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Development of Environmental Public Interest Litigation in China: How can public participation play its role beyond environmental authoritarianism?

Kenji Otsuka *

Abstract

China is well known as one of the longest-standing authoritarian countries ruled by a Communist party in the world. Nevertheless, both non-participatory and participatory approaches to decision making in environmental governance can be observed under this form of regime. How then can we identify their combinations in China's environmental governance? In exploring this question, this study focuses on the recent development of environmental public interest litigation (EPIL) cases after the enactment of the revised Environmental Protection Law (EPL) in 2015, and tests the pro-authoritarianism assumption, "non-environmental spillover effects," as a characteristic of Chinese "environmental authoritarianism" raised by earlier writers. Looking into the recent development of EPIL cases by NGOs and procuratorates carefully, it can be concluded that a kind of division of work between NGOs and procuratorates stipulated in the revised EPL could restrain authoritarian spillover effects, although there are disproportionately increasing numbers of cases by procuratorates than NGOs. Also, there are some cases where NGOs and procuratorates cooperate in EPILs. Furthermore, local NGOs can mobilize numerous volunteers in this process. The experience and knowledge accumulated among the broader group of locals in the country might bring an "environmental spillover effect," which means a spillover toward pro-environmental democracy, to push EPIL reform toward a more participation-friendly style of involvement.

Keywords: Environmental governance, authoritarianism, environmental public interest litigation, spillover effect, China.

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1.Introduction

China is well known as one of the longest standing authoritarian countries ruled by a Communist party (Frantz 2018, 82-83). At the dawn of the "reform and open-door" policy in the late 1970's, the Chinese Communist Party (CCP) recognized the significance of achieving environmental protection while boosting its economy. Moreover, it should be noted that the CCP also recognized the important role of public participation in environmental policy implementation, even while tightening its control of anti-government voices and activities (Otsuka 2007).

Along with the swift development of environmental law and policy, enforcement has been a key issue in improving the environment in China since the first trial of the Environmental Protection Law (EPL) was enacted in 1979. A lot of environmental policy practices have been criticized in the past as "no reliance on laws, not conforming to rules, not rigidly enforcing laws, not condemning illegal acts, and substituting power for law."[1] In response to these issues, top-down inspections and campaigns have been launched jointly by the central government (State Council), the National People's Congress (NPC), and official media since the 1990's and have been boosted continuously up to the present (Otsuka 2007; 2016). Also, since the 2000s the CCP has been tightening the screws on personnel administration in its hierarchical system to push against malfeasance in implementing environmental regulations, in response to the increasingly severe pollution accidents around the country (Center for Environmental Emergency and Accident Investigation 2010, 354-357). The increasing role of environmental police institutionalization, the "one river, one leader" system, and other coercive supervisory mechanisms developed during this period can be understood as being in the same vein as the centralization of environmental policy (Kostka and Zhang 2018).

In addition to measures using the authoritarian power it should be noted that the role of information disclosure and public participation has also been growing in Chinese environmental policy. For example, such measures and activities as the evaluation and rating systems for industrial pollution control used in bank financing (Otsuka 2007), NGO activities advocating environmental protection (Economy 2004; OECD 2007; Otsuka 2009), multi-stakeholder deliberations (Xie 2016; Liu 2019), and the "Black and Smelly Waters Program" by ICTs (Hsu, Zhi, and Weinfurter 2020). have been developed.

The opportunity for environmental public interest litigation (EPIL) was recently added as a new tool for environmental NGOs to push forward environmental protection when the revised EPL was enacted in 2015 (Cao and Wang 2011; Q 2018; Xie and Xu 2021; Zhai and

[1] "State Council decision on further enhancement of environmental protection," *China Environmental Yearbook*, 19-20.

Zhang 2018; Zhuang and Wolf 2021). However, this newly opened opportunity for NGOs seems to be threatened after enhancing the role of prosecutors. Six months after the introduction of EPIL by NGOs the NPC launched a pilot project for public interest litigation by procuratorates, and the number of EPIL cases submitted by this means have been increasing rapidly, rising to more than ten times those by environmental NGOs in 2016 (Li 2016, 2018). Why has this unbalanced growth of cases happened? Also, under this condition can environmental NGOs play a unique role in EPIL?

The literature on environmental governance in China has argued that it has mixed characteristics, with both participatory and non-participatory opportunities occurring (Grano 2016; He and Thøgersen 2010; Ho and Edmonds 2007; Otsuka 2007; Mertha 2009; Shahar 2015; Stern 2013; Teets 2013). Recently, along with the enhancement of environmental governance led by the CCP after the launch of Xi Jinping's administration, there are (re)emerging discussions how Chinese authoritarianism can address complex environmental sustainability issues and beyond in framing authoritarian environmentalism (Ahlers and Shen 2017), environmental authoritarianism (Beeson 2010; Li and Shapiro 2020), or eco-authoritarianism (Shahar 2015), all of which focus on recentralization of environmental governance and its consequences. It would be worthwhile testing how recent Chinese authoritarianism can move forward so-called 'eco-civilization' as propagated through the nation-wide CCP organs, holding their superiority while balancing diversified social and economic interests among the people.

This article contributes to the recent discussions on environmentalism and authoritarianism in China using the example of EPILs in examining why and how procuratorates and environmental NGOs demarcate their works and whether environmental NGOs can play their own role in EPILs under the pro-authoritarian institutional setting.

In the next section, environmental governance under Chinese authoritarianism is reviewed and the analytical points of view in this article are clarified. In later sections, a series of juridical reforms in environmental law enforcement are presented, and the development of EPIL by both NGOs and procuratorates is carefully examined. Lastly, the article summarizes the study's findings and reflects on their limitations.

2.Environmental governance under Chinese authoritarianism

In responding to the observed dysfunctions in environmental policy implementation in China, the State Council and the environmental committee of the NPC launched a series of nationwide inspection activities together with a media campaign in the 1990s. Strengthening top-down initiatives while incorporating a media campaign has made state-society interactions in environmental policy in China more visible than before. As Tilt noted, "citizen

complaints and media exposure —called 'civil society factors' — are playing a key role in determining the regulatory course of action for district EPB[2] officials" (Tilt 2007). Otsuka (2007) also noted that China has "stepped towards building a multi-stakeholder governance system" including government, media, and NGOs under its authoritarian regime while tightening "the screws of political liberty," which implies that we must consider the two sides of state-society interaction: multi-stakeholder interactions and a consistently authoritarian regime together. Grano (2016) further notes that as environmental policy is being developed through newly improved laws and regulations, "third-sector actors, from private organizations to civic associations, are being given (and are demanding) more responsibilities and tasks in environmental governance, as a consequence of which state, market and civil society are having to renegotiate their own spaces and the relations between them, each seeking more efficiency and legitimacy."

In terms of multi-stakeholder interaction, environmental non-governmental organizations (ENGOs) are the most popular target of environmental governance studies in China. An ENGO is expected to be an agent of the "environmental future" against the Party-State (Economy 2004), a "policy entrepreneur" (Mertha 2009), an agent of a "green civil society" (Turner and Lü 2006), a "public mouthpiece" of victims voicing complaints against polluters and developers (Otsuka 2009) and should serve as a "transparency-based platform" (Haddad 2015). Such functions might be workable but would be mostly based on informal "network(ing)" under the authoritarian regime (Otsuka 2009; Wells-Dang 2012). In the network of ENGOs we also find media, citizens, and some supporters within official organizations who are struggling against ineffective environmental policy.

As noted earlier, these new actors, including the ENGOs in the field of environmental policy, cannot bypass the authoritarian regime in China. The resulting interaction between these emerging actors and the existing authoritarian regime is often discussed in the literature, and there is a scholarly consensus that "democratization" or "civil society" in the Western context cannot properly explain the current changes in China. Even the recent "turn toward law and litigation is not a sign of political liberalization, but of authoritarian responsiveness" (Stern 2013).

However, the authoritarian system is not considered to work monolithically but is rather seen as being fragmented. As Ho has stated, public policies vary "from stringent control to tolerance" (Ho 2001). There are "fragmentary opportunities" between environmental policy and social control policy, so ENGOs can find ways to pursue their mission under the authoritarian regime using their informal networks (Otsuka 2009). Additionally, the authoritarian regime could be incrementally changeable toward "fragmented

[2] EPB=Environmental Protection Bureau.

authoritarianism," and this change could make the environmental policy process more pluralistic (Mertha 2009). Additionally, in summarizing recent case studies on environmental governance in China, Grano (2016) notes that "public participation is not yet capable of bringing forth any political change nor of fundamentally altering China's environmental crisis; instead, public participation often lends itself to serving the interests of the authorities." When distinguished from the student movements in 1989 or similar responses of an earlier time, Ho and Edmonds (2007) suggest that such an emerging environmentalism in China is "embedded environmentalism" because of its "fragmentary, highly localized, and nonconfrontational nature" as "the result of a limited, semi-authoritarian political space for civil society." They point out two features of this embeddedness. One is "contextualization," which means that the Chinese context of authoritarianism yields "a situation of negotiated symbiosis with the Party and State." Another is "networks," which means that "interaction and negotiation are effected through social networks and ties" in a "personal, informal and weak" way. They also argue that such an embedded environmentalism "has evolved within a semi-authoritarian environment, which limits activism while at the same time enabling it."

On the other hand, when facing global environmental crises such as climate change and loss of biodiversity, authoritarianism attracts environmental governance scholars' interest, and China is deemed a good sample of such a natural experiment. Beeson (2010) argues in his paper entitled "the coming of environmental authoritarianism" that "good authoritarianism, in which environmentally unsustainable forms of behavior are simply forbidden, may become not only justifiable but essential for the survival of humanity—in anything approaching a civilized form, at least," and suggests China is a good example to be examined. In opposition to such an optimistic view of environmental authoritarianism, Shahar (2015) raises concerns about its undemocratic consequences as well as its drawbacks in environmental governance and claims that "an absence of free and open public disclosure makes it easy for administrators to get locked into narrow, rigid ways of thinking that impede their ability to make good decisions." He points out that "some real-world regimes have recently been moving in the direction of greater interaction with the public rather than less," and "'hybrid' regimes have become particularly prevalent in Southeast Asia" (Shahar 2015, 22).

In looking into the real-world of environmental politics in China, it seems to have succeeded in controlling frequent heavy smog in Beijing and other major cities under Xi Jinping's strong leadership for the promotion of "ecological civilization." The Chinese amalgamation of authoritarianism and environmentalism could be worth revisiting in the context of environmental governance studies. To this end, Li and Shapiro (2020, 16) introduce the key concept of "authoritarian environmentalism" ("eco-authoritarianism," "coercive environmentalism," and "state-led environmentalism" are also used interchangeably) and point out that scholars of authoritarian environmentalism "have turned their focus towards

China to flesh out the implications of managing the environment through authoritarian means." They conceptualize state-led environmentalism as having three dimensions: "through top-down governmental tools, techniques, and technologies," "incorporating non-state environmental interests" into state-led initiatives and controlling "non-environmental spillover effects;" mainly based "on the centralization of political power and the suppression of individual rights and public participation" (Li and Shapiro 2020, 20). Drawing on selected cases, they argue that China's engagement with environmental policy should be seen not as authoritarian environmentalism but as "environmental authoritarianism," where "authoritarianism is the end and environmentalism is the means" (Li and Shapiro 2020, 24).

Their view is thought provoking, but whether the variety of practices in environmental governance observed in China can be summarized as such a simple statement should be carefully examined, case by case. For example, as they depicted, one local government entity was recently compelled to follow the central mandate to replace coal with natural gas even when it was not ready, and some residents in North China had to bear the local cold winters without alternative heating under the ban on burning coal. This is indeed a case of "systemic over-compliance on the part of local authorities" (Li and Shapiro 2020, 62), as they point out.

However, it would not be proper on the basis of this outcome to suggest that "authoritarianism is the end and environmentalism is the means;" rather we should say that "the authoritarian means distorts the environmental target into (just) a bureaucratic performance target." In this case, it is local bureaucrats who fear punishment against poor performance when they cannot comply with the central mandate who invoke this compliance.

However, it should be noted that the Ministry of Ecology and Environment has issued a series of notices to prohibit such over-compliance behavior by local authorities since 2018.

This episode tells us that individual rights could be easily suppressed by top-down environmental regulations ("non-environmental spillover effect"), however, it is more contingent and dynamic in balancing coercive measures and individual than the decisive assumption of an environmental authoritarianism discourse as the Ministry of Ecology and Environment reaction shows.

In order to examine a way to amalgamate authoritarianism and environmentalism in policy frameworks, we should consider a concrete case carefully in the context of real-world environmental politics. This article investigates how authoritarianism and environmentalism interact in China's environmental governance in focusing on the typical environmental authoritarian assumption of "non-environmental spillover effects" put forward by Li and Shapiro (2020, 20) through two queries raised by case studies on EPILs.

The first query is about the method of decentralization of authority in EPILs when asking what kinds of role are expected for NGOs in the institutional settings through judicial reforms in China (Section 3). The second is whether the judicial reforms will cause an intended or

unintended enhancement of authoritarianism beyond environmentalism as Li and Shapiro (2020) suggest (Section 4).

3.Judicial Reform and the Role of NGOs in Environmental Policy under Chinese Authoritarianism

The EPL enacted in 1979 stipulates that: "Any citizen has the right to supervise, impeach, and accuse organizations and individuals that pollute and destroy the environment." This stipulation provided the first legal basis for environmental litigation by Chinese citizens (Wang et al. 2001, 5). However, there is only fragmentary information on the results of environmental litigation to date. One source of information tells us there were 21,015 environmental cases, including criminal, administrative, and civil cases from 1998 to 2001 (Li 2003). Also, another source tells us there were 118,779 actions of all types dealt with in the courts from 2002 to 2011 (Wang and Fuo 2015). According to these limited figures, we can see that there has been a sharp increase in environmental litigation from around 500 cases annually before 2002 to over 10,000 cases annually after 2002. It should be noted, however, that most of these cases were criminal actions led by procurators, not by citizens. Among the total number of cases of environmental litigation from 2002 to 2011, nearly 70% were criminal actions (81,844 cases), and less than 20% were civil actions (19,744 cases) (Wang and Fuo 2015).

In the context of public participation, there are two major problems that undermine environmental litigation that have been pointed out by scholars. First, there are unjust interventions from local government into environmental law enforcement to hide inconvenient truths "under the carpet" (Wang and Fuo 2015; Van Rooij et al. 2017; Qi 2018).

This problem has been seen as "local protectionism" in line with the pro-economic growth strategy of local governments in China (Van Rooij et al. 2017). Second, there are high costs in terms of money and time for citizens in taking legal action. This is especially so when trying to prove causal relationships between environmental damage and particular activities.

This needs science, technology, and fieldwork, which can take a lot of time and money if plaintiffs have no personal resources to conduct any systematic surveys (Wang and Fuo 2015). Given these political and socio-economic drawbacks, the people's access to justice to protect their life and their environment has been limited for many decades despite the rapid development of environmental law and regulations.

It was around 2010 when a series of judicial reforms in the realm of environmental protection were launched in China. There are two streams in these reforms (Table 1). The first stream is the professionalization of the environmental judicial system, which is deemed a judicial sector response to the increasing demand for legal solutions for worsening

environmental problems in the country (Han 2015). Earlier, in 2007, the first environmental court (renamed the "ecological environmental court" after the establishment of the Ministry of Ecology and Environment in 2018) had been set up in Qingzhen City, together with the Two Lakes (Hong Feng-uu and Baihua-hu) Management Bureau and the Two Lakes One Dam (Ahha Dam) Environmental Protection Foundation in Guizhou Province. These new institutions were introduced to overcome sectarianism in the administrative system in responding to the serious water pollution in these lakes and dams. It is worth mentioning that this first environmental court in Qingzhen City could cover environmental cases not only in the city but also in its adjacent cities and one area including Guiyang city, Anshun city, and Guian New District. Also, this court can deal with all types of environmental cases including civil, administrative, and criminal ones[3].

In 2014, the Supreme Court set up the Environmental Resource Court. According to the report by the Supreme Court in 2015, there were 456 environmental courts in 24 provinces in the country (Wang 2016, 109). According to the latest data, courts across the country have established 2,426 specialized institutions or organizations for environmental resource trials. "[O]ur country has become the only country in the world that has established an environmental resource trial system covering all levels of courts across the country."[4]

The second stream in environmental judicial reform was the institutionalization of environmental public interest litigation (EPIL), which enables those who do not have a direct interest to file a lawsuit for the sake of the public interest in terms of environmental protection. Before this reform there had been only a few cases accepted by the courts every year, 72 in total from 1995 to 2014, as Figure 1 shows. In 2012 EPIL was officially stipulated in the revised Civil Procedure Law: “Legally approved institutions and related organizations may bring an action in people’s courts against any behavior to harm social public interests including environmental pollution and violating the legal rights of many consumers” (Wang 2015). Following this stipulation, the revised EPL has made EPIL cases by NGOs official under certain conditions, while stipulating the rights of citizens, legal entities, and other organizations to obtain environmental information, participate in, and even supervise environmental protection (J. Wang 2015; C. Wang 2016). As Figure 1 shows, in the first year after enacting the revised EPL there was a sharp increase of EPIL cases, from 10 in 2014 to 44 in 2015.

In addition to the revised EPL, the Supreme Court has issued its judicial commentary on the ability of NGOs to support EPIL cases by stating that an NGO may bring an EPIL outside its jurisdiction and that courts should reduce the economic burden of costs for lawsuits,

[3] Interview with one judge in the environmental court, Qingzhen, September 2015.

[4] The Supreme People’s Procuratorate of the People’s Republic of China, January 11, 2023.https://www.court.gov.cn/zixun-xiangqing-386101.html

appraisals, and the service of lawyers (C. Wang 2015). It is indeed a breakthrough in the context of environmental judicial reform that EPIL cases by NGOs have been officially stipulated in the revised EPL, however, there are some critical limitations in terms of the role of these NGOs.

First, there are strict requirements for NGOs that affect their standing in any legal cases, such as their objectives (they must be formed to promote environmental protection activities in the public interest), the duration of their activities (more than five consecutive years of experience), their capacity (no penalties against them for these five years), and type of organization (they must be legally registered as a social organization in a city or its upper level) (Qi 2018). Due to these requirements, young organizations registered for less than 5 years and/or not registered as social organizations but as other types of nongovernmental organizations even with full experience in environmental lawsuits, such as the Center for Legal Assistance to Pollution Victims (CLAPV) in the Chinese University of Political Science and Law, are not able to bring an EPIL under this regime.

Second, NGOs may file only civil EPIL cases not administrative ones. There were debates about the role of NGOs in administrative cases during the process of the revision of the EPL before 2014, and the Supreme Court has not allowed NGOs to bring an administrative case involving an EPIL (Wang 2015). However, 6 months after the revised EPL was enacted in 2015, the NPC launched a two-year pilot project on public interest litigation by procuratorates,[5] which included environmental cases. Based on this pilot project, the Civil Procedure Law (CPL) and the Administrative Procedure Law were amended in 2017 to include the ability of prosecutors to file public interest administrative cases. Also, the CPL stipulates prosecutors may bring public interest civil environmental litigation when NGOs have not taken such an initiative (Zhang and Mayer 2017).

This uneven distribution of rights to sue between NGOs and prosecutors has resulted in an uneven increase of EPIL cases. As shown in Tables 2 and 3, the number of EPIL cases by prosecutors has increased rapidly since 2016, and the total number is about ten times higher than those by NGOs from 2015 to 2019.

In sum, a series of recent judicial reforms in environmental law enforcement in China shows us a clear demarcation of work between NGOs and procuratorates in EPILs. NGOs can sue in environmental public interest civil litigation cases but cannot sue in administrative public interest litigation cases. On the other hand, procuratorates can sue in both public

[5] In China, procuratorates were expected to be in charge of criminal cases before the enacting of the revised Civil Procedure Law and the revised Administrative Law. The Supreme People's Procuratorate (SPP) locates at the top of its hierarchical system (Liu and Shi 2020). All procuratorates in national and local levels are governed by the communist party system without exception under the Chinese authoritarian regime.

interest civil and administrative litigation cases. So, it is apparent that there is uneven distribution of power between NGOs and procuratorates, but it is also true that NGOs have a certain space in the newly built institutional settings under the Chinese authoritarian regime.

4.Development of EPIL by NGOs and Procuratorates

As mentioned in the previous section, it is obvious that EPIL cases by procuratorates have become more common than those by NGOs over the past 5 years. The chief of the division responsible for public interest litigation in the Supreme People's Procuratorate (SPP) mentioned the disproportionate numbers of cases made by NGOs and procuratorates. There have been under 50 cases by NGOs but over 100 thousand cases by procuratorates because procuratorates have skilled teams, legal measures, and other resources.[6] Liu and Shi (2020, 330) also suggest that the role of procuratorates was added in the revised CPL because the SPP acknowledged the inactivity of NGOs in public interest litigation.

On the other hand, it should be noted that the number of EPIL cases brought by NGOs did not decrease but also increased in the same period, even though the pace of this change was slower, and its scale smaller (Table 3).

It is interesting to find that the number of cases brought by NGOs has not decreased despite the rapid increase in those brought by procuratorates. This finding has twofold implications in terms of the tension between authoritarianism and environmentalism.

First, the promotion of public interest litigation by procuratorates and the increase in the numbers in EPIL cases from this source has not discouraged NGOs from bringing EPILs. This finding is important when we recall the authoritarian environmentalism assumption raised by Li and Shapiro (2020), who noted that the "non-environmental spillover effects" as a consequence of state-led environmentalism may have recently been enhanced in China. Our data does not confirm such an authoritarian spillover effect in the recent development of EPIL when we check the trend of increasing numbers by both NGOs and procuratorates. Second, this trend could simply be rooted in a demarcation dispute about public interest civil actions between NGOs and procuratorates as stipulated in the revised CPL that restrains procurators from filing public interest litigation after NGOs have undertaken such a lawsuit with the same target (Zhang and Mayer 2017).

We should be cautious, too, about taking a microscopic view in individual cases. For example, Qi (2018) introduces one example about the Procuratorate of Nanjing's "additional unnecessary requirements" when NGOs file public interest litigation, probably "due to the political pressure it faced to build a better performance record." This case could be deemed a

[6] The Supreme People's Procuratorate of the People's Republic of China, December 16, 2019. https://www.spp.gov.cn/spp/tt/201912/t20191216_441455.shtml

consequence of “non-environmental spillover effects” when enhancing the authority of procuratorates in the judicial reform process.

On the other hand, it should be recognized that there are some cases of cooperation between procuratorates and environmental NGOs in EPILs. According to the report of EPIL cases in 2015, there were at least 3 where environmental NGOs and local procuratorates cooperated in EPILs (Li 2016). In two of the 3 cases, one was a lawsuit against ecological disruption brought by the Friends of Nature, Fujian Green Home (NGOs), and a local procuratorate and another was the lawsuit against water pollution brought by the Chinese Union of Environmental Protection. In these two cases, the plaintiffs won. In the third case about water pollution in Dalian City, the city-level procuratorate joined the lawsuit by an NGO and they reached a settlement. In addition, through the lawsuit, environmental crimes were prosecuted by the procuratorate (Li 2016, 77-81).

This fact suggests that cooperation between procuratorates and environmental NGOs would be enabled by the clear demarcation between them in the institutional setting even though such demarcation is made by in a pro-authoritarianism way. This preliminary observation supports one of the environmental authoritarianism assumptions raised by Li and Shapiro (2020) in terms of the incorporation of nonstate environmental interests into state-led initiatives, however, we could not conclude that such incorporation would cause any authoritarian spillover in reducing the ambition of participation by environmental NGOs in EPILs at this moment.

Besides the number of cases, how many and what kind of NGOs participate in EPIL cases may be worth examining. Table 4 is a list of such NGOs from 2015 to 2017 (Zhang 2017, 2018). According to this table, we can see three characteristics in the EPIL cases brought by NGOs in the initial three years after the revised EPL was enacted. First, as shown in the total numbers of NGOs, there were less than 30 organizations involved in EPIL cases in these three years. Though it is said that there are over 700 potential organizations that have standing in EPIL cases in China (Li 2016, 262), there are only a limited number of these that engage in this new activity. Second, among this limited number of NGOs, three organizations, the China Biodiversity Conservation and Green Development Foundation (CBCGDF), the Friends of Nature (FON), and the All-China Environmental Federation (ACEF) have taken most of these lawsuits. This activity covered 67% of the total number of cases (91,135 cases in three years). These two patterns suggest that there is only a limited space for NGOs to file EPIL cases under the current institutional setting. Third, besides these three champions, we can find a variety of organizations based in Beijing and in other provinces, including Guizhou, Fujian, Liaoning, Guangdong, Henan, Jiangsu, Chongqing Anhui, Hunan, Sichuan, and so on, that have instituted cases. This feature shows us a different view of the potential for EPIL activity by NGOs, though each case taken by local organizations is small.

The role of local NGOs in the process of EPIL has not been documented but is very important. For example, one of the local NGOs based in Shandong Province is not qualified to stand in EPIL cases under the revised EPL because the organization was registered just two years ago.

However, it is committed to the EPIL cases initiated by FON in multiple ways: finding and reporting accidents, collecting evidence, monitoring of environmental improvement, and rehabilitation after concluding a trial activity. This involvement can be conducted more effectively and efficiently as a locally based grassroots NGO. The NGO staff learnt a series of environmental lawsuit procedures and other related knowledge through a seminar organized by CLPAV, a pioneer NGO specializing in environmental lawsuits. Also, it is important to say that there are many nameless volunteers who have played an irreplaceable role with the staff of the NGO in conducting such local-based activities over the years.[7] This is just one evocative episode that helps in understanding the role of local NGOs in EPIL cases, though the number of cases that involve such organizations are still limited.

The last finding would suggest that there might be "non-authoritarian spillover effects" rather than "non-environmental spillover effects." This means there could be an impact from promoting EPIL cases when such local NGOs with a broad spread of volunteers are able to accumulate their experience and knowledge of EPIL for the public, and this could offer an alternative path to the current authoritarian way of enhancing environmental law enforcement.

5.Conclusion

Environmental governance in China has been developed by enhancing authoritarian powers on the one hand and introducing participatory approaches on the other. Looking into the recent development of EPIL by both NGOs and procuratorates carefully, it can be concluded that there is limited space for NGOs but a wider space for procuratorates to file cases due to the strict standing conditions for civil cases, the restrictions on involvement in administrative cases, and maybe the disproportionate capacity for filing environmental lawsuits. Second, there were slightly increasing numbers of EPIL cases by NGOs from 2015 to 2019, though the numbers and the pace of this increase has been smaller than those involving procuratorates. This suggests that a kind of division of labor between NGOs and procuratorates stipulated in the revised CPL could restrain any authoritarian spillover effects, though there are disproportionately increasing cases by procuratorates over those by NGOs. However, we should be cautious about an individual case that shows a possible intervention by procuratorates in a civil action by an NGO. Third, there are a variety of organizations involved in the process of bringing EPIL cases by NGOs, though most of the cases have been filed by the "big-three organizations" based in Beijing. It is worth mentioning that the role of local

[7] Interview with one of the NGO staff in Qinan, November 2016.

NGOs that have not satisfied the conditions for standing required by the revised EPL is however essential in the process of the EPIL cases initiated by a Beijing-based NGO. Also, such a local NGO may be able to mobilize many volunteers to participate in this process. Such experiences and the knowledge that is accumulated among broader groups of locals in the country might bring an "environmental spillover effect," which means a spillover toward pro-environmental democracy intended to push EPIL reform toward a more participation friendly process.

Lastly, there are limitations affecting the observations in this article. First of all, there is a lack of comprehensive data about EPIL cases. This study has had to depend on the limited and fragmented information available in China. Second, we do not know how NGOs and procuratorates interact in each concrete case except in a limited way. There is still much room to investigate EPILs as a case of the unique amalgamation of authoritarianism and environmentalism in China by and beyond the common environmental authoritarian assumptions.

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Table 1： Institutional change for Environmental Public Interest Litigation

Year	Institutional change
2007	The first Environmental Court in China settled in Qingzhen City, Guizhou Province
2012	Civil Procedure Law revised (enacted in 2013)
2014	Environmental Protection Law revised (enacted in 2015)
	Environmental Resource Court settled in the Supreme Court
2015	Pilot project for EPIL by Procuratorates launched
2017	Civil Procedure Law revised
	Administrative Procedure Law revised
2018	Institutional Reform Trail for Ecological Compensation launched

Source: Compiled by the author based on related official documents issued by the Chinese authorities.

Table2: Number of EPIL Cases (1995-2014 and 2015)

	1995-2014	2015
NGOs	17	53
Public prosecutor	25	7
Local government	28	n.d.
Individual	6	n.d.
Total	76	60

Source: Compiled by the author based on Li (2016, 261-76) and Li (2018, 335-47).

Note: "n.d." indicates no data.

Table 3: Number of EPIL Cases by NGOs and Procuratorates after EPL revised (2015-2019)

Year (months) Types of organizations and cases	January 2015- December 2016	July 2016- June 2017	July 2017- June 2018	January 2019 – December 2019	January 2020- December 2020	January 2021 – December 2021
NGOs	112(54) *123	57(13)	65(16)	179(58)	n.d.(103)	299(151)
Public prosecutor	77(25) *79	791(381)	1737(1252)	2309(1895)	n.d. (3454)	5610(4785)
_civil	25	71	113	312	n.d.	847
_administrative	51	720	376	355	n.d.	612
_administrative with a civil case	1	0	0	0	n.d.	0
_criminal with a civil case	0	0	1248	1642	n.d.	4151

Source: Compiled by the author based on press releases by the Supreme Court.

Notes: *indicates the number based on Table 1. The cases by procuratorates have been recorded since July 2015. The data of numbers is duplicated from July 2016 to December 2016. Also, the date is lacking from July 2018 to December 2018... The data in ( ) indicates the number closed. The data set are incomplete because the sources of data published are limited.

"n.d." indicates no data.

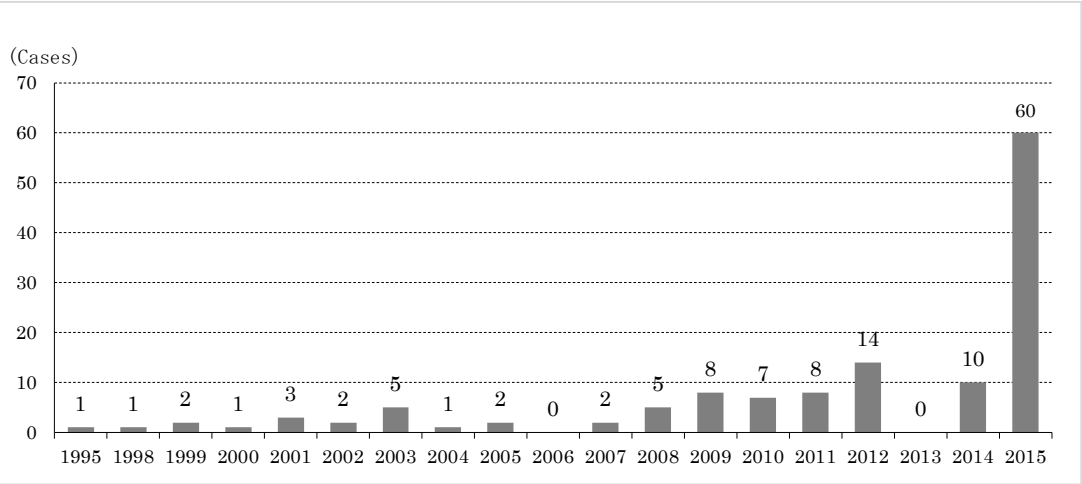
Table 4: EPIL Cases by NGOs (2015-17)

(cases)

NGO/Year	2015	2016	2017	2015-17
China Biodiversity Conservation and Green Development Foundation (CBCGDF)	13	33	1	47
Friends of Nature (FON)	6	10	8	24
All-China Environmental Federation (ACEF)	9	9	2	20
Guiyang Public Environmental Education Center	8		2	10
Green Home Environment-Friendly Center of Fujian	2		1	3
Qingzhen Ecological Environment Federation	1			1
China Mangrove Conservation Network	1			1
Dalian Environmental Protection Volunteers	1			1
Xiangtan Environmental Protection Association	1			1
Zhengjiang Society for Environmental Science	1			1
China Environmental Protection Foundation (CEPF)		5	4	9
Guandong Environmental Protection Foundation		2		2
Corporate Social Responsibility Promoting Center of Henen		2		2
Huaian Society of Environmental Science		1		1
Chongqing Liangjiang Voluntary Service Center		1		1
Anhui Province Environment Federation		1		1
Jiangsu Province Environment Federation		1		1
Henan Province Environment Federation		1		1
Green Hunan		1		1
Green Volunteer League of Changing			3	3
Ecological Civilization Promoting Association of Shaoxing			1	1
Guizhou Youth Law Society			1	1
Chengdu Urban Rivers Association			1	1
Yiyang Environment and Resource Protection Volunteer Association			1	1
Total number of cases	43	67	25	135
Number of NGOs involved	10	12	11	24

Source: Compiled by the author from Zhang (January 2018).

Figure 1: Trend of the number of EPIL cases (1995-2015)



Source: Compiled by the author based on Li (2016, 261-76) and Li (2018, 335-47).

Abstract (in Japanese)

要　約

中国は世界における共産党支配による長期にわたる権威主義国家として知られている。それにもかかわらず、環境ガバナンスにおいて非参加型―参加型アプローチの複合形態が観察される。中国の環境ガバナンスにおけるこのような複合形態の特徴をどのように理解すればよいのだろうか。本研究ではこの問いに答えるべく、2015 年より施行された改正環境保護法以降の環境公益訴訟事例に着目し、先行研究で挙げられた中国的「環境権威主義」のもとでの「非環境的浸透（権威主義的スピルオーバー)」仮説を検証する。NGO と検察官による最近の環境公益訴訟の展開を注意深く観察すると、検察官による訴訟件数が NGO のそれよりも不釣り合いに増加している一方で、改正環境保護法で定められた NGO と検察官の間のある種の分業が権威主義的スピルオーバーを抑制しうることが明らかになった。また環境公益訴訟において NGO と検察官が協力している事例がいくつか見られること、さらに現地の NGO がこの過程で沢山のボランティアを動員していることが指摘できる。こうして中国における幅広い地域の主体の間で蓄積された経験や知識は、むしろ「環境（民主）的浸透」をもたらし、環境公益訴訟をより参加的なスタイルへ改革を促す効果を持つかもしれない。

キーワード：環境ガバナンス、権威主義、環境公益訴訟、浸透効果（スピルオーバー・エフェクト)、中国