

The Chinese courts – environment and climate change

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The Chinese Courts – Environment and Climate Change

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Abstract

The role of Chinese courts in environmental and climate governance has expanded in recent years, yet their institutional position and practical contributions remain insufficiently understood. This article offers an integrated account of the Chinese court system, the development of environmental litigation over the past decade, and the emerging judicial engagement with climate-related disputes. Our analysis clarifies how institutional reforms, new legal pathways, and shifting governance objectives have shaped judicial practice and examines the courts' role within China's wider environmental governance architecture, particularly in relation to public prosecutors and nongovernmental organisations. We identify significant institutional innovations, including the creation of specialised environmental divisions and the expansion of public-interest litigation, along with early judicial efforts to address climate-related issues through a pragmatic approach to legal application. The findings underscore the courts' growing capacity to influence environmental and climate governance and point

to an overall trajectory of increasing judicial involvement in these domains. The newly promulgated Ecological and Environmental Code is more likely to reinforce than fundamentally alter the existing characteristics of climate-related adjudication in China.

Keywords: Specialised environmental divisions; climate governance; judicial reform in China

1. Introduction

This article examines the functioning and limitations of specialised environmental divisions in Chinese courts in the context of environmental and climate governance. It does so through a systematic review of authoritative legal documents and leading judicial decisions. To address the fact that several influential Communist Party of China (CPC) directives shaping judicial practice are not publicly accessible, the analysis draws on reporting from official media to reconstruct their content and effects. The article also incorporates empirical information from twenty interviews with judges and prosecutors at both central and local levels, conducted between 2022 and 2025.

This article begins with a brief overview of the organisation and functioning of the Chinese court system, establishing the institutional context for judicial action. It then traces the development of environmental litigation, highlighting the emergence of new legal pathways and institutional innovations, and more recently in relation to climate change. It identifies the practical challenges of implementing climate policy and balancing competing goals by the court. Finally, it briefly discusses the potential influence of the newly promulgated Ecological and Environmental Code.

2. A brief introduction to Chinese judicial system

In 1951, two years after the establishment of the People's Republic of China (PRC), Central People's Government Council, the highest authority between 1949 and 1954,

adopted the Provisional Regulations on the Organisation of the People's Courts. When the PRC enacted its first Constitution in 1954, it also adopted its first Organic Law of People's Courts and Organic Law of People's Procuratorates. Both the Constitution and the Organic Law of People's Courts declared that "in administering justice, the people's courts are independent, subject only to the law."¹ In addition, several rules established by the 1954 organic law are inherited by subsequent organic or procedural laws, such as the hierarchical division of courts,² finality of judgment after two trials,³ adjudication committees,⁴ and the right to use ethnic languages in legal proceedings.⁵ However, the ordinary functioning of all state organs, including the judicial system, was severely jeopardised by the "anti-rightist" campaign in 1957 that institutionally, personally, and physically attacked a large number of intellectuals and officials. They were then totally paralyzed during the Cultural Revolution (1966-1976).

In the aftermath of the Cultural Revolution, the Third Plenary Session of the 11th Central Committee of the Communist Party of China (CCCPC) in 1978 marked the beginning of efforts to reestablish democracy and the rule of law. According to the Communist Party's official account, from 1978 onward "a series of important laws, decrees, and regulations have been restored, drafted, and implemented, including the Criminal Law and the Criminal Procedure Law—both of which had never been enacted since the founding of the PRC. The work of judicial, procuratorial, and public security organs has

¹ Constitution 1954 art 79; Organic Law of People's Courts 1954 art 4.

² Organic Law of People's Courts (n 1) art 1.

³ *ibid* 11.

⁴ *ibid* 10.

⁵ *ibid* 6.

also been strengthened.”⁶ The Party also pledged to refrain from interfering in the exercise of judicial functions.⁷ In reality, however, because the Party reviews appointments and disciplines of officials such as judges and prosecutors and leads major institutional reforms, the Party’s political decisions play an important role in the administration of the judicial system. In this context, the National People’s Congress (NPC) adopted the new Organic Law of People’s Courts and Organic Law of People’s Procuratorates in 1979, prior to the new Constitution enacted in 1982. Aside from minor adjustments, these laws remained largely unchanged until their substantial revision in 2018.

Three major judicial reforms have been undertaken since the early 2000s. The first phase (2004-2008) reorganised judicial institutions, redefined functional divisions, and adjusted management structures, while the second phase (2008-2012) addressed operational constraints by strengthening oversight of judicial power, refining criminal policy, improving personnel management, and securing funding.⁸ A third wave of reform was launched in 2013.⁹ In 2014, the working group for reform of the CCCPC advanced this agenda and established goals, principles, and a roadmap for this reform,¹⁰ and then later further identified key institutional challenges.¹¹ As key documents of the third reform are still not publicly available, it is difficult to evaluate its effectiveness.

⁶ Central Committee of the Communist Party of China, ‘Resolution on Certain Questions in the History of Our Party since the Founding of the People’s Republic of China’ (Central Committee of the Communist Party of China 1981).

⁷ *ibid.*

⁸ Information Office of the State Council, ‘Judicial Reform in China’ (the State Council 2012).

⁹ Decision on Several Major Issues Concerning Comprehensively Deepening Reform 2013 ch 9.

¹⁰ Opinions on Deepening Judicial Reform 2014.

¹¹ Framework Opinions on Pilot Judicial Reform 2014.

However, this reform introduces the “quota system” that significantly impacts on judges’ appointment and administration.

The current organisation of the courts and the judiciary is governed by the Organic Law of the People’s Courts (2018) and the Judge Law (2019), which elaborate and reinforce the principles set out in the 1954 and 1979 organic laws and the 1995 Judge Law, while consolidating the judicial reforms.

The Organic Law defines judicial independence as the principle that “people’s courts exercise adjudicatory power independently, in accordance with the law, and without interference from administrative organs, social groups, or individuals.”¹² Beneath the SPC are higher courts at the provincial level, intermediate courts at the municipal level, and basic courts at the county level,¹³ with each higher court supervising the adjudicatory work of the courts below it.¹⁴ The SPC issues judicial interpretations on questions of law and guiding cases.¹⁵ Although their normative rank is unspecified by the legislature, these interpretations function in practice as general and regulatory rules. The SPC also issues judicial policy documents, such as “guidance,” recommendations,” and “opinions”, that lower courts are expected to follow. It regularly prepares and disseminates white papers on major judicial policies and developments¹⁶. This article cites the white papers on environmental adjudication as an authoritative source of information.

¹² Organic Law of People’s Courts 2018 art 4.

¹³ *ibid* 12 and 13.

¹⁴ *ibid* 10.

¹⁵ *ibid* 10 and 18.

¹⁶ Supreme People’s Court, Opinions on Further Deepening Judicial Transparency [Fa fa 2018 No 20] s 18.

Courts can determine their internal divisions according to workload.¹⁷ Any such decision requires approval from the CPC's institutional organisation commission at the same administrative level.¹⁸ and the appointment of division leaders must be approved by the standing committee of the corresponding people's congress.¹⁹ The Organic Law authorises the establishment of special courts—such as military, maritime, intellectual property, and financial courts—whose creation and jurisdiction are determined by the NPC Standing Committee.²⁰ To date, however, the Standing Committee has not formally established any environmental court, and what are often called “environmental courts” or “environmental tribunals” are in fact specialised divisions or teams within the general courts.

The Organic Law defines the people's courts as the adjudicative organs.²¹ In practice, however, the essence of Chinese judiciaries' tasks is not simply to apply legal texts literally, but to achieve the “unity of legal and social effects.”²² The emphasis of social effects derives from the belief that legal disputes reveal deeper social issues and that an adjudicator is expected to address these social issues. As we will see in the following sections, this purposive, pragmatic framework plays an important role in China's climate litigation.

¹⁷ Organic Law of People's Courts (n 12) art 27.

¹⁸ Regulations on the Institutional Organisation Work of the Communist Party of China 2019 art 14.

¹⁹ Constitution 1982 art 67 (12) and 106.

²⁰ Organic Law of People's Courts (n 12) art 15.

²¹ *ibid* 2.

²² Supreme People's Court, Recommendations on Strengthening and Standardizing Arguments in Judicial Decision 2018 para 1.

To become a judge, candidates are required to have an undergraduate or postgraduate degree in law.²³ In impoverished regions, it is permitted to appoint a person with another college degree combined with specialised training. Candidates also need to pass the bar exam and have at least five years of experience in legal practice, though the seniority requirement is reduced to four years for postgraduates in law and three years for those with a PhD.²⁴ When needed, courts may recruit lawyers with at least five years of practice and strong reputation, or legal scholars with demonstrated achievements.²⁵ Several leading, high-profile scholars have been appointed to senior court positions, commonly along with their usual university positions. Selection committees composed of judges and other legal professionals at the provincial level are responsible for reviewing candidates' qualifications.²⁶

In 2014, the working group for reform of the CCCPC initiated a quota system reform that requires all judges, regardless of rank and seniority, to re-apply for their positions and undergo assessments, in which only a portion would regain status as judges.²⁷ Also in 2014, the SPC further specified that the number of judges is allocated and adjusted at each court level based on socio-economic and related operational factors.²⁸ which is later formalised by laws²⁹. For judges who had mainly carried out administrative roles, there was a choice between administrative posts and frontline judging. As a result, just over 120,000 of nearly 212,000 judges were reconfirmed, while around 90,000 lost their

²³ Judge Law 2019 art 12(5).

²⁴ *ibid* 12(6) and (7).

²⁵ *ibid* 15.

²⁶ *ibid* 16.

²⁷ Framework Opinions on Pilot Judicial Reform (n 11).

²⁸ Supreme People's Court, Opinions on Comprehensively Deepening Reform of the People's Courts (Fourth Five-Year Reform Outline of the People's Courts, 2014–2018) 2014 [Fa Fa [2015] No. 3] para 49.

²⁹ Organic Law of People's Courts (n 12) art 46; Judge Law (n 23) art 25.

judgeships, which led to an exodus of mid-career judges to private practice.³⁰ Most new appointees, particularly in economically developed regions, are former law clerks who have passed the civil servant exam and have graduate law degrees.

Continuous training is an integral part of a judge's evaluation and promotion.³¹ The SPC oversees nationwide training planning, policy, and supervision, with its Political Department responsible for overall strategy, standards, resources, and high-level talent development.³² High courts manage training within their jurisdictions and implement SPC directives, while lower courts carry out assigned training tasks and organise local programs.³³ Training programs are delivered by the National Judges College and its local branches.³⁴ A judge must complete one year of training before the appointment and at least one month of advance training before promotion to senior positions. In addition, they must take at least 12 days of training each year.³⁵

3. The development of environmental litigation in China

3.1. The establishment and administration of specialised environmental divisions

From 2007 to 2014, 134 environmental divisions have been institutionalised³⁶. The rapid growth of environmental divisions started in a local ad hoc experimentation in Guizhou,

³⁰ Qiang Zhou, 'Supreme People's Court Work Report to the National People's Congress' (National People's Congress 2018).

³¹ Judge Law (n 23) art 31.

³² Regulation on the Education and Training of Judges 2020 arts 5 and 6.

³³ *ibid* 7 and 8.

³⁴ *ibid* 9.

³⁵ *ibid* 17, 19, and 20.

³⁶ 'Establishment of the Environmental and Natural Resources Adjudication Division of the Supreme People's Court' *People's Court Daily*, (4 July 2014) Front Page.

a mountainous and underdeveloped province in Southwestern China. In 2007, leachate from a chemical company's waste deposits caused severe phosphorus contamination in Hongfeng Lake, the main drinking water source of Guiyang Municipality, yet the site lay within Anshun Municipality and outside Guiyang's jurisdiction. During an inspection that year, Wan Exiang, then Vice President of the SPC, witnessed the pollution firsthand and proposed establishing a dedicated environmental division. The Guiyang Municipal Court promptly submitted this proposal to the Party leadership and the Guizhou High Court, securing their approval. Two weeks later, the first such division was created in the Qingzhen County Court, which proceeded to hear a public-interest water pollution case against Tianfeng—years before environmental public-interest litigation was formalised in 2015.³⁷

The Qingzhen experiment coincided with the CCP's 2007 designation of promoting Ecological Civilisation as a key requirement for achieving a prosperous society.³⁸ In 2013, the CCP further elevated Eco-civilisation by incorporating it into the overall framework of economic, political, cultural, social, and ecological development.³⁹ As we will discuss later, this CCP agenda was soon translated into legislative developments in environmental law.

³⁷ 'Confronting Problems and Boldly Breaking New Ground: As China's First Environmental Protection Court, the Qingzhen Environmental Protection Court Has Actively Explored Models of Environmental Civil Public-Interest Litigation and Built a Judicial Line of Defense for Ecological Protection' *Chinese Journal of Environment* (18 June 2021)

<https://sthj.guizhou.gov.cn/xwzx/stdt/202106/t20210618_77723384.html?isMobile=false>.

³⁸ Jintao Hu, 'Working Report to the 17th National Congress of the Communist Party of China' (National Congress of the Communist Party of China 2007).

³⁹ Jintao Hu, 'Working Report to the 18th National Congress of the Communist Party of China' (National Congress of the Communist Party of China 2013).

The political momentum generated by the state's prioritisation of environmental governance was essential to the establishment of the SPC's environmental division in 2014, as such an institutional change required the support of both the CCCPC and the NPC. In the same year, the SPC issued a judicial policy on environmental adjudication directing courts to establish specialised divisions or teams for environmental and natural resources cases according to local conditions. High and intermediate courts were instructed to allocate resources for this purpose based on caseloads, while basic-level courts with exceptionally high volumes of environmental cases could do so with approval from their superior courts.⁴⁰

Centralizing all environment-related cases before a dedicated group of judges poses a significant challenge because it requires altering long-standing internal jurisdictional arrangements. Courts have traditionally been organised into criminal, civil, and administrative divisions. While civil and criminal divisions date back to 1951,⁴¹ and administrative divisions were formally authorised by the SPC in 1987 in response to rising litigation against government agencies.⁴² Jurisdiction has likewise followed China's procedural laws—the Civil Procedure Law, Criminal Procedure Law, and Administrative Procedure Law—which direct registries to assign cases based on the primary cause of action. In the absence of environmental procedure law or procedural provisions in the Environmental Protection Law, the jurisdiction of environmental divisions is therefore contingent rather than legally defined. As a result, many newly

⁴⁰ Supreme People's Court, Opinions on Fully Strengthening Adjudication in Environmental and Natural Resource Cases to Provide Robust Judicial Support for Advancing Ecological Civilisation Construction 2014 art 16.

⁴¹ Provisional Regulations on the Organisation of the People's Courts 1951 arts 14, 23, and 31.

⁴² Supreme People's Court, Notice on the Establishment of Administrative Divisions within the People's Courts 1987.

created environmental divisions initially lacked caseloads because registries continued to route cases to the established divisions. Since around 2020, however, several local courts have piloted reforms assigning all environment-related civil, administrative, and criminal cases to environmental divisions to remedy this gap.

Most environmental judges were transferred from other divisions, as the creation of environmental divisions did not significantly expand the judiciary under the constraints of the quota reform. Ideally, an environmental division shall regroup judges from all three other branches. The primary criterion for selection has been expertise in environmental law, acquired either through academic training or prior experience adjudicating environmental cases. Interviewees also emphasised that strong investigative and research skills were important considerations in these appointments.

Environmental judges spend substantial time on training. At the national level, the SPC, through the National Judges College, organises two to three sessions annually with several hundred participants drawn from across the provinces. In 2024, the SPC convened three national training courses on environmental adjudication and one special session taught by international experts⁴³. High court judges typically rotate to undertake training in Beijing every other year. Compared to other domains, environmental law training is particularly open to international experts.

For intermediate and county level judges, local programs run by the provincial judge's colleges are more important. The Shandong Provincial College, for example, convenes two biannual week-long sessions that lectures by academics on emerging areas such as mineral resources law, and practical workshops led by senior judges, supplemented by case discussions and professional seminars. Such training is regarded by judges as

⁴³ The Supreme People's Court (ed), *Environment and Resources Adjudication in China (2024)* (Edition of People's Court 2024) 28.

especially valuable because it allows them to better understand new legislation and unify their application. Training thus serves not only to improve professional competence but also to promote greater consistency in environmental judgments.

A notable feature of the development of the environmental jurisdictions has been the involvement of foreign expertise. In November 2014 James Thornton, founder of the environmental NGO ClientEarth, participated in a workshop in Beijing with the newly established environmental division of the SPC. This has led to regular co-operation between the SPC and the Beijing office of ClientEarth in developing environmental litigation round the country. In May 2021 the SPC, jointly with the United Nations Environment Programme, hosted an on-line “World Judicial Conference on Environment”, with the participation of many international judges. Specialist judges from other countries have also been invited to participate in training sessions for environmental judges in China. For example, in November 2024 a group of foreign judges took part in a two-day training session for environmental judges at the National Judges College in Beijing. The invited foreign judges included Lord Carnwath, and senior judges from Indonesia, Kenya, and Brazil. Other participants included senior representatives of UNEP, and of the Sabin Centre (Columbia University) and the Grantham Institute (LSE). This session was followed by a two-day International Workshop in Chengdu on “Environmental Rule of Law and Green Development”.

3.2. Consolidation of Environmental Adjudication by Laws

Significant developments in environmental law took place during the 12th National People’s Congress (2013–2018). In 2014, the NPC adopted the first comprehensive revision of the Environmental Protection Law (EPL) since 1989, granting qualified NGOs the ability to sue polluters, although procedural rules remained unspecified.⁴⁴ In

⁴⁴ Environmental Protection Law 2015 art 58.

2015, the NPC authorised the Supreme People's Procuratorate to pilot a system in which procuratorates may initiate public interest litigation (PIL).⁴⁵ By the end of this pilot period, in 2017, a decade after the Qingzhen pilot case, PIL was formally incorporated into China's legal system through revisions to the Administrative Procedure Law and the Civil Procedure Law, which empowered prosecutors to sue government agencies⁴⁶ and recognised the standing of both NGOs and procuratorates in civil public-interest cases.⁴⁷

According to the new rules on standing, the government agencies cannot file PIL, which contradicts what happened in the Qingzhen pilot case in 2007. Instead, also in 2017, a high-profile, non-binding policy document authorises government agencies to file civil lawsuits against private entities in cases of pollution or ecological degradation.⁴⁸ However, the procedural rules of this new channel remain unspecified.

Another achievement of the 12th NPC in terms of environmental law is the incorporation of the “ecological twist” in the Civil Code. In 2017, it introduced a new legal principle that “when undertaking civil activities, the subjects of the law shall consider the necessity of resource conservation and environmental protection.”⁴⁹ Although the rest of the Civil Code was adopted by the 13th NPC in 2020 and promulgated in 2021, its rules were drafted before 2018. The new code requires property and land-use rights to be exercised in line with resource conservation and environmental protection and instructs judges to consider relevant regulatory laws when interpreting civil rights and

⁴⁵ National People's Congress, Decision on Authorizing the Supreme People's Procuratorate to Conduct Pilot Public-Interest Litigation Programs in Selected Regions 2015.

⁴⁶ Administrative Procedure Law 2018 art 25(4).

⁴⁷ Civil Procedure Law 2018 art 55(1) and 55(2).

⁴⁸ General Office of the CCP Central Committee & General Office of the State Council, Pilot Plan for the Reform of the Compensation System for Ecological and Environmental Damage 2015.

⁴⁹ Civil Code 2020 art 9.

obligations.⁵⁰ In terms of civil liability, the Civil Code exhibits two significant developments. First, it broadens environmental liability by extending it beyond pollution to include “ecological degradation”.⁵¹ Second, it stipulates that where ecological degradation violates national provisions but causes no identifiable personal harm, the state or authorised organisations may require remediation without proving the severity of damage.⁵²

The incorporation of environmental provisions into the Civil Code has made a significant contribution to environmental adjudication. In 2024, the SPC reported 219,276 first-instance environmental cases, out of which 151,256 are civil disputes, compared with only 4,168 EPIL cases.⁵³

Finally, in the final year of its mandate (2018), the 12th NPC adopted an amendment to the Constitution that tasks the state to construct an “ecological civilisation”.⁵⁴ This constitutional declaration paved the way for the efforts of the 13th NPC (2018-2023) in adopting a new generation of environmental law characterised by the focus on large scale territorial planning,⁵⁵ as well as incorporating more environmental provisions in laws.

⁵⁰ *ibid* art 286, 326, and 346.

⁵¹ *ibid* art 1229.

⁵² *ibid* 1234.

⁵³ The Supreme People’s Court (n 43) 1.

⁵⁴ Constitution (n 19) Paragraph 7 of the Preamble.

⁵⁵ Examples of these new environmental laws include the Yangtze River Protection Law 2020; Wetland Protection Law 2021; National People’s Congress, Yellow River Protection Law 2022; draft National Park Law.

4. Environmental judges in overall environmental governance

4.1. The Role of Judges

Charging judges with more effectively supporting the institutional development of Eco-Civilisation, the SPC identifies twenty areas in which courts can contribute and outlines the key considerations for each.⁵⁶ For instance, courts are instructed to adjudicate carbon-related EPIL and environmental damage cases in ways that support the energy transition and to prioritise disputes involving energy-structure adjustments in key regions.⁵⁷ They are also required to apply stringent environmental standards in general and more specifically severe punishments to environmental crimes.⁵⁸ These requirements further align environmental adjudication with a purposive and pragmatic judicial approach.

In comparison with their counterparts in other divisions, environmental judges carry out much more extrajudicial activities. From our interviews and public reports, we learn that they have developed a variety of practices in raising legal and environmental awareness, often in collaboration with other state agencies. For example, some jurisdictions organise “Corporate Environmental Legal Service Days” jointly with bureaus of environmental protections, during which legal professionals provide on-site consultations for enterprises and respond directly to questions on compliance and environmental responsibilities. Courts also cooperate with agencies such as the water authorities, forestry and grassland authorities, and natural resources managers to design legal awareness campaigns tailored to issues such as river basin protection and

⁵⁶ Opinions on Strengthening and Innovating Environmental and Natural Resources Adjudication in the New Era to Provide Judicial Services and Safeguards for Building an Ecological Civilisation 2023 [Fa Fa (2021) No. 28].

⁵⁷ *ibid* 15.

⁵⁸ *ibid* 4.

biodiversity conservation. In addition to these local and ongoing initiatives, on the occasions of World Environment Day (5 June) and the National Ecology Day (15 August), environmental judges across the country routinely organise environmental publicity events linked to their local ecological conditions on street, in schools, or on sites of conservation. In this way, the judiciary's publicity activities symbolically link legal education with visible acts of ecological restoration, thereby aligning legal institutions with the state's broader sustainability agenda.

4.2. The role of prosecutors

Other than the courts, the PIL reform also impacted public prosecutors who are now also in charge of promoting ecological transitions. Procuratorates are defined as “the legal supervision organ of the state.”⁵⁹ Traditionally, this definition means that prosecutors ensure that other state organs act according to law. For example, if a procuratorate determines that a legally effective court decision contains an error or violates the law, it may seek a retrial.⁶⁰ The former General Bureau for Anti-Corruption and Bribery of the Supreme People's Procuratorate (SPP) also exercised oversight of civil servants by investigating corruption and unexplained assets until its functions were absorbed into the newly established National Supervisory Commission in 2018. The organisation of procuratorates is governed by Organic Law of People's Procuratorates (2018) and Prosecutor Law (2019).

While NGOs are limited to suing private actors, prosecutors have far broader authority. In cases of environmental harm, they may pursue private wrongdoers through criminal proceedings, civil public interest litigation, or both. They may also challenge government agencies for omissions or inaction through public interest litigation. The

⁵⁹ Constitution (n 19) art 133.

⁶⁰ Administrative Procedure Law art 93; Criminal Procedure Law 2018 art 228.

power of initiating PIL against a governmental agency is conceived as a part of the prosecutors' function of supervision of legality.⁶¹ Before initiating a case against the executive branch in court, however, prosecutors must first issue an advisory opinion to the relevant agency.⁶² According to the annual report of the SPP to the NPC, prosecutors issue several hundred thousand such opinions each year, with more than 99% accepted by the executive branch.⁶³ In a press conference in September 2025, the SPP declared that prosecutors have handled a total of 348,000 environmental public interest cases between 2021 and 2025.⁶⁴

In practice, the large room of manoeuvres dedicated to the prosecutor may raise issues of interdepartmental coordination. In the best-case scenario, the prosecutor can coordinate different public organs. For example, in one of the exemplary cases selected by the SPP, illegal fishery persisted for fourteen years because jurisdiction was split among five uncoordinated offices. The municipal prosecutor intervened, convened a workshop to coordinate their actions, and ultimately orchestrated a joint operation that mobilised 150 officers to remove the facilities. The executive branch is incentivised to comply with prosecutorial instructions, as noncompliance may affect its annual

⁶¹ Organic Law of People's Procuratorates 2018 arts 20 & 21.

⁶² Administrative Procedure Law art 25 (4).

⁶³ Jun Zhang, 'Report of the Supreme People's Procuratorate on Procuratorial Public Interest Litigation (最高人民法院关于开展公益诉讼检察工作情况的报告——2019年10月23日在第十三届全国人民代表大会常务委员会第十四次会议上)' (2019) <www.npc.gov.cn/c2/c30834/202310/t20231021_432326.html>.

⁶⁴ Supreme People's Procuratorate, 'Strengthen Supervision of Legality and Promote the Comprehensive, Balanced, and Adequate Development of the Major Procuratorial Functions' (12 September 2025) <https://www.spp.gov.cn/spp/zd gz/202509/t20250912_706447.shtml>.

performance evaluation, and the prosecutor can also seek the intervention of a higher-level procuratorate.⁶⁵ In contrast, a court does not possess such bureaucratic measures.

However, it is also possible that the prosecutor evades its responsibility by leaving the hard decision to the court. In practice, the challenge most typically lies in how to hold a polluter responsible for environmental damage without hurting the polluter's employees. In recurrent illegal agricultural land use cases, for example, the companies and their owners may be held criminally liable. However, full land restoration could trigger bankruptcy and job losses, provoking local resistance. When local governments hesitate to order the demolition of facilities and the restoration of land to its original state, prosecutors may press them to act. More often, however, prosecutors initiate civil public interest litigation, expecting the court to issue the unpopular order, one that ultimately still depends on the executive branch for enforcement.⁶⁶

4.3. The role of NGOs

Compared to prosecutors, the number of cases brought by NGOs is relatively limited. Having said that, some NGOs have made important contributions to environmental law thanks to their expertise in environmental protection. One example is the Green Peafowl Case. In March 2017, during its investigation in a rainforest in Yunnan Province, the NGO Wild China discovered that the construction of a hydropower station would destroy the largest green peafowl habitat in China and probably result in the bird's regional disappearance. Another NGO, Friends of Nature, brought a lawsuit against the hydropower developer and the environmental impact assessment agency. After nearly

⁶⁵ Supreme People's Court, 'A Procuratorial Recommendation Resolved a 14-Year Impasse over Demolishing Illegal Structures' *Procuratorate Daily* (25 December 2018)

<https://www.spp.gov.cn/spp/zhuanlan/201810/t20181026_396748.shtml>.

⁶⁶ *Prosecutor v Chen* [2022] Xuanwu District, Nanjing (2022) Su 0102 Criminal First Instance No. 28.

three years and several hearings, both the environmental division of Kunming Intermediate Court and the environmental division of Yunnan High Court ruled in the plaintiff's favour. The courts applied the precautionary principle and confirmed that EPIL can be filed if a project presents significant environmental risk, even if the damage has not yet materialised. This is the first time a Chinese court applied the precautionary principle in a public interest litigation. Both courts further ruled that the project must be halted until a further environmental impact assessment could be completed. To date, the hydropower project has not resumed.

5. Development of climate change policy and litigation in the courts

5.1. Bridging incomplete provisions and nonbinding policies

In September 2023, the Standing Committee of the NPC released its Legislative Plan for the 14th NPC Standing Committee (2023-2028), designating draft laws on climate change and on carbon peaking and carbon neutrality as Category III projects. This classification indicates that the NPC considers a framework law on climate important, but its preparatory work insufficiently developed. Therefore, a climate law proposal may be discussed occasionally in Standing Committee meetings but is unlikely to be brought to a vote in the near term. Also, the regime of air pollution is largely inapplicable to climate change because greenhouse gases (GHGs) are not considered or regulated as pollutants in Chinese law. Atmospheric Pollution Prevention and Control Law (APPCL, 1987/2018) makes a clear distinction between pollutants and GHGs and stipulates that “atmospheric pollution caused by coal, industries, transport, dust, and agriculture” shall be prevented and controlled, while containing GHGs is only regarded as a co-benefit of regulating atmospheric pollutants.⁶⁷ Two climate change litigation strategies highlight

⁶⁷ Atmospheric Pollution Prevention and Control Law 2018 art 2.

this distinction. One approach is for NGOs to challenge thermal power plants for conventional pollution, thereby reducing GHG emissions as a co-benefit. Another is to argue directly that excessive GHG emissions constitute pollution. While plaintiffs using the first strategy routinely succeed in PIL, the NGO that recently pursued the second secured only a precedent that GHGs are not pollutants.⁶⁸

Despite the lack of binding climate law⁶⁹, China has adopted several energy laws, including Energy Law (2024), Electric Power Law (1995/2018), the Coal Law (1996/2016), the Energy Conservation Law (1997/2018), the Renewable Energy Law (2005/2009), and the Nuclear Safety Law (2017). Although none of these laws mention climate change, many contain provisions relative to transition from fossil fuels to renewables. For instance, Energy Law tasks the state with supporting a green and low-carbon transition and promoting the development of new energy industries.⁷⁰ While energy policies should integrate considerations of energy security, optimisation, and transition and environmental protection,⁷¹ they must ensure substitution of fossil energy with non-fossil energy to increase the latter's share in overall consumption.⁷²

However, the provisions of these laws are rarely judicially applicable. Because, fundamentally, they grant considerable power to central and local governments to

⁶⁸ *Beijing Grassland Alliance Environmental Protection Center v Xingyi Shangcheng Power Generation Company Limited* [2023] Court of Qianxinan Buyei and Miao Autonomous Prefecture (2023) 黔 23 民初 19 号.

⁶⁹ Haomiao Du and Hao Zhang, 'Climate Neutrality in the EU and China: An Analysis of the Stringency of Targets and the Adaptiveness of the Relevant Legal Frameworks' (2022) 31 *Review of European, Comparative & International Environmental Law* 495 <<https://doi.org/10.1111/reel.12453>>.

⁷⁰ Energy Law 2024 art 8.

⁷¹ *ibid* 21.

⁷² *ibid* 22.

conduct surveys, make development plans, standardise technical requirements, provide research funding, manage market, and educate the public. Vested with such a broad range of policymaking power and discretion, the executive branch has, indeed, issued numerous overall or sectoral policies that are not legally binding. The paramount examples of these include the Working Guidance for Carbon Dioxide Peaking and Carbon Neutrality (2021) jointly published by the CCCCPC and the State Council and the 14th Five-Year Plan for a Modern Energy System (2022) by the National Development and Reform Commission and the National Energy Administration. Provincial and local policies also proliferate. Meanwhile, energy laws impose liability on individual officials or private actors for noncompliance, rather than on the agencies themselves, which means they are hardly applicable in administrative procedures. The absence of effective accountability mechanisms stems in part from the dominance of departmental interests in the legislative process. Energy laws are typically drafted by the government agency responsible for a given energy sector and ultimately voted by senior officials from government agencies and state-owned enterprises, who make up over 40 percent of the NPC Standing Committee.

Therefore, in this landscape characterised by the contrast between an abundance of climate policies and the lack of legally binding laws, Chinese judges under the mandate of providing judicial support to ecological transitions need to incorporate policies in climate-related cases. They use non-legal materials to support statutory or contractual interpretations and determine the existence or limits of rights, which alters the meaning and scope of existing legal terms and principles.⁷³ For instance, Beijing courts invalidated three cryptocurrency mining contracts, ruling that they jeopardise various

⁷³ Mingzhe Zhu, 'The Rule of Climate Policy: How Do Chinese Judges Contribute to Climate Governance without Climate Law?' (2022) 11 Transnational Environmental Law 119 <<https://doi.org/10.1017/S2047102521000212>>.

kinds of public interest, including climate mitigation. The decisions articulated the requirement of public interest by relying on policy documents jointly issued by several departments that highlight the risks of cryptocurrency for financial stability and energy consumption.⁷⁴ On another occasion, a property owner brought a case against a developer for not installing a solar water-heating system. The developer argued that the installation was not part of its contractual obligations. The court, however, ruled that the energy conservation project listed in the contract's appendix constituted a binding duty, given national disclosure policies for new buildings. The judge reasoned that since the conservation measure was mandated by regulation, responsibility for installing the solar system lay with the developer, not the property owners.⁷⁵

Another possibility is to use purposive interpretation of energy law provisions to deduct legal responsibilities. In a series of high-profile climate litigation cases, Friends of Nature, the most established environmental NGO in China, tried to use innovative interpretation of the Renewable Energy Law (REL) to address the high curtailment issue a term describing grid companies' reduction in renewable power transmission⁷⁶. In 2016, it brought EPIL against two state-owned provincial electric power companies in Gansu and Ningxia, arguing that their high curtailment rate of wind and solar power

⁷⁴ *Beijing Fengfujiuxin Marketing and Technology Co Ltd v Zhongyan Zhichuang Blockchain Co Ltd* [2021] District Court of Chaoyang in Beijing [(2020) Jing 0105 Minchu No. 69754; *Beijing Fengfujiuxin Marketing and Technology Co Ltd v Zhongyan Zhichuang Blockchain Co Ltd* [2022] The 3rd Intermediate Court of Beijing [(2022) Jing 03 Minzhong No. 3852.

⁷⁵ *Mujie Jia v Shandong Hailiang Real Estate Co Ltd* [2019] Court of Huaiyin District, Jinan Municipality Case No. Lu 0104 civ. 6255(2018) 鲁 0104 民初 6255 号.

⁷⁶ *Friends of Nature Environmental Institute v State Grid Ningxia Electric Power Corporation* [2023] Yinchuan Intermediate People's Court in Ningxia (2018) Ning 01 Minchu No.109((2018)宁 01 民初 109 号); *Friends of Nature Environmental Institute v State Grid Gansu Electric Power Corporation* [2023] Mining Area Court in Gansu Gan 95 Minchu No.7 ((2019)甘 95 民初 7 号).

violated Article 14(3) of REL, which requires grid companies to purchase the full purchase of all grid-connected electricity generated by renewable-energy projects that meet technical standards.⁷⁷ In addition, FON argued that GHGs, although not pollutants in themselves, lead to climate change, which is ecological degradation. They emphasised that “global climate change caused by greenhouse gases from coal-based thermal power generation has significant negative impacts on the environment and ecology.”⁷⁸

However, it is difficult to evaluate the success of FON’s innovations. On the one hand, technically speaking, it did not win the cases. While the court of the Ningxia Case concluded that the defendant had not violated the REL,⁷⁹ the parties of the Gansu Case negotiated a mediation agreement through which the Gansu State Grid committed to continuous investment to increase renewable electricity integration.⁸⁰ On the other hand, the Chief Justice of the SPC, Zhang Jun, reported to the NPC that a court in Gansu Province “guided the grid company that violated the provisions of the REL [...] to reach an agreement with the applicant to invest at least 913 million RMB in grid connection of renewable electricity, which will prevent air pollution and reduce GHG emissions.”⁸¹ In addition to confirming that the company breached its duty, the Chief Justice further suggested that courts will consider GHG reductions as a positive outcome of environmental adjudication.

⁷⁷ Renewable Energy Law 2009 art 14(3).

⁷⁸ *Friends of Nature Environmental Institute v State Grid Ningxia Electric Power Corporation* (n 76) para 4.

⁷⁹ *ibid* 16.

⁸⁰ Annex 2 (Mediation Agreement), *Friends of Nature Environmental Institute v State Grid Gansu Electric Power Corporation* (n 76) paras 4–6.

⁸¹ Jun Zhang, ‘SPC’s Working Report on Environment and Resources Adjudication before the Standing Committee of the National People’s Congress’ (2023)

<www.npc.gov.cn/c2/c30834/202310/t20231021_432326.html>.

5.2 The development of SPC policy on Climate Change

In recent years, the SPC has made clear that it considers climate mitigation as a policy priority. Since 2019, the SPC has reported its achievements in adjudicating climate mitigation cases in its annual White Paper “China Environment and Resources Adjudication”. The SPC requires the courts to “strengthen judicial guarantees in promoting energy structures, industrial structures, modes of production, and lifestyles that support climate change mitigation and adaptation.”⁸² Other than interpreting legislative provisions in the light of climate policy, the SPC further expects local courts to elaborate new solutions to promote climate mitigation when there are no authoritative texts. The recent focus seems to lie in the domain of carbon market trading mechanism, such as cases involving carbon emission allowances and certified voluntary emission reduction transactions.⁸³ The judicial innovations that the SPC are particularly keen on mainstreaming include the confirmation of certified voluntary emission reduction as a property right and the recognition of carbon sink purchases as a substitution of environmental restoration.⁸⁴

On February 17, 2023, the SPC issued a guidance document regarding climate litigation.⁸⁵ As the first systematic and specialised judicial policy in this field, the document marks the SPC’s commitment to regulating climate litigation and ensuring policy coherence. It consists of six sections and 24 articles. The first section reaffirms the principles guiding the judiciary’s role in climate governance, while the sixth introduces new institutional arrangements to strengthen climate adjudication. The

⁸² The Supreme People’s Court (n 43) 12.

⁸³ *ibid* 13.

⁸⁴ *ibid*.

⁸⁵ Opinions on the Complete and Accurate Implementation of the New Development Concept and the Provision of Judicial Services to Actively and Steadily Promote Carbon Peaking and Carbon Neutrality 2023.

intervening sections largely consolidate past practices, providing guidance on how courts should handle climate-related cases. Its most notable contribution lies in clarifying tort rules applicable to climate litigation. Article 6 recognises that GHGs can cause ecological damage for which tortfeasors must compensate. Article 9 allows tort claims against public companies that fail to disclose carbon-related information, even though statutory law does not impose mandatory climate information disclosure. Article 11 encourages judges to consider climate impacts in air pollution cases. This document also addresses broader issues of climate governance, including socioeconomic transition, industrial restructuring, energy system optimisation, and the carbon market. However, we could not identify leading cases that are built upon this policy.

The SPC also designated the Deqing case as a leading example of applying tort law to climate-related disputes.⁸⁶ In this case, the defendant released 3,079.7 kg of trichlorofluoromethane, a regulated ozone-depleting substance, and was held liable for ecological damages on the basis that “the excessive ultraviolet radiation caused by depletion of the ozone layer leads to ecological harm.” It is noteworthy, however, that trichlorofluoromethane is classified as an air pollutant, and the judgment made no reference to its climate impacts, focusing solely on its polluting effects.

5.3. The challenges of handling climate change in the courtroom

Chinese specialised environmental divisions may significantly contribute to climate litigation and climate governance, in the current context characterised by high level political determination, SPC’s climate pledges and its regulatory and supervisory power to realise it, and the problem-solving oriented approach to adjudication. The specialisation of environmental judges has indeed fostered the development of climate

⁸⁶ *Deqing Procurate v Deqing Minghe Thermal Insulation Materials*, Court of Huzhou, Zhejiang Province (2020) Case No. Zhejiang 05 Civ. 115.

law and science expertise within the judiciary. Some SPC judges are not only knowledgeable in the latest developments in climate law and comparative judicial practice but are also invited to give lecture to both domestic and international audiences. Targeted training programs have enabled environmental judges at the provincial and, at times, municipal levels to stay current on climate law and science. Yet knowing is one thing; applying this knowledge in daily adjudication is another. Moreover, it takes considerable time for climate awareness and expertise to filter down to the grassroots. For most local judges, prosecutors, and government officials, the CCP leadership's high-profile climate pledges are seen as important, but largely as matters for the central government rather than their own immediate responsibilities.

Climate litigation in China remains largely focused on disciplining private actors through civil and EPIL cases, leaving governmental agencies largely beyond judicial scrutiny. Although the government can, in principle, be sued in two ways—citizens filing administrative lawsuits and procuratorates initiating PIL—the scope of these actions is tightly constrained. Citizens may challenge only specific administrative acts,⁸⁷ not regulations, policies, or the absence of climate action⁸⁸. They therefore cannot contest inadequate climate targets or the lack of climate policy. While procuratorates could theoretically compel local authorities to implement energy transition measures mandated by energy laws, their limited technical expertise makes it unlikely that they will intervene in the operations of microeconomic departments that design and implement these measures.

Also, judges show great deference to the executive branch's discretion. The court acknowledged Ningxia State Grid's critical role in ensuring national electricity security,

⁸⁷ Administrative Procedure Law art 12.

⁸⁸ *ibid* 13(2).

stating that a full purchase of renewable energy is only required when grid connections are viable and secure.⁸⁹ In other words, when overload, frequency and voltage anomaly created by integration of renewables become too significant, the grid companies are not required to purchase renewable energy. Additionally, the Court pointed out that the quantity of renewable electricity that the grid company is required to purchase is determined by government planning rather than by electricity generation. The provincial Development and Reform Commission confirmed that the defendant had met the targets set by this commission.⁹⁰

Promoting climate governance through adjudication is challenging in itself, let alone balancing climate goals with other policy priorities. Chinese judges are generally reluctant to impose harsh measures that could drive a business into insolvency, particularly when the company is a major local taxpayer or employer. Instead, they often favour solutions that encourage technological innovation or upgrading. In the first air pollution EPIL case, an ENGO sued a privately owned company that was among the country's leading producers of construction materials⁹¹. The court ordered ecological compensation of 22 million RMB but rejected the plaintiff's request to force facility renewal, noting that the defendant had already decided to close the old plant and construct a new one with more advanced equipment. When sharing this case nationwide, the presiding judge emphasised that its success lay in addressing the root cause of pollution, namely, outdated production methods, without imposing excessive burdens on the business or jeopardising local employment.

⁸⁹ *Friends of Nature Environmental Institute v State Grid Ningxia Electric Power Corporation* (n 76) para 16.

⁹⁰ *ibid.*

⁹¹ *All-China Environment Federation v Jinghua Group Zhen Hua Co Ltd* (中华环保联合会与德州晶华集团振华有限公司环境污染责任纠纷) [2015] Court of Dezhou Municipality (2015) De Zhong Huan Mingong Chu No.1.

Judges also need to balance climate mitigation and other environmental goals. One of the most telling examples of this is the Changdao windfarm case. In 2016, an ENGO filed a public-interest complaint against a wind-farm developer on Changdao Island. The NGO claimed that the turbines had disturbed seasonal bird migration. The court helped the parties reach a settlement that mandated the removal of seven of the defendant's wind turbines,⁹² but the court did not stop there. Instead, the president of the environmental division reached out to other wind-farm developers and convinced them to remove some 70 wind turbines from the island in all, ten times more than the NGO's demand. The Journal of People's Court, the official daily of the judicial system, praised this effort in a headline article.⁹³ The president made the following statement in an interview with a reporter: "The functionality of the court of environment and resource cannot be reduced to ruling several cases. Rather, through the court's decisions, we must magnify the leading force of judicial power and promote environmental awareness in society, therefore contributing to the implementation of ecological civilisation."⁹⁴ In comparison, the Supreme Court of India was also asked to reconcile its earlier order requiring underground power lines to protect the endangered Great Indian Bustard with the government's argument that such restrictions would seriously impede India's renewable-energy expansion and its Paris Agreement commitments.⁹⁵

⁹² *CEPF v Kailian Wind Power Ltd* (中华环保基金会诉长岛联凯风电发展公司环境破坏案) [2016] Court of Yantai Municipality (2016) Lu 06 Minchu Civil Mediation no. 373.

⁹³ Guangming Xu, Hang Sun and Hongwei Guo, 'Guangming Xu, Hang Sun, Hongwei Guo, "From Old Productivity to New Economy"' *Journal of People's Court* (30 July 2018) 1.

⁹⁴ *ibid.*

⁹⁵ *MK Ranjitsinh and Others v Union of India and Others* [2024] Supreme Court of India INSC 280.

6. Continuity in the context of the Ecological and Environmental Code (2026)

On 12 March 2026, the National People’s Congress adopted the Ecological and Environmental Code (EEC), which entered into force on 15 August 2026. Comprising 1,242 articles, the EEC integrates pollution prevention, ecological conservation, and climate governance, harmonising previously fragmented laws and ordinances. Its Book IV on green and low-carbon development establishes the legal framework for China’s transition toward a more sustainable industrial model and climate governance. Other than Chapter I on general provisions, this book contains Chapter III on energy conservation and low carbon transition and Chapter IV on addressing climate change.

The forty-nine articles comprising these two chapters focus almost exclusively on governmental responsibilities, setting out the principal policy measures for advancing the energy transition and climate governance. Many provisions simply require “the State” to promote, encourage, support, prioritise, or facilitate the development, deployment, or wider adoption of particular technologies and production models, without imposing measurable or enforceable legal obligations. For example, the Code requires the State to accelerate the development of a modern power system by strengthening grid infrastructure, expanding cross-regional transmission, promoting smart grids and microgrids, and enhancing the electricity grid’s capacity to integrate, allocate, and regulate renewable energy.⁹⁶ By contrast, non-state actors are identified as direct duty-bearers. This is illustrated by a provision that appears to consolidate the regulatory outcomes of the two renewable energy curtailment cases, requiring electricity suppliers, retailers, and major electricity users to fulfil their statutory obligations to consume a prescribed share of renewable electricity.⁹⁷

⁹⁶ Ecological and Environmental Code 2026 art 1022.

⁹⁷ *ibid* art 1020.

The chapter on climate change establishes the institutional architecture of climate governance in China because it allocates the respective competences of different governmental authorities. Most significantly, at the level of the central government, the EEC designates the Ministry of Ecology and Environment to lead climate change policy, while the National Development and Reform Commission is to coordinate carbon peaking and carbon neutrality.⁹⁸ This allocation of competence changes the landscape of China's climate policy that has long been shaped and dominated by the National Development and Reform Commission.⁹⁹ This chapter also defines the core mechanisms for climate governance, such as information sharing,¹⁰⁰ climate research,¹⁰¹ carbon emissions and intensity control,¹⁰² and carbon accounting.¹⁰³

The EEC is more likely to reinforce than fundamentally to alter the existing characteristics of climate-related adjudication in China. Its climate-related provisions further specify governmental responsibilities and strengthen the legal basis for climate policy, while neither establishing binding emissions reduction targets nor conferring enforceable individual rights. As a result, they provide limited grounds for judicial review of governmental climate action, meaning that climate litigation is likely to continue its focus primarily on private actors. Chinese courts will maintain their established practice of deferring to the executive branch's policy-making authority and technical expertise in implementing climate governance. What remains an open question is whether the EEC's designation of the Ministry of Ecology and Environment as the

⁹⁸ *ibid* art 1026.

⁹⁹ Mingzhe Zhu, 'China's Developmentalist Approach to Climate Governance' (2022) 12 IUCN AEL Journal of Environmental Law 22.

¹⁰⁰ Ecological and Environmental Code art 1029.

¹⁰¹ *ibid* art 1031.

¹⁰² *ibid* art 1032.

¹⁰³ *ibid* art 1035.

lead authority for climate governance will lead to a greater number of cases being heard by specialised environmental tribunals whose judges generally possess greater expertise in environmental and climate matters.

7. Conclusions

The development of environmental adjudication in China reflects a continuous interaction between judicial practice and institutional reform. The establishment of specialised divisions, the growth of EPIL, and the gradual incorporation of climate-related concerns into judicial reasoning have all taken shape within a broader political and institutional landscape characterised by both top-down, centrally designed reforms and bottom-up, dispersed local experiments. These reforms and experiments have widened the judiciary's operational space and encouraged judges to address complex environmental conflicts, while also revealed challenges that need to be managed by further legal and institutional developments. The functioning of environmental divisions, for example, informs and necessitates subsequent reforms in procedure, inter-agency cooperation, and operationalisation of legal instruments. This reciprocal relationship between institutional change and judicial activity suggests that environmental adjudication will continue to evolve, strengthening the role of courts within China's expanding environmental and climate governance framework.