted that the changes take place during the litigation and not typically afterwards and so the enforcement is partially happening during the same phase as the case is heard. This deterrence effect does not go unnoticed by the court and plaintiffs as the court judgements make note of that and are typically followed by a longer phase between the hearings. By bringing the case in, the deterrence has materialized with both litigation parties having an institution (the court) outside the administration to oversee the changes and affirm and evaluate the effects of the changes triggered by the litigation in writing.

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[241] The argument of flexible handling of law with respect to local conditions is embedded in the larger scholarly and political discussion on the degree of appropriateness of foreign legal transplants versus indigenous legal development and the choice of preferred mode of application of law. It, therefore, comes with a systemic rivalry argument while at the same time not rejecting the inclusion of foreign or international legal norms but at the center of the debate lies the focus on pragmatic adoption together with the corresponding appropriation and application of the law. In the context of China’s official legal-political ideology, the systemic rivalry can be best-observed in the ongoing debates surrounding *legal culture* (in the Chinese context often referred to as “rule-of-law” culture) culture triggered by the Fourth Plenum of the 18th Party Congress in 2014 and more recently by the introduction of “Xi Jinping Thought on the Rule of Law” in 2020 (for more on the derived visions of the judicial profession as discussed in this thesis see 3.3.2 Judicial Receptivity, p. 62 et seqq.). The perceived systemic rivalry with regards to Western constitutionalism and the monopoly of the CCP was expressed in a leaked 2013 circular by the Central Committee of the CCP broadly referred to as “Document No. 9”; for the discussion of constitutionalism in the context of this document see Creemers (2015).

[242] This title is inspired by Chapter 9 Litigation Leverage of the doctoral thesis by Katinka Fürst dealing among others with the phenomena of “legal aid-based litigation” and “public interest litigation” in China (see Fürst, 2016).

More than a mere threat of activating the court getting the case accepted arguably created a form of encouragement that speaks to a pressure effect either on part of the court exerting pressure on the polluting enterprises or regarding the administrative bureaus and CCP organizations involved. Another point outlined in the interviews with NGO representatives is that such cases can also motivate polluters to better hide pollution (Fürst, 2016). In addition, the affirmation is relative to the strength of the NGO-plaintiffs and the institutions involved in the assessment of achieved changes.

Polluting companies' efforts are reviewed, and their compliance established in a binding written document issues by the court and rewarded by, for example, dropping certain demands such as public apology in exchange for implemented changes. These cases are illustrative to the power of deterrence mainly through the pressure of the ongoing litigation. They also involve a more collaborative and rewarding approach that speaks more to a breach-of-contract-like mediatory dispute resolution scenario.

These cases should be further studied as they show a 'leverage' by resorting to litigation and might avoid the typical problems during the enforcement phase, an issue that has not received much attention in this thesis. It is also interesting to understand the change in motivation and the preferred mode of action by the plaintiffs and institutions themselves brought by the polluter's willingness to amend its polluting behavior and the difference between a threat of litigation (pre-litigation communication) and the actual lawsuit.

Numerous public statements by GONGO/NGO-plaintiffs, researchers, judges, other state institutions and state media outlets can be found referring to the revised environmental law as the "law with teeth" ("有牙齿"的), dubbed as "the historically most strict" (历史上最严格) or as the Judge and Director of Environment and Resources Law Tribunal at the Supreme People's Court put it for the public interest litigation and related provisions to become a future "Sword of Damocles" (达摩克里斯之剑)[243] swinging over the polluters. These nearly omnipotent attributes that have accompanied the introduction of the breakthrough post 2014 legislative developments might have somewhat obscured the additional collaborative dynamics via courts made possible by the revisions and the opening of the judicial channels to NGOs that have relied on similar tactics without the legitimate backing of the law and legal channels for much longer[244]. This court-centric dynamic is characterized by utilizing the law deterrence in

[243] For the source of this quote see Lin, Y., & Tuholske, J. (2015). Field Notes from the Far East: China's New Public Interest Environmental Protection Law in Action. *Environmental Law Reporter News & Analysis, 45*(9), 10855-10862.

[244] For an overview of this typology of these collaborative tactics as outlined in the scholarship see footnote 76.

state discourse "weapon metaphor"[245] effect early on (probably after failed or uncertain pre-litigation talks) and again increased collaboration in the latter process with efforts to lessen the pollution by plaintiffs, judges and the administration. To achieve the effect prior to suing is to rely on the legitimacy of the law itself. Therefore, the conditions for failure or success of this strategy (such as characteristics of the defendants, their legal consciousness vis-à-vis cost-benefit-analysis to avoid the high sums for economic benefits of non-compliance etc.) should be further examined to better understand the collaborative as opposed to more adversarial elements of the lawsuit tactics employed by the NGOs and how stakeholders (including courts and polluters) themselves include these factors in their strategic calculus.

7.3 Summary of findings

In Chapter 7 I have looked at the degree of success of the concluded lawsuits beyond won and lost cases. I was able to show that the claims made by plaintiffs (alias their demands) can be categorized based on two objectives (and an additional category where both are present)*: 1) retrieving costs of pollution and helping the locality*, *2) demanding substantial changes with the interest of the environment at large*. The overall trend in EPIL is the latter and a high number of lawsuits with GONGOs leading the charts follows both objectives. Despite that, local GONGOs are more prevalent regarding the first (1) objective of retrieving the costs of pollution for the benefit of the locality and NGOs typically seek to fulfill the latter (2) via litigation. The probable explanation for the local/central NGO's activity is their lack of control and the lack of influence over funds distribution or usage when monetary demands lie at the core of the lawsuit.

Some "original agreements" with innovative multi-party oversight mechanisms and prescribed detailed reporting duties, though rare in number, try to tackle this problem. Some cases also show that plaintiffs have a certain room to maneuver and raise the bar of acceptable boundaries by raising original demands. Some of those such as compelling administrative departments via a civil lawsuit is exceeding the scope of the permissible scope of EPIL but are in minor cases successful. Other original demands include innovative agreed points such as third-party oversight mechanisms and substitute measures and changes on part of the equipment that should result in the future elimination of pollution sources are also part of the lawsuits. Publicly performed apologies and other forms of public "blame-taking" speak to the performative elements of EPIL.

[245] For more on this point see Mary Gallagher and the discussion on p. 41.

The overall success rate is high but varies considerably. This is caused by several factors. These factors are the *support* provided to the plaintiffs by the administration, plaintiffs' *organizational type* taken together with the dichotomy between central and local organizations, and the *court´s influence*. The *type of outcome* (adjudication/court mediation) does not influence the degree of success.

Relying on the discussion of *support* I was able to show that supported cases are better off than non-supported ones and that local organizations are likelier to receive support from the administration/procuratorate. This is a case of interlinked causality where the classification of local/central affects one of the causal conditions. Rather than an inherent feature of a certain type of organizations, even local GONGOs that lie closer to the administrative first needed to establish some sort of connection to the administration and the local state in order to gain the support of the procuratorate. Where support is directed in the opposite direction and the defendant is extensively backed by the administration in cases with the environmental public interest being subordinated to other interests as shown in the case of Beijing homeowners, the chance for the plaintiff to succeed is low. The remaining alternative for national NGOs is to partner up with another local and powerful organization.

By focusing on the success and *organizational type*, NGOs emerged much less successful than GONGOs. This was especially the case for central NGOs. NGOs tend to be more successful where they pursue cases primarily benefiting the environment which also is the preferred trend as discussed above. When they decide to help the locality, they likely face pushback because the locality already took care of things in another way rather than through a civil lawsuit filed, and thus central NGOs emerge more as a competitor rather than a partner – such a problem can be circumvented by resorting to a trusted local partner (such as another local GONGO) or cultivating the ties in certain localities. Nevertheless, this points to a potential pitfall for NGOs registered outside the locality with no apparent record in the locality trying to align their strategy to fit the needs of the local administration, either not being a trusted partner or relying on an incorrect assessment of their role and the situation including the needs of the local government.

Finally, *court's influence* proved to be crucial in shaping the outcome of certain cases. The case in Jiangxi is particularly illustrative of court's ability to strike the balance between multiple conflicting priorities and interests based on "local conditions" and decisively influence the success of the case that go beyond the cost burden of the parties. While the court was able to decisively influence the degree of success by putting economic development and economic stability first, the evidence suggests that this is more of an exception than a rule and only

relevant in major cases involving huge damage sums demanded that have the potential to avert the course of the local economy or affect other interests.

8 Conclusion

The complexity of imagining the environmental pollution

How does one imagine and assess the effects of over 145,000 tons of illegal waste with levels of hexavalent chromium 30 times exceeding the national limits being emitted into a river within just two years?[246] Is it the same pollution magnitude as nearly 12,000 tons of some form of phosphorus acidic composite being inadequately stored and is RMB 50-80 per ton the adequate price for such violation?[247] Do these big one time cases cause more pollution than a dozen of small factories engaged in metal polishing in rural Jiangsu that have likely been in operation for a long time polluting the nearby environment without much restriction?[248] Can it cause more trouble for the environment than the seemingly negligible fact of not offering the option of opting out of disposable chopsticks and other utensils per default with every food delivery via food delivery apps given the scope of the service?[249] Moreover, how does it compare with the irreversible destruction of Song-dynasty family clan shrine and other historical residencies in rural Henan?[250] How does one determine the extent of pollution and allocate the responsibility in a polluted locality after 20 years of various companies coming and going?[251]

These questions evolve around case-based facts and issues addressed by judges, plaintiffs and defendants in a courtroom and other persons indirectly involved or impacted by the decision beyond the decision through the law in the cases that formed the basic material for this thesis. Environmental pollution is not always manifested in a straight-forward way. Not all cases investigated in this thesis are the same or necessary evolve around the same type or the same magnitude of pollution.

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[246] A case in Chongqing (First Intermediate Court of Chongqing, 2017).
[247] This case was filed by ACEF in Shandong's Dongying (Shandong High Court, 2017).
[248] Multiple decisions in a case in Xuzhou, Jiaangsu Province (Xuzhou Intermediate Court, 2015).
[249] This lawsuit was filed against Baidu and food delivery platforms Meituan and Ele.me, for more see the article in the South China Morning Post (Zuo, 2017).
[250] Case #16 involving local administrative filed in Henan's Zhengzhou.
[251] The case evolves around soil pollution caused by a leather tanning factory. The case covers the period of 1986-1998 and the costs for ecological restoration were determined at RMB 160 million by the Zhejiang University (Zhejiang High Court, 2018). The case was not concluded at the time of writing this thesis and the plaintiffs filed an application for retrial to the SPC.

It is difficult to judge on the size of the case by taking the case-based characteristics into account and researchers should avoid becoming pure followers of catchy headlines with “sky-is-the-limit compensation amounts” or setting normative criteria based on one type of damages (e.g. just monetary compensation instead of active duties) awarded[252]. That is why this thesis has followed an approach that focused on interpreting the aim of the lawsuit closely modelled after the demands. Instead of evaluating the scope of various cases by case-based facts such as type of pollution, awarded damages or pollution magnitude that are as already outlined above very difficult to compare, this thesis has focused on the role of courts as venues for problem-solving and social organizations as plaintiffs, the success of these plaintiffs in the litigation success defined narrowly in the scope of each case based on their demands, interpreted aim based on the demands and the respective result achieved via adjudication or mediation. The understanding gained from this knowledge should shed light on the kind of legal opportunity that is missing in accounts on collective action and different from the policy-advocacy or the form of rightful resistance by Kevin O’Brien and Li Lianjiang described in the literature. It is important to understand the art of claim-making and the “taking to the court” tactics of social organizations. It is equally important to also appreciate the constraints and possibilities provided by windows of legal opportunity for citizens in pursuit of advocating public goods. The available means for such advocation are found in the repertoire of participation in the authoritarian system that strongly advocates and invests in legal development and employs legal propaganda. Law centric and court-centric movements, alongside other tactics, exploit these opportunities and legitimacy sources provided for by the political and legal developments.

Specifically in relation to the environmental public interest litigation, this thesis sought to close this research gap by understanding: (1) What kind of environmental NGOs engage in environmental public interest litigation? (2) How successful are they? (3) Which factors are likely to influence the outcome of the case? In this final chapter I will first review the understanding of environmental public interest litigation gained from this thesis, then relate to the research questions and hypothesis outlined in the thesis before finally moving on to the broader implications of the insights for legal opportunity structure and judicialization.

What environmental public interest litigation is not

[252] In this regard at least those cases involving monetary demands are well beyond the threshold of more than RMB 10,000 defined as a major case in an earlier study on civil lawsuits initiated by the procuratorate (Shi & Rooij, 2016).

Lawsuits examined in this thesis center around environmental issues that are argued on behalf of the public by actors that do not directly suffer a loss resulting from the pollution. Nothing in environmental public interest litigation suggests an immediate connection between the social-organizations-as-plaintiffs as bearers of such public interest and the affected communities. The "public interest" has alleviated itself into an all-encompassing and general goal based on the promise of a clean environment rather than delivering a particular set of rights to a particular community. Representation of the public is implied and thus moves in most cases beyond the struggles and worries of the communities. This is also mirrored in the judgements that abstain from discussing adverse effects of pollution on local population and prefer abstract terms as indemnification for example health or property damages is not the focus of environmental public interest litigation although it is not fully unthinkable that these lawsuits could have some indirect effect on either solving other disputes (by reducing the effect of pollution) or be used for calculating damages where applicable. Much to the contrary, I was able to show in a single case that environmental public interest litigation even collided with, for example, the way of private individuals wanted to make their interests heard or was used by local government to turn down the private lawsuits. What this shows is the important, yet sometimes overlooked, realization when one focuses only on one tactics in the overall repertoire: various facets all belonging to one source of problem can be tackled via various means (protest, petition, environmental public interest litigation, litigation by private parties, litigation by private parties with public interest in mind, government interference) by different or even the same type of stakeholders.

What is environmental public interest litigation?

It is an instrument that via the institutionalized court from the state perspective is supposed to make polluters accountable (polluter pay principle) for the environmental destruction caused, or prevent such pollution from occurring, and seeks to partially restore the costs of such pollution to local governments. What sets it apart from other forms of claiming such damages is the fact that it opens the opportunity for intermediate actors (in this case social organizations) to engage in such action. For plaintiffs it is possible to make use of the deterrent potential (the threat of holding polluters accountable) or EPIL (holding polluters accountable) but also rely more on restorative (seeking way to restore the destroyed environment) or preventive elements (preventing the environmental harm) of EPIL. The mode can be adversarial, but it also opens a possibility to resort to more collaborative scenarios and for plaintiffs to negotiate an agreement

with the polluter via court-assisted mediation and advice compliance to polluters that would have otherwise not consented to be subject to public oversight. To be fair, NGOs have engaged in such advocacy without the additional backing of the law for much longer time. EPIL, therefore, holds the potential to include plaintiffs that seek to retrieve costs for the local government but also other plaintiffs that are willing to reach their objectives via this means and possess the legal and environmental knowledge, the correspondent mission or aspiration to relieve local budgets in a different way than cost recovery. In the space occupied by Chinese ENGOs, such legal action remains a domain of a few designated organizations that put high hopes on legal means and environmental public interest litigation as a means for solving problems.

What kind of environmental NGOs engage in environmental public interest litigation?

I was able to show that a few Beijing-based organizations are highly active in filing cases nation-wide. Local organizations, although nominally stronger represented, are less active in case filing. Moreover, most of the pivotal active organizations in EPIL are early pioneers and proponents of the public interest litigation even with case experience prior to the revised law. This is especially evident with provincial and sub provincial GONGOs with generally low case filing activity and their mobility bound by the locality and level of registration.

None of the organizations that act as plaintiffs (whether GONGOs or NGOs) studied here are tainted with critical and contentious legal activism, nor has any of those fallen out of the favor of the government. Quite on the contrary, as with every opportunity the plaintiffs have affirmed that "[a]daptions are necessary for a group to take advantage of political opportunities when they become available" (Hildebrandt, 2013, p. 59). To make most out of the legal opportunity and become trusted partners in the quest for environmental justice, they have cultivated the necessary experience, discursive, political and legal knowledge resources.

As I hypothesized in in relation to *discursive resources* GONGOs and NGOs with close ties to the administrative departments (embedded in the local administration) explicitly invoke state-official discourse with corresponding framing of their organizational mission (realizing certain aims and values), function regarding the position towards the government together with the overall abstract function, framing of law and legal channels. This was shown by the examination of their *mission*, *function* (self-description of the function) and *law framing*. I was able to show that organizations (regardless of GONGO/NGO categorization) frame their *function* as complementing/assisting/supporting the government. This also true for true for

other organizations with no or very little political resources as discursive resources are an easy to accumulate low-cost investment with the appropriate provisions in organizational charter that reflect the attitude adopted towards the government (either given with active-positive stance or missing with zero or neutral stance) with neutral stance among research-focused NGOs with background in academia and framing as subject-matter experts. These NGOs place more emphasis on cooperation with rather than complementation of the government, which reflects their cautious approach to find a middle ground for drawing on such resources. Such political statements could be otherwise interpreted as replacing the functions of the state bureaucracy rather than complementing it. Strongest references of bridging the society and government were found with GONGOs and in particular All-China Environmental Federation (ACEF) taking on the "quasi-enforcer" role in environmental governance on behalf of the central government. In general, the *mission* is framed with some reference to official CCP "green ideology", the various degrees of references are discussed in the thesis. Some NGOs with close ties to the administration that act as service providers for the government echo the party state discourse with explicit references to "green" ideology in their mission statements. With *law framing* the difference was more pronounced as typically only GONGOs make grand statements on the advancement of rule of law or *weiquanism*, NGOs remain typically (with some exceptions focused rather on rights advocacy of the environment as such) more reserved.

In relation to *political resources*, I hypothesized that connections to elites happen mainly through (i) the key leader of the organization or (ii) government funding. As expected, GONGOs typically have a key leader with government background with various backgrounds discussed. Central GONGOs all have a veteran CCP/state elite as a key leader. Major central GONGOs active in environmental public interest litigation are inter-connected through their organizational history and generally characterized by their close relationship to mass organizations. Local GONGOs are typically more embedded in the local administration. This embeddedness is reflected in resource-sharing with the government, government officials involvement in the board of such organizations, organization's strong ties to their sponsoring (e.g. involvement of local EPBs). Agenda-setting on behalf of the government is also reflected in local GONGO's self-assumed "complementing function". NGOs key leader come from various background and have experience working with the government but do not originate from the administration or elite party organization itself. As far as government funding is concerned, both GONGOs and NGOs are financially quite independent from the government and with minor exceptions do not receive government funding on regular basis. This shows that their organizational (even for the central GONGOs) agendas are less dependent compared to

the directly overseen ministerial bodies or mass organizations. All these organizations (with exception of some local GONGOs) have a considerable leeway to form their own agendas as opposed to the administrative departments.

Cultivation of political resources is also possible with the absence of a key leader that with direct ties to the administration via cooperation and other channels. Central organizations (FON) are well integrated into policy-making and advisory on central and local levels. They provide the administration with feedback for policies, laws, and organize activities targeted at various state and party stakeholders and experts. Many NGOs active in EPIL engage in policy advocacy and have developed strong ties with local governments. This reflects stronger corporatist and partially institutionalized arrangements that lay foundations for such inclusion.

In relation to *legal knowledge resources,* contrary to what I expected, the thesis showed that considerable efforts to increase legal capacities have only been undertaken by a handful of social organizations, restricted to those pioneering (pivotal) organizations most active in the environmental public interest litigation and prior to the law amendment in 2014. The thesis showed that law firms and the existing ties even beyond one case indeed exist and some limited borrowing or pooling of legal knowledge resources derived from the case filing plaintiff' network. The government might offer some legal personnel as well to those local GONGOs that sue on its behalf, however, no such evidence was found and as sub provincial GONGOs are not very active in the case filing, they might also lack these resources and no form of capacity building is suggested, which partially also helps to explain their inactivity despite their potential to be activated. The ability to understand and navigate in the legal and practical legal challenges around a complex environmental public interest case is crucial and one factor that likely puts off other organizations from filing. As the analysis shows with discussion of concrete cases, the cooperation among plaintiffs also requires coordination, which can be difficult. Cooperation in a handful of cases with multiple plaintiffs should, therefore, not be taken for granted as some cases are merged by the court or new settings of a plaintiff applying to enter the case emerge ad hoc even without prior coordination especially with GONGO and NGO "cooperation".

How successful are the plaintiff in environmental public interest litigation?

Lost cases are the exception and there is a tendency of high success as already noted in the existing scholarship that focused on single cases. The overall average success rate is very high

with social-organizations-as-plaintiffs reaching nearly 80 percent of what they set out to achieve. It is worth pointing out that losing a case can effectively put a small NGO out of business with expenses exceeding the yearly budget of the organization. This and the high success rate lead to me believe that organization do prepare well and strategically choose their cases to increase their chances of winning, opt-in for resource pooling and engage in other trends outlined below. The degree of success varies considerably based on various case characteristics.

Which factors are likely to influence the outcome of the case?

In relation to *organizational type* of plaintiffs central or local GONGOs are generally more successful than expected. Cases filed by local GONGOs seem to achieve the most favorable results. The lower success rate achieved by national NGOs is further affected by the distribution of cases based on whether they predominantly seek to benefit the locality in partly retrieving costs or seek to benefit the environment at large or both.

In relation to *government support* the analysis illustrated that the success is in fact significantly higher in cases supported by the procuratorate or the administration than in non-supported cases.

Regarding the *type of outcome*, cases that take less than one year are predominantly decided by mediation, but there are also enough complex cases 1-2 years with mediation taking longer. While mediations are on average quicker than adjudications, the mean values lie much closer to each other. The difference between adjudication and mediation is that the latter is only slightly shorter than adjudication in environmental public interest litigation, which hints at the complexity of the lawsuits. The longer *adjudication* takes, the more likely that the success is going to be lower. With longer *mediation* there is a slight better chance for a more favorable outcome, which would be in line with the general expectation. The explanation can only be a hypothesis that the longer the time span, the more time is allocated to the defendant to handle the pollution as the pressure from the trial rises, which speaks more to the "leveraging into compliance" discussed in the thesis and partly refutes the understanding of mediation as a purely time and cost saving device.

The "balancing reasoning" in the court's *direct influence / courts receptivity* on the outcome proved to be crucial on the outcome of the case. This was confirmed with otherwise successful cases made swept away by the court. This decision is not a step outside the law but represents a proportionality principle that remains within the role of Judge as envisioned under

the Chinese socialist law. Here discretion or departures from law are not obscuring the decision but enabling the judge to rely on political directives to guide such proportionality reasoning by resorting to social stability or economic stability concerns. This is restricted to high-level cases where economic and environmental priorities inevitably clash with each other. To be precise, it would be wrong to assume that this is authority vested in the court is a rule of decision-making in most of these cases took as these few outliers took place in localities dominated by a traditional mode of production. This again illustrates the variety of conditions that influence judicial decision-making and that Chinese judges are supposed to pay attention to highlighting the core values - adaptive qualities of law and pragmatism as uncovered in the Chapter on Chinese judicial role-models and hinting at the "mixed character" of Chinese law and judicial decision-making.

In line with the observation a new variable *case objective* for success emerged by categorizing cases for the benefit of retrieving the costs on behalf of the locality and on behalf of the "environment" as well as dual objective cases (with both elements presented) by focusing on the demands raised by plaintiffs. The analysis showed that mostly local GONGOs / local governments engage in such cases with only one and monetary demand at the core of the lawsuit. The sole objective of such a lawsuit only makes sense where the plaintiff has some power to influence the choice of the administration on how to use the funds retrieved via litigation or is itself part thereof. Therefore, such lawsuits are not typical. Tendentially social organizations that are organizationally close to the government seek both objectives with cost-retrieving and environment-centered aims. When a central NGO tried to mimic this success by filing cases that based on the demands had more cost benefit to the locality, they were not successful. This led to another hypothesis as explanation that such actions interfere with locally preferred solutions and are therefore not well received with perceiving outside actors as intruders instead where favorable conditions where other types of opportunities (Hildebrandt, 2013) are not given.

Courts as problem-solving entities and venues for social activism

Against the backdrop of the role of courts in politics elsewhere and in China I argued that Chinese courts, while not independent and limited in many ways, have been given some room to influence public policy outcomes and implementation. Chinese courts have emerged as problem-solving entities and the symbolic "courtrooms" have become venues for a debate involving politics in every aspect without directly challenging it. The lawsuits inevitably touch upon environmental policy and previous actions of the administration with regards to the

pollution. The decision reached in the case impacts local economy, the course of policy and often political image. These big issues that go beyond the immediate pollution issue are not expressly addressed via the lawsuits and their discussion not yet delegated to intermediaries such as social organizations. Taken together with the central party grip over courts and access limitations this is a case of constrained judicialization of politics that is not sensitive in nature. The danger of courts not becoming overburdened potentially resulting in delayed justice delivery or an enforcement gap could render their problem-solving capacities meaningless and undermine the image that the Party-state has imposed on its socialist rule-of-law flagship project.

There are many obstacles including costs, time, available claims, and enforcement. Both in the legal design and the practice of the environmental public interest litigation and contentious legal activism references to such elements can be found.

The legal opportunity for Chinese social organizations

Social organizations, too, do not use the courtroom as a venue for contentious policy debates but focus on their goal of mitigating the pollution damage and thereby helping the government more than criticizing or potentially undermining it. After dozens of years of efforts, the efforts by social organizations themselves, like-minded state, judicial and Party elites have culminated into opening this channel for social organizations to engage in legal action. Should such action prove to contravene state goals, the state can just as abruptly restrict or close the narrow opportunity for social organizations to file public interest litigation.[253] The law opened a legal opportunity for Chinese environmental NGOs to held polluters accountable via civil law litigation and to pressure them for assuming civil liability for the past or potential future environmental damages. Organizational attributes and resources that social organizations as plaintiffs bring to the table, the claims they direct at the court and the support and judicial receptivity they receive, or the lack thereof fills the structure of this opportunity roughly determined by access to court and judicial receptivity and the range of available frames. All of those three are based on the respective context, institutional practices and court reforms and thus much less stable elements than generally assumed in the scholarship on legal opportunity structure. Other stakeholders (judges, law firms, experts, procurators, state administration, other

[253] Closing and restriction are somewhat synonymous here as the latter is likelier as procurators and to a much lesser degree local governments have made EPIL part of their standard operation. Therefore, any further restriction placed on social organizations could be interpreted as closure of the opportunity.

civil society organizations in different roles than plaintiffs), too, fill the structure of this opportunity.

Challenging the boundaries of the legal opportunity

As with every opportunity, plaintiffs do probe the permissible boundaries, but only when it does not jeopardize their case in form of additional claims and demands posed to the administration. Courts sometimes follow in cases involving lower-level administration as defendants and plaintiffs with government background and/or the adequate support provided by the procuratorate. One important limitation of this thesis is that demands but also connections among plaintiffs are considered only by focusing on their formal nature, informal exchanges that inform much empirical research on Chinese courts (L. Li, 2011; Ng & He, 2017, 2018 as examples) and the functioning of civil society organizations (Spires, 2011) are left unaccounted for. In the reality, demands raised by the plaintiff are likely to be pre-discussed or could even be made fit into the frame provided by the court, defendant, and local administration. This is, however, partly accounted for by the fact that not every lawsuit is decided exactly as demanded which suggests that the court does play a role and many lawsuits and uncertainties connected to the facts and legal grounds are fought in the courtroom – on the other hand more research would be needed to investigate how demands are shaped before the actual trial, by whom and based on which criteria do social organizations as plaintiff select their cases. Social organizations as plaintiffs have also been successful in a few cases where the court held the administration liable for the failure to perform their duties (case #29 filed in Anhui).

As suggested by some sporadic evidence found during the data collection phase for this thesis, the Chinese public and legal subjects not foreseen by the revised Environmental Protection Law in 2014 have tried to find their way into the courts as defenders of the "public interest" with trying to file for claims to defend the public interest under the newly available opportunity. In line with the expectations and stringent law requirements the doors for this kind of action remain closed as the litigants have not been able to successfully overcome the strict legal requirements placed on standing (see footnote ft 70, p. 49). In this sense, EPIL still follows the basic logics of not overburdening the courts and not opening up the controlled door for participation and legal activism too much (see 3.1 Judicialization of politics). However, from an international standpoint such rules vary considerably among various civil law orders and at large between civil law and common law jurisdictions, so that some form of control via the

eligibility for plaintiffs is hardly avoidable when engaging in this institutionalized channel of participation.

Co-Governance, cooperative partnerships, and networks as trends

Despite opening the criteria for environmental social organizations to participate in public interest litigation, the community of plaintiffs remains limited beyond those that had advocated for the law change in the past as already shown with answering the question on the identity of plaintiffs. This shows that the pivotal organizations themselves might not be able to mobilize other organizations. The focus lies also more on establishing and supporting already existing players rather than massive recruitment of new participants. It is no coincidence that plaintiff-organizations most active in the environmental litigation invest some efforts to curb their legal knowledge lacks as this form the basis for understanding & researching the procedure (EPIL), for organizations lacking such legal understanding they might be even more reluctant and less confident to actively engage in EPIL when confronted with the high risk of cost allocation. Shown in the mapped networks, both partly formalized and as evidenced through the case filing, local GONGOs remain quite isolated with less ties, central GONGOs are also less connected to other plaintiffs through case filing. Friends of Nature and CLAPV and a few other organizations including non-active plaintiffs with government affiliation, law firms and others are active in network building.

The collaborative dynamics was already identified in some of the lawsuits whose outcome were creative agreements with polluters or in the government support variable (working close with procuratorates that are better equipped to provide necessary resources). Another trend is partnering of social organizations with local communities, local administration departments, local government representative, judges, procurators etc. This is also a feature of the non-confrontational governance model envisioned by one NGO in Guying. There is also emphasis on “co-governance” (*gongzhi*) that should facilitate better information sharing and coordination in the environmental agendas of various stakeholders. Now all these initiatives are quite different from each other, but they form a new trend of working cross sectionally and will create opportunities but also pose new challenges to social organizations.

The future of “taking to the courts” strategy

The case of environmental public interest litigation also has implications for the shifting opportunities in the third sector. As courts get pressured from above in an somewhat "instrumentalist conception of law" (deLisle, 2017, p. 83) that highlights effectiveness and law as a tool of governance, legal avenues for conflict-solving previously unavailable or simply unusable open up. Many have highlighted the shrinking space for Chinese social organizations, the rising control of the state over the third sector but few have pointed to the uneasy winners of 'turning to the courts' (judicialization from below) brought by intensified judicialization from above. In their quest for resolving environmental conflicts, some NGOs' either seek to resort to informal channels and are driven away from the operation while those analyzed in this thesis seek the opposite way of further formalizing their existence through alliance-building but avoiding becoming politicized by "steer[ing] clear of […] contentious tactics" (Lu & Steinhardt, 2020, p. 9). This study is built around another trend of a small, intertwined community of NGOs active in environmental protection. As anything deemed too contentious and vague criminal offences lead to the shrinking spaces for social activism, social organizations with few registered and trusted entities are, at the same time, adapting to this dynamics by resorting to, to borrow the term used in reference to formal institutions like courts, "formally sanctioned channels of participation" (Saich, 2004, p. 202) and legal channels in particular and new alliances with the administration organized around shared policy objectives. These two trends – namely unpolitical alliances among Chinese ENGOs, company representatives, law firms and the inclusion of ENGOs and their partners into local policymaking and implementation - are expected to further intensify as a response to the restrictive environment. This is also aided by a third tendency namely as social organizations utilize the law, they also educate the public and help the state to disseminate legal knowledge (普法), which itself is an essential part of legitimacy of the CCP, while making use of the law in line with its organizational goals as a tactic to reach environmental outcomes. This symbiotic setting creates new opportunities for Chinese ENGOs to ensure their survival in an uneasy terrain and determine their mode of action.

The implications for LOS are that NGOs considering the idea of incorporating litigation into their tactical repertoire will not have an easy way in case they lack the appropriate resources. The same holds true for social organizations should the state call on those organizations or declare public interest areas other than environmental protection where the integration of litigation into the tactical repertoire has been the focal point of reform efforts on part of the NGOs or vague to expand the standing in public interest litigation to individuals. This is a good ground for comparative studies to further test these findings, focus more on the outliers - social organizations that are in position (or individuals that would be in position) to litigate but for

lack of various resources or prevalence of other tactics choose not to and examine their reasons for non-action.

Limitations and further research

More research is needed to understand the process of framing appropriation or departure from older frames and new ways of self-understanding framed around law and judicial channels by social organizations in China. My thesis offered a piece of evidence that this form of strategic appropriation both signified through the mission framing as well as the framing of legal channels and law at large takes place. I also argued that this framing is likely to have a practical relevance as well – after all it is a part of materials submitted by the plaintiff, carefully reviewed by the panel of judges and quoted at each judicial decision in connection to the ENGOs' aspiration to better the environment. Beyond the respective case, this special form of conformity or departure from the official framing is also likely to pave the way for cooperation or terminate cooperation between the state and civil society and bear some influence on the judicial receptivity. These individual framing processes are part of a larger identity-building among clusters of ENGOs that have already formed a network around pivotal participants.

NGOs active in EPIL do prepare well for the lawsuits they file, which is the basic assumption underlying this research and aided by the examination of the plaintiffs' background and insights drawn from individual cases. The degree of success is high, although it does vary and is influenced by one´s position and demands: this thesis found that local GONGOs are successful in making claims on behalf of the administration and that this is not the same case for central NGOs. However, most local GONGOs are not very active in EPIL, mostly filing one case each and unlikely to become "repeat-players", which probably echoes the same logics found in a different context of some procuratorates earlier before 2013 (Shi & Rooij, 2016), Now a large portion of the dataset is, of course, very much dominated by one NGO (Friends of Nature) and their style of litigation as they also account for most of the cases and other organizations aspiring and resembling the resources and strategies favored by FON. Thus, the explanation is only modestly generalizable across the whole spectrum of social organizations active in EPIL.

The variance in a sample of highly successful cases is low but so is the homogeneity of the plaintiff community. This has implications for any potential plaintiffs that might wage to enter the EPIL case filing without possessing the typical features beyond legal requirements stipulated in the law: without an organizational capacity to engage, not well-versed in law and

without the corresponding framing of the organization helping the government and the high degree of inclusion in local administration or the inability to receive administrative support, it might be difficult to reach a higher success in the case. The homogeneity of the community in some of these crucial characteristics illustrates that social organizations might know that and that outsiders despite meeting the formal standing requirements do not wage to enter the courtroom.

Despite these “haves”, the court can play a crucial role that can overturn the final outcome, balance and base its reasoning on “local conditions”. As the evidence suggests, this is the case in major cases that have the potential to crucially avert the course of economic development or in a collision with local interests with the defendant being backed by local administration. These cases are not the norm but the judges’ decision-making in these cases is highly flexible but argued in the scope of flexibility that they should possess taking local conditions into account rather than relying on the law itself.

The emphasis on outcome is also aided by the fact that one unsuccessful lawsuit can put those organizations with low budgets essentially out of business. Stable financial income will determine the ability of the existing active plaintiffs to being able to continue to initiate lawsuits and the ability of more plaintiffs to engage. But budgets are not everything. Trust matters too. The very fact that EPBs have not been made the force behind suing the polluters reflects the mistrust of central government towards local administrative departments and more favorable attitude towards social organizations and recently much more procurators regarding their usefulness in contributing to the goals set by the center. Especially NGOs have begun to pool resources and institutionalize networks in order to provide a stable financial basis and counter the limitations posed by the lack of funds, connections and knowledge when it comes to courts. Further research is needed to especially refine the understanding of administrative partnerships and CSO networks at large as well as sharpen the knowledge about the processes that lead to these outcomes.

Further research opportunities for China scholars

This study has relied on written sources with many judicial documents as a starting point of the inquiry, which shows a new opportunity for scholars to deepen the understanding of judiciary and judicial politics in China and complements the perspectives derived from extensive fieldwork. But it also poses a challenge as more fieldwork is needed to further uncover the

causal mechanisms at play and explain how they work and what explicitly or implicitly forms the expectations of the participants that rely on the "taking to the court" strategy.

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Appendix

German abstract

Im Jahr 2015 ermächtigte das revidierte Umweltschutzgesetz der Volksrepublik China die chinesischen Nichtregierungsorganisationen (NROs) dazu, Umweltklagen im öffentlichen Interesse in ganz China einzuleiten. Bisher haben jedoch nur wenige diese Gelegenheit genutzt. Frühere Studien haben die geringe Partizipation hauptsächlich den strengen rechtlichen Bedingungen für die Klaglegitimation zugerechnet. Die vorliegende Arbeit stellt diese Argumentation als alleinige Erklärung zur Debatte. Durch die Kontextualisierung der Umweltklagen im öffentlichen Interesse als einen Fall der breiteren Justizialisierung der Politik konzipiert diese Arbeit die rechtliche Taktik der NROs als Legal Opportunity Structure (oder rechtliche Opportuntätsstruktur), die von TeilnehmerInnen mithilfe unterschiedlicher Ressourcen wahrgenommen wird. Daher liegt der Schwerpunkt der Untersuchung auf dem organisatorischen Hintergrund der NROs und den Bedingungen für deren Erfolgsquote bei den untersuchten Fällen. Es werden folgende drei Fragestellungen berücksichtigt: Erstens, welche Art von NROs engagiert sich in den Umweltklagen im öffentlichen Interesse? Zweitens, wie erfolgreich sind sie dabei? Drittens, welche Faktoren beeinflussen wahrscheinlich den Ausgang der Klagen? Zur Beantwortung dieser Forschungsfragen greift die Arbeit auf 118 Fälle aus dem Zeitraum zwischen 2014 und 2019, Gerichtsentscheidungen, gerichtliche Schlichtungsvereinbarungen und auch Online- und Medienquellen in Bezug auf den Hintergrund der NROs zurück. Die vorliegende Arbeit zeigt, dass die aktivsten Klägerinnen ihre rechtlichen Kapazitäten ausgebaut haben, nahe der Regierung stehen oder über andere politische Ressourcen verfügen. Sie bevorzugen zunehmend das Framing von Gerichtswegen und verfügbare juristische Möglichkeiten als Mittel für die Streitbeilegung, ohne dabei die Legitimation des Staates direkt herauszufordern. Basierend auf der Untersuchung von 57 Entscheidungen mit rechtskräftiger Wirkung werden Bedingungen für den Erfolg dieser Klagen – wie das vorherrschende Ziel der Klage, die Unterstützung seitens staatlicher Institutionen und der Einstellung des zuständigen Gerichtes – aufgestellt und untersucht. Die Ergebnisse dieser Arbeit tragen zum besseren Verständnis des Umfelds bei, in dem sich die KlägerInnen in Umweltklagen bewegen. Die Arbeit zeigt das Ausmaß und die Grenzen der Möglichkeiten von NROs bei der Schaffung von und der Teilnahme an rechtlichen Opportunitäten, die vom Staat eröffnet werden und leistet einen Beitrag zum besseren Verständnis der Justizialisierung, im Zuge derer die Gerichte als Institutionen zur Problemlösung in den Mittelpunkt gerückt wurden. Die Arbeit hilft zudem die Spannungen und die institutionelle Ausgestaltung der Justiz, die auf ihre Entscheidungsfindung einwirken, besser zu verstehen.

Table 11 Overall cases by region of filing per plaintiff

Region (Provinces)	Number of cases (n=133)
North China	19
Beijing (12), Tianjin (1), Hebei (3), Shanxi (2), Inner Mongolia (1)*	
Northeast	5
Liaoning (3), Jilin (2), Heilongjiang (0)	
East China	48
Shanghai (0), Jiangsu (18), Zhejiang (5), Anhui (7), Fujian (7), Jiangxi (3), Shandong (8)	
South Central	28
*Henan (6), Hubei (3), Hunan (7), Guangdong (5), Guangxi (*5), Hainan (2)	
Southwest	24
Chongqing (4), Sichuan (1), Guizhou (7), Yunnan (12), Tibet (0)	
Northwest	9
Shaanxi (3), Gansu (2), Qinghai (0), Ningxia (2), Xinjiang (2)	

*Beijing (the headquarters of many defendants and plaintiffs in EPIL) alone accounts for 63 percent of cases in this region. The cases, however, span beyond geographical boundaries and the pollution events are not related to Beijing (except for one case) but is filed based on the headquarters of many companies active in proximity but outside Beijing's borders.

Table 12 Case filings by region

Region (Provinces)	Number of cases (n=119)
North China	16
Beijing (9), Tianjin (1), Hebei (3), Shanxi (2), Inner Mongolia (1)*	
Northeast	5
Liaoning (3), Jilin (2), Heilongjiang (0)	
East China	45
Shanghai (0), Jiangsu (17), Zhejiang (4), Anhui (7), Fujian (6), Jiangxi (3), Shandong (8)	
South Central	25
Henan (6), Hubei (3), Hunan (7), Guangdong (3), Guangxi (5), Hainan (1)	
Southwest	20
Chongqing (4), Sichuan (1), Guizhou (5), Yunnan (10), Tibet (0)	
Northwest	8
Shaanxi (3), Gansu (2), Qinghai (0), Ningxia (2), Xinjiang (1)	

*for Beijing see the Note above in Table 11

Table 13 List of concluded cases for analysis

Case No.	Plaintiff(s)	City	Province	Filing date (*, **, ***, ****)	Decision date	Appeal (if applicable)	Second decision (if applicable)
#1	Taizhou EP Federation	Taizhou	Jiangsu	04.08.2014	10.09.2014	20.11. 2014	29.12.2014
#2	GVLCQ	Chongqing	Chongqing	13.11.2014	date unknown	25.03. 2016	13.09.2016
#3	FON, Qingzhen EcP Federation	Qingzhen	Guizhou	17.12.2014*	16.11.2015		
#4	FON, Green Home	Nanping	Fujian	01.01.2015*	29.10.2015	N/A	14.12.2015
#5	ACEF	Dongying	Shandong	13.01.2015*	16.12.2016	date unknown	24.11.2017
#6	ACEF	Dezhou	Shandong	24.03.2015	18.07.2016		
#7	ACEF	Wuxi	Jiangsu	01.05.2015***	date unknown		
#8	Green Home	Longyan	Fujian	07.05.2015	06.07.2015		
#9	GPEEC	Qingzhen	Guizhou	07.05.2015*	21.01.2016		
#10	Dalian EPVA	Dalian	Liaoning	08.06.2015	11.12.2015		
#11	ACEF	Zhangzhou	Fujian	24.08.2015	11.10.2016		
#12	FON	Beijing	Beijing	23.07.2015**	24.10.2018		
#13	CBCGDF	Zhongwei	Ningxia	13.08.2015	19.08.2015	date unknown	06.11.2015
#14.1	FON	Taizhou	Jiangsu	14.08.2015*	21.09.2016		
#14.2	FON	Taizhou	Jiangsu	14.08.2015*	21.09.2016		
#15	ACEF	Suzhou	Jiangsu	15.09.2015*	19.05.2017	date unknown	25.06.2018
#16	CBCGDF	Zhengzhou	Henan	16.10.2015	11.01.2017		
#17	CBCGDF	Xiantao	Hubei	17.12.2015	26.09.2016		
#18.1	CBCGDF	Xuzhou	Jiangsu	18.12.2015*	02.06.2016		
#18.2	CBCGDF	Xuzhou	Jiangsu	18.12.2015*	16.06.2016		
#19	Xiangtan EP Association	Xiangtan	Hunan	01.06.2018***	26.09.2019		
#20	Zhenjiang Society for Environmental Science	Zhenjiang	Jiangsu	13.01.2016	31.05.2016		

#21	CBCGDF	Xingtai	Hebei	15.01.2016*	16.07.2018		
#22	CBCGDF, CEPF	Beijing	Beijing	22.01.2016	05.12.2018		
#23	FON	Dongying	Shandong	22.01.2016	07.05.2016		
#24	FON, GEPF	Qingyuan	Guangdong	04.03.2016	20.02.2017		
#25	Xiangtan EP Association	Zhuzhou	Hunan	05.06.2015****	27.06.2016		
#26	CEPF	Beijing	Beijing	25.05.2016**	29.08.2017		
#27	CEPF	Dalian	Liaoning	21.06.2016**	18.12.2017		
#28	CBCGDF	Changzhi	Shanxi	05.07.2016	11.07.2018		
#29	Anhui EP Federation	Huainan	Anhui	06.07.2016	11.12.2017	date unknown	25.04.2018
#30	CBCGDF	Ma'anshan	Anhui	21.07.2016	04.08.2017	date unknown	27.12.2017
#31	CBCGDF, FON	Beijing	Beijing	21.07.2016	03.05.2018		
#32	CSRPCH	Luoyang	Henan	01.08.2016***	13.11.2016		15.09.2017
#33	FON	Xinzhou	Shanxi	24.08.2016	28.12.2018		
#34	FON	Jilin	Jilin	05.09.2016	13.12.2018		
#35	CSRPCH	Luoyang	Henan	19.09.2016	N/A	date unknown	27.05.2019
#36	Green Home	Fuzhou	Fujian	01.11.2016***	31.05.2017		
#37	Jiangsu EP Federation, Jiangsu Prov. Gov.	Nanjing	Jiangsu	01.12.2016	26.07.2017		
#38	CEPF	Huainan	Anhui	08.12.2016	30.09.2018		
#39	Green Hunan	Changsha	Hunan	12.12.2016	15.10.2018		
#40	CEPF	Tangshan	Hebei	20.12.2016	20.03.2019		
#41	CEPF	Yangzhou	Jiangsu	11.01.2017	28.11.2018		
#42	CEPF	Chongqing	Chongqing	17.01.2017****	date unknown		
#43	CQLJ, Chongqing Municipal Government	Chongqing	Chongqing	13.03.2017	11.01.2018		
#44	Yiyang RPVA	Yueyang	Hunan	23.03.2017	27.10.2017		
#45	ACEF	Xinyu	Jiangxi	01.04.2017***	01.12.2017	date unknown	15.06.2018
#46	CBCGDF	Qinhuangdao	Hebei	01.04.2017***	25.12.2017	date unknown	05.11.2018
#47	CBCGDF	Zhengzhou	Henan	05.05.2017*	28.12.2017	date unknown	12.06.2018

#48	ACEF	Wuxi	Jiangsu	05.04.2017	04.09.2017		
#49	FON, GPEEC	Qiannan	Guizhou	09.07.2017****	12.11.2018		
#50	GEPF	Guangzhou	Guangdong	18.07.2017*	01.08.2018		
#51	CBCGDF	Ma'anshan	Anhui	30.11.2017	08.04.2018		
#52	FON	Beijing	Beijing	08.05.2018	21.05.2019		
#53	BJ Yuantou	Jiujiang	Jiangxi	09.05.2018*	16.11.2018		
#54	Yiyang RPVA	Yueyang	Hunan	30.05.2018	25.12.2018		
#55	FON	Lianyungang	Jiangsu	01.08.2018	12.12.2018		
#56	HYKJ	Dali	Yunnan	24.08.2018	27.11.2018		
#57	Shaoxing ECPA	Shaoxing	Zhejiang	date unknown	02.2017		
#58	ACEF	Zhangzhou	Fujian	06.2015**	09.09.2015		

* date of acceptance (受理)

** date of placement (立案)

*** only month and year available

**** date based on media reports

If nothing indicated – the date of case filing as a basis (提起诉讼（起诉）)

Table 14 Geographical Scope of Social Organizations in EPIL

	Registration Level	Organizational Type	Scope (based on organization)	Scope (based on case filing*in additional provinces)	Scope (Result)
ACEF	central	GONGO	3 representative offices (*banshichu*)	6	national
CBCGDF	central	GONGO	self-characterized as "national" (*quanguoxing*)	18	national
CEPF	central	GONGO	6 representative offices (*daibiaochu*)	7	national
Anhui/ Jiangsu EP Federations	provincial	GONGO	-	-	local
CSRPCH	provincial	GONGO	-	-	local
Fujian EPVA	provincial	GONGO	-	-	local
GEPF	provincial	GONGO	-	-	local
Dalian EPVA	subprovincial	GONGO	-	-	local
Hangzhou ECA (Green Zhejiang)	subprovincial	GONGO	-	-	local
Qingzhen EcP Federation	subprovincial	GONGO	-	-	local
Shaoxing ECPA[1)]	subprovincial	GONGO	-	-	local
Taizhou EP Federation	subprovincial	GONGO	-	-	local
Xiangtan EP Association[1)]	subprovincial	GONGO	-	-	local
Zhenjiang Society for Env. Science	subprovincial	GONGO	-	-	local
BJ Yuantou	central	NGO	-	2	national
FON	central	NGO	22 member groups (*huiyuan xiaozu*)	15	national
GVLCQ	local	NGO	-	3	national
HYKJ	central	NGO	-	6	national
CMCN	local	NGO	-	1	local
CQLJ	local	NGO	-	1	local
GPEEC	local	NGO	-	-	local
Green Home	local	NGO	-	-	local
Green Hunan	local	NGO	-	-	local
Guizhou Youth Law Society	provincial	Uncategorized	-	-	local
Shandong EP Foundation	provincial	Uncategorized	-	-	local
Yiyang RVPA	local	Uncategorized	-	-	local

*Case filing in additional two provinces outside the province of registration used as a proxy for national scope especially where no branch offices

Table 15 Resource Mobilization by Type

Part 1 out of 2	Political Resources		Discursive Resources			Legal Knowledge Resource	
	Key Leader	Current Leadership Background	Mission Framing (References to Ideology)	Function Framing (Position towards the government)	Law Framing	Legal Knowledge Capacity-Building	Experience in EPIL (prior to the EPL 2014)
ACEF	elite party veteran	leader of central institutions, mass org.	references to "green ideology"	• unite social organization, coordination ("bridge" function) • assist and cooperate with the government	• env. rights protection & legal aid, env. rights awareness • advancing env.rule of law • advancing compliance of local governments with env. law	Legal Affairs Work Committee	yes
CEPF	elite party veteran	leader of central instituions, provincial party cadre	no references to ideology	no positioning (collection and management of funds)	no reference to env. law/rights in the Charter	legal specialists on board	no
CBCGDF	elite party veteran	leader of central institutions, mass org.	references to "green ideology"	assist the government	• env. rights protection • advancing env. rule of law	Legal Affairs Work Committee	no
Anhui/Jiangsu EP Federation	provincial administrative leader (EPB)	provincial administrative/party org. leaders	references to ideology	• unite social organizations(AH), • coordination ("bridge"function) • assist and cooperate with the government (AH/JS)	env.rights protection	no evidence	no
GEPF	provincial government leader	business and high-level EPB executives	references to "green ideology"	• "complementing" function of gov. work • representation and mobilization of public, funds management	• fund management reg. EPIL, focus on legal service provision • no other referenes to env. law/rights	Legal Service Center	no
CSRPCH	provincial administrative/party organization leader (CPPCC)	consultant, director of gov-affiliated centers, board members from administrative	references to "green ideology"	• research and expertise tor provincial branch of mass organization • oversight of companies, env. compliance services	no reference to env. law/rights in the Charterr	founder=law graduate	no
Fujian EPVA	SOE cadre	President of EPB-affiliated company	reference to "green ideology"	"sharing burden w. gov." (bridge fnction)	env. rights protection	no evidence	no
Zhenjiang Soc. for Env. Sc..	*n/a*	local administrative leader (EPB)	*n/a*	*n/a*	*n/a*	no evidence	no
Shaoxing ECPA	*n/a*	local administrative leader (EPB)	references to "green ideology"	• assisting the government • uniting social org.	• env. rights protection • advancing the development of env. regulations & laws	no evidence	no
Xiangtan EP Association	local administrative/party organization leaders	local administrative/party organization leaders	*n/a*	bridge function [yearly report], Charter *n/a*	• achieving goals by "legal means" • promotion of laws	no evidence	no

Part 2 out of 2	Key Leader	Current Leadership Background	Mission Framing (References to Ideology)	Function Framing (Position towards the government)	Law Framing	Legal Knowledge Capacity-Building	Experi-ence in EPIL (prior to 2014)
Dalian EPVA	local administrative leader (env.)	*current leaders = key-leader*	references to "green ideology"	• assisting the gov. in mediating env. conflicts • policy services to the gov.	• env. rights protection & legal aid • advancing the legal env. development	no evidence	no
Qingzhen EcPF	*n/a*	*n/a*	references to "green ideology"	• assisting the gov. • third-party gov. & production oversight & production (mission quoted in media)	rights protection (quote in media)	no evidence	yes (only & special case)
Taizhou EPF	local administrative leader (EPB)	*current leaders = key-leader*	*n/a*	*n/a*	*n/a*	no evidence	yes (only & special case)
FON	academic (w. connections to NPC, CPPCC)	academic	reference to "green ideology"	• no reference to gov. • research, education, awareness-raising • policy advpcacy	• respecting nature's rights • "legal channel" (in add. in short-bio on its website)	Legal & Policy Advocacy Department	yes
HYKJ	non-profit/volunteer	*current leaders = key-leader*	*n/a*	• supporting & assisting the gov. • research, education, awareness-raising • polivy advocacy (quoted in JICA)	*n/a*	no evidence	no
BJ Yuantou	non-profit/volunteer	non-profit/journalist	*n/a*	*n/a*	*n/a*	no evidence	no
GVLCQ	non-profit	non-profit	reference to "green ideology" (based on JICA)	cooperating with gov. (self-bio)	env. rights protection & legal aid	Legal Aid Center	yes
CQLJ	non-profit	*current leaders = key-leader*	*n/a*	*n/a*	*n/a*	specialized legal staff	no
GPEEC	journalist	*current leaders = key-leader*	reference to "green ideology" (self-bio)	• third-party oversight (gov., companies) • assisting & contributing to coordination of local gov., industry and population	file civil or administrative EPIL (self-bio)	lawyers and EPB specialists	yes
Green Hunan	consultant (private)	*current leaders = key-leader*	no	• connect the strenght of public, public interest org. and gov. • environmental research, policy advocacy	no reference to env. law/rights in the Charterr	lawyers on board	no
Green Home	media	*current leaders = key leader*	no	• assisting the government with strenghening oversight • environmental research, policy advocacy	no reference to env. law/rights in the Charter	law department	no
CMCN	student	*current leaders = key leaders*	no	• advancing the strength of gov., busiess, minjian	no reference to env. law/rights in the Charter	no evidence	no
Guizhou Youth Law Society	university	university (mass org.)	*n/a*	*n/a*	*n/a*	legal councel & law professer = key leader	no
SH EP Found.	provincial gov. leader	private enterpreneur	references to Party line	• no reference to gov. • fund management, training, advocacy	enviromental public interest ligitation	no evidence	no
Yiyang RVPA	lawyer	*current leaders =key leader*	n/a	n/a	n/a	founder=lawyer	no

Table 16 Concluded cases by type of outcome

Case No.	Plaintiff(s)	Mediation	Adjudication	Other
#1	Taizhou EP Federation		●	
#2	GVLCQ		●	
#3	FON, Qingzhen EcP Federation	●		
#4	FON, Green Home		●	
#5	ACEF		●	
#6	ACEF		●	
#7	ACEF		●	
#8	Green Home	●		
#9	GPEEC	●		
#10	Dalian EPVA	●		
#11	ACEF	●		
#12	FON		●	
#13	CBCGDF	●		
#14.1	FON	●		
#14.2	FON		●	●
#15	ACEF		●	
#16	CBCGDF	●		
#17	CBCGDF	●		
#18.1	CBCGDF		●	
#18.2	CBCGDF	●		
#19	Xiangtan EP Association	●		
#20	Zhenjiang Society for Environmental Science	●		
#21	CBCGDF	●		
#22	CBCGDF, CEPF	●		
#23	FON	●		
#24	FON, GEPF	●		
#25	Xiangtan EP Association	●		
#26	CEPF	●		
#27	CEPF	●		
#28	CBCGDF		●	

#29	Anhui EP Federation		●	
#30	CBCGDF		●	
#31	CBCGDF, FON	●		
#32	CSRPCH		●	
#33	FON	●		
#34	FON		●	
#35	CSRPCH		●	
#36	Green Home	●		
#37	Jiangsu EP Federation, Jiangsu Prov. Gov.		●	
#38	CEPF	●		
#39	Green Hunan	●		
#40	CEPF	●		
#41	CEPF	●		
#42	CEPF	●		
#43	CQLJ, Chongqing Municipal Government		●	
#44	Yiyang RPVA		●	
#45	ACEF		●	
#46	CBCGDF		●	
#47	CBCGDF		●	
#48	ACEF	●		
#49	FON, GPEEC	●		
#50	GEPF		●	
#51	CBCGDF	●		
#52	FON	●		
#53	BJ Yuantou	●		
#54	Yiyang RPVA		●	
#55	FON	●		
#56	HYKJ	●		
#57	Shaoxing ECPA	●		
#58	ACEF	●		

Table 17 Coding manual for claims

Monetary claims (in percentage)	Claim to cover legal and other expenses (in percentage)	Other non-monetary claims (0/1)	Apology (0/1)	Other (0/1)
A+, B+, C	E	A, B	D	F

A = “cessation”: stopping the infringement, removing/eliminating the harm (A+ = pay fee for A or pay fee for measures adopted in order to achieve A instead)

B = “restoration” (B+ = pay restoration fee instead)

C = “compensation”: compensate the ecological function loss, other kind of losses (property etc.)

D = “apology”: formally apologize

E = “costs”: cover case expenses on behalf of the plaintiff

F = “original claims”: other claims that exceed the scope claims A to E

FON and CLAPV networks

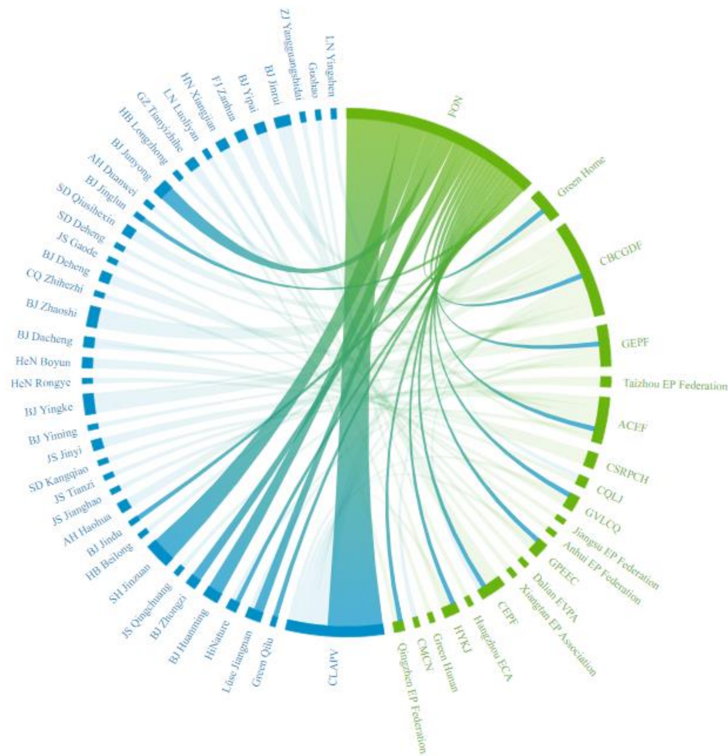

Figure 6 CSO network: FON

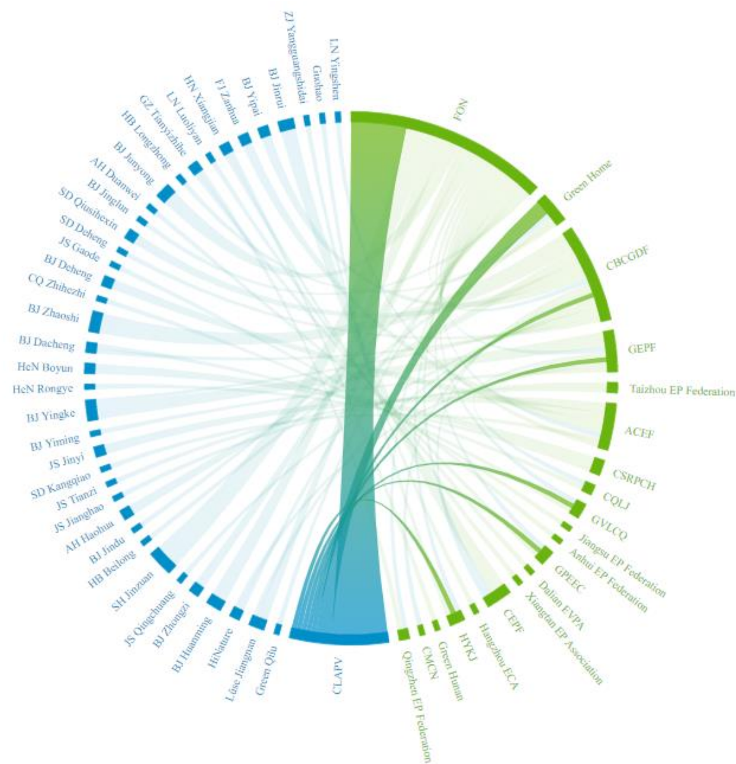

Figure 7 CSO network: CLAPV

Table 18 Social organizations-plaintiffs in EPIL

Name	Full name (Chinese)	Place, year of founding (registration)	Province	Sponsoring Unit	Legal form of registration	Registr a-tion Level
ACEF	中华环保联合会	Beijing, 2005	Beijing	Ministry of Environment and Ecology (former)	社会团体	central
Anhui/ Jiangsu EP Federations	安徽/江苏省环保联合会	Hefei 2006 / Nanjing 2009	Anhui/ Jiangsu	provincial EPB	社会团体	provincial
BJ Yuantou	北京市丰台区源头爱好者环境研究所	Beijing, 2012	Beijing	Beijing Fengtai District Commmission for Science & Technology	民办非企业单位	central
CBCGDF	中国生物多样性保护与绿色发展基金会	Beijing, 1985 (1992)	Beijing	China Association for Science & Technology 中国科学技术协会	基金会	central
CEPF	中华环境保护基金会	Beijing, 1993	Beijing	Ministry of Environment and Ecology	基金会	central
CMCN	中国红树林保育联盟 (莆田绿萌滨海湿地研究中心)	Putian, 2001 (2009)	Fujian	Putian Association for Science & Technology	民办非企业单位	local
CQLJ	重庆两江志愿服务发展中心	Chongqing, 2010 (2011)	Chongqing	Chongqing Office of the Commission For Constructing Spiritual Civilization 精神文明建设委员会办公室	民办非企业单位	local

CSRPCH	河南省企业社会责任促进中心	Zhengzhou, 2010	Henan	Henan All-China-Federation of Industry and Commerce 工商联合会	民办非企业单位	provincial
Dalian EPVA	大连市环保志愿者协会	Dalian, 2003	Liaoning	Dalian City EPB	社会团体	subprovincial
FON	北京市朝阳区自然之友环境研究所	Beijing, 1994 (2010)	Beijing	Beijing Chaoyang District Comission for S&T	民办非企业单位	central
Fujian EPVA	福建省环保志愿者协会	Fuzhou, 2006	Fujian	Fujian Province Enterpreneur Association 福建省企业与企业家联合会	社会团体	provincial
GEPF	广东省环境保护基金会	Guangzhou, 1996 (2003)	Guangdong	Guangdong Province EPB	基金会	provincial
GPEEC	贵阳公众环境教育中心	Guiyang, 2010	Guizhou	Guiyang City EPB	民办非企业单位	local
Green Home	福建省绿家园环境友好中心	Fuzhou, 1998 (2006)	Fujian	Fujian Province Association for Science & Technology	民办非企业单位	local
Green Hunan	长沙绿色潇湘环保科普中心	Changsha, 2011	Hunan	Changsha Association for Science & Technology	民办非企业单位	local
Guizhou Youth Law Society	贵州省青年法学会	Guiyang, 1988 (1992)	Guizhou	Guizhou Province Youth Federation (青年联合会)	社会团体	provincial

GVLCQ	重庆市绿色志愿者联合会	Chongqing, 1995 (2000)	Chongqing	Chongqing City EPB	社会团体	local
Hangzhou ECA/Green Zhejiang	绿色浙江(杭州市生态文化协会)	Hangzhou, 2000 (2009)	Zhejiang	Hangzhou City EPB	社会团体	subprovincial
HYKJ	北京市朝阳区环友科学技术研究中心（环友科技）	Beijing, 2005/06 (2010)	Beijing	Beijing Chaoyang District Comission for Science & Technology	民办非企业单位	central
Qingzhen EcP Federation	清镇市生态保护联合会	Qingzhen, 2013	Guizhou	Bureau for the Construction of Ecological Civilization 生态文明建设局	社会团体	subprovincial
Shandong EP Foundation	山东环境保护基金会	Jinan, 2001	Shandong	Shandong Province EPB	基金会	provincial
Shaoxing ECPA	绍兴市生态文明促进会	Shaoxing, 1991	Zhejiang	Shaoxing City EPB	社会团体	subprovincial
Taizhou EP Federation	泰州市环保联合会	Taizhou, 2014	Jiangsu	Taizhou City EPB	社会团体	subprovincial
Xiangtan EP Association	湘潭生态环境保护协会	Xiangtan, 2004 (2007)	Hunan	Xiangtan City EPB	社会团体	subprovincial
Yiyang RVPA	益阳市环境与资源保护志愿者协会	Yiyang, 2004 (2011)	Hunan	unknown (former)	社会团体	local
Zhenjiang Society for Environmental Science	镇江市环境科学学会	Zhenjiang, 1987	Jiangsu	Zhenjiang Association for Science & Technology	社会团体	subprovincial