# Policy Recommendation

## Expanding the qualification scope of the plaintiffs for environmental public interest litigation in Environmental Protection Law (Draft Amendment)

EGP-Guizhou
环境治理项目-贵州项目

Improving access to environmental justice
to protect people's environmental rights
in Guizhou province

推动贵州环境司法发展 维护贵州公众环境权益

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# 1. Environmental policy(ies) addressed

In 2012, China revised *The Civil Procedure Law of the People's Republic of China* (CPL), which is a first step in the development of a public interest litigation (PIL) system in China. The law now includes a provision that states: "*The public authorities and related organizations provided by law can bring suits to the Peoples Court on violations of the public interests such as environmental damages and violation of consumers' legal rights and interests*"[1]. However, the wording of the amendment regarding public interest litigation in the CPL requires elaboration or interpretation. To promote the establishment and development of public interest litigation system in China, this recommendation is drafted based on experiences from the EGP-Guizhou project, gained from activities such as the baseline study (2013), policy tour in Sweden (2013), and feedback from local authorities and other stakeholders in Guizhou Province. The proposal also draws from the joint research conducted by the All-China Environment Federation (ACEF) and Natural Resources Defense Council (NRDC) on behalf of ACEF. Based on the research and analyses, we propose to expand the qualification scope of plaintiff of environmental public interest litigation (EPIL) in the *Environmental Protection Law* (EPL) (Draft Amendment), permitting more environmental Civil Society Organizations (CSO) to bring environmental public interest litigation as plaintiff.

# 2. Existing Chinese policy(ies) in the addressed field

## 2.1. Background

Since the 1990s, cases with characteristics of public interest litigation have emerged in China. By the end of 2012, different levels in the court system in China had accepted and heard a total number of 53 cases related to environmental public interest litigation. Judging from the existing practices of environmental public interest litigation, the major difficulties lie in aspects of case filing, pollution identification, enforcement, plaintiff's lack of knowledge in litigation, shortage of funds, etc. However, the main difficulty is lack of clear standards of the qualification for environmental public interest litigation.

According to the theory of litigation, environmental public interest litigation is different from the traditional litigation law, which clearly stipulates the plaintiff to be qualified. Therefore, the commencement of environmental public interest litigation requires legal authorization or special regulations. In terms of practical experiences, the *Article 90* in the *Marine Environment Protection Law (1999)* stipulates "*For any damages caused to marine ecosystems, marine aquatic resources or marine protected areas that result in heavy losses to the State, the interested department empowered by the provisions of this Law to conduct marine environment supervision and control shall, on behalf of the State, claim compensation to those held responsible for the damages*." With this stipulation, about 20 cases have been filed by administrative organs concerning marine ecological damage compensation as judicial practices of China. This fully proves that clearly-defined legal authorization through legislation is the prerequisite to practicing public interest litigation in China.

[1] Article 55 of the revised Civil Procedure Law of China

### 2.2. Current situation

In response to the needs of practice of public interest litigation, the Article 55 of CPL (Revised in 2012) stipulates that "*The public authorities and related organizations provided by law can bring suits to the Peoples Court on violations of the public interests such as environmental damages and violation of consumers' legal rights and interests*". However, the article does not specify which kind of organizations can bring public interest litigation, but leaves it to the laws and regulations concerned with environmental protection and consumer protection.

In response, the 2nd revised version of *Environmental Protection Law* (EPL) (Draft Amendment), which sought for public opinions in July 2013, stipulates that ACEF and other environmental federations established in a specific province, autonomous region and municipality directly under the jurisdiction of the Central Government can bring public interest litigation to People's court against actions causing environmental pollution, ecological damage, and damaging the social public interests. In October 2013, after the third round of review, the EPL (Draft Amendment) prescribed the plaintiff of environmental public interest litigation as "*national social organizations that are legally registered in the Ministry of Civil Affairs under the jurisdiction of the State Council, have been specifically and continuously engaged in environmental protection and public interest activities for more than five years and been in good standing*".

## 3. Recommendation for Chinese policy(ies) development or enhancement

Based on the research into practices and experiences from Guizhou of environmental CSOs in environmental public interest litigation and our understanding of the Article 55 of CPL, we recommend that the EPL (Draft Amendment) should broaden the qualification scope of plaintiff of environmental public interest litigation, and that more environmental CSOs should be given the rights to bring environmental public interest litigation. At the same time, the type of "public authorities" should be explicitly defined.

The provisions related to environmental public interest litigation in the EPL (draft amendment) should be amended as follow:

Against any actions leading to environmental pollution and ecological damage, and causing damages to the public interests of the society, the Environment Administrative Organs that conduct the right of supervision and management of environment can bring litigation to the People's court and request for environmental remediation or compensation for environmental damage.

Against any actions violating the environmental protection law, polluting the environment, damaging the ecosystem and the public interests of the society, social organizations which are legally established, with the aim to protect environment, can bring public interest litigation to the People's court and request for halt of the actions violating environmental law, and for environmental remediation or compensation for environmental damage.

# 4. Findings underpinning the policy(ies) recommendation

**First, the narrow range of the qualification scope of plaintiff of environmental public interest litigation excludes the vast majority of environmental CSOs from environmental public interest litigation and also cannot meet the actual demand for national ecological civilization system construction.**

The ecological civilization construction has become a common view on the development direction of the Chinese society and it is seen as a long-term task to guarantee the people's well-being and nation's future. To construct an ecological civilization it is necessary to establish a systematic and comprehensive institutional system of ecological civilization, to implement the most stringent systems of source ecological protection, damage compensation and accountability, to improve the system of environmental governance and ecological restoration, and to utilize the various systems to protect the ecological environment. To establish and promote a system of environmental public interest litigation is significant to improve the environmental legal system, to form a strict mechanism of environmental accountability, and it is hence an important part of the ecological civilization system construction. As a basic law in environmental protection, the EPL is supposed to include comprehensive and specific provisions for the system of environmental public interest litigation, in order to enrich and develop the ecological civilization system.

**Second, the exclusion of a vast majority of environmental CSOs from the scope of plaintiff of environmental public interest litigation hinders the social organizations in general from fully playing a role in social governance.**

Given current governance concepts and reform of the new central government of China - including resolving social conflicts with the principle of “governing by law”; stimulating the vitality of social organizations and promoting their legal autonomy and active role; and establishing an unimpeded and ordered mechanism for appeal, psychological intervention, conflict mediation, and rights & interest protection mechanism - it is suggested that more State affairs will be authorized by the state authority to market- and social organizations. Environmental CSOs are today involved in environmental governance by means of bringing environmental public interest litigation, which may be seen as the forefront of reform of a social governance model and a testing ground of new systems. Therefore, entrusting more environmental CSOs with the qualification of plaintiff of environmental public interest litigation could be a specific practice of the new generation of collective leadership in deepening the all-round reform.

The number of Environmental CSOs in China is growing rapidly, with a number of over 7000 by the end of 2012. Entrusting only few of these environmental CSOs with the right of environmental public interest litigation will greatly limit the motivation and participation of environmental CSOs in environmental governance, severely restricting the role that social organizations can play in environmental governance and making it impossible for social organizations to fully realize their function in social governance.

Furthermore, one core purpose of authorizing social organizations to bring environmental public interest litigation is to break the monopoly in law enforcement, as it entitles civil societies to enforce environmental laws through the court system, which administrative organs may fail to do. However, entrusting the right of environmental public interest litigation only to a narrow range of

environmental NGOs is equal to forming a new monopoly, which contradicts the original intention when designing the environmental public interest litigation system.

**Third, environmental CSOs can play an important role in environmental public interest litigation. However, entrusting the right of environmental public interest litigation to more environmental CSOs will not result in abuse of public interest litigation.**

As for the practices of environmental public interest litigation, environmental CSOs can play an important role in environmental public interest litigation by, for example, directly bringing environmental public interest litigation, providing support to other entities bringing environmental public interest litigation, or participating in the enforcement of the environmental public interest litigation judgement.

Theoretically, a broadened qualification scope of plaintiff of environmental public interest litigation may encourage those organizations concerned about the public environment to actively take actions against environmental pollution and damage. However, although bringing environmental public interest litigation can imply an increased sense of achievement, it cannot increase the material gains of relevant organizations but may rather require extra costs. Therefore, not all organizations with plaintiff qualification will exercise that right. Envisaged from the overseas experience, even in the United States where litigation is common, a broad qualification for the citizens to litigate has not resulted in many citizen litigation cases.

Meanwhile, our experience and research also shows that environmental CSOs have many expectations from but also fears of environmental public interest litigation. They expect that environmental public interest litigation could be another effective channel in environmental protection, but they also fear the high costs of environmental public interest litigation. Therefore, the environmental CSOs are very cautious to bring unnecessary environmental public interest litigation given limited time, energy, funds and other practical factors.

**Fourth, the EPL should specify the provisions of environmental public interest litigation based on the provisions related to public interest litigation in the *CPL*.**

The CPL limits the scope of plaintiff of public interest litigation to public authorities and relevant organizations as two major categories, for which the litigant requests and procedures are different. As the special law with public interest litigation articles, the EPL should be refined in accordance with both types of entities. However, the current Environmental Protection Law (Draft Amendment) only stipulates the relevant organizations which can bring public interest litigation, but does not mention the involvement of public authorities.