

Climate Change and the Individual. A Perspective of China

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Abstract

As a state where the ruling communist party operates in a central planning mode, the policies of the ruling party and central government exert a great influence on national affairs with a long historical tradition in China, which can be even more obviously illustrated in the issues of climate change. But on the other hand, there is still no specific national climate legislation in China, which is currently the main barrier and challenge in China's legal system for an individual to bring a case against the government for allegedly not complying with its international climate change obligations. As a concept developing gradually in various countries in recent years, 'Climate litigation' is not strictly a term in environmental judicial practice in China. In a long run, to improve the development of climate litigation, China is required to design a climate litigation system within the framework of Environmental Public Litigation, which is tailored specifically to climate change-related cases.

Keywords

China
Legal framework
Climate litigation
Climate change

1. Introduction

Climate change is a major challenge for the entire international community in regard to our survival and development in the twenty-first century. It has become the global consensus and trend to proactively address climate change and promote the green and low-carbon development. As the

largest developing country with a large population, China has complex and diverse terrain conditions, faces unbalanced, uncoordinated and unsustainable problems in the economic development, and is vulnerable to the adverse effects of climate change. An active response to climate change is not only China's responsibility for extensively participating in global governance and building the common destiny of mankind, but also the inherent requirement to achieve sustainable development.

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In 2015, China formulated and submitted the *Enhanced Actions on Climate Change: China's Intended Nationally Determined Contributions* (INDC) to the UNFCCC, becoming the first developing country to submit such a document, in which it declared that China will achieve the peaking of carbon dioxide emissions around 2030 and making best efforts to peak early, and lower carbon dioxide emissions per unit of GDP by 60 to 65% from the 2005 level, which provides a medium to long-term direction for China's work in combating climate change.¹ China also made active efforts to put the Paris Agreement into effect. In April 2016, Chinese Vice Premier Zhang Gaoli, as the special envoy of Chinese President Xi Jinping, attended the high-level signing ceremony of the Paris Agreement at the United Nations Headquarters in New York,² and China became the first-batch countries to sign the Paris Agreement. In September 2016, China held a ceremony in Hangzhou to deposit the legal instruments of ratifying the Paris Agreement, where Chinese President Xi Jinping and US former President Barack Obama submitted the respective ratification instruments to the Secretary-General of the United Nations.³ With the active promotion of countries such as China, most signatories to the Paris Agreement accelerated the ratification process, and the Paris Agreement formally entered into force on November 4, 2016.

The Chinese Government has always attached great importance to tackling climate change and strengthened the work on low-carbon development and climate change adaptation since the beginning of 13th Five-Year Plan (FYP) period (2016–2020). As an important part of the 5-year plan for national economic and social development, the *Work Plan for Controlling Greenhouse Gas Emissions During the 13th Five-Year Plan Period* has been formulated and implemented. Regional governments formulated and decomposed greenhouse gases (GHG) controlling targets, ministries and departments implemented policies and measures, sectors and enterprises took innovative actions, and the public participated actively.⁴

In 2016, the carbon intensity decreased by 6.6% from the 2015 level and the proportion of non-fossil energy sources increased to 13.3%.⁵ The tasks for afforestation and forestry protection were overfulfilled, the capacity for climate change adaptation and disaster prevention and alleviation were further strengthened and the systems and mechanisms for addressing climate change were improved.⁶ The carbon market construction is underway in an orderly manner and the first phase of national ETS has already been officially launched in December 2017.⁷

It is worth noting that the 19th National Congress of Communist Party of China (CPC) raised higher requirements for addressing global climate change and promoting low-carbon development from the perspective of China and the world. In the future, we will develop a green, low-carbon and circular economy, build a clean, safe, efficient and low-carbon energy system, advocate a simple, moderate, green and low-carbon lifestyle, accelerate the formation of green low-carbon new growth drivers, promote the improvement of development quality, actively fulfill the mitigation commitment, and achieve the NDC as scheduled.⁸

2. Legal Basis: Policy and Regulatory Framework

In China's current legal system, the environmental and energy policies and regulatory framework provide the legal basis for individuals to bring a case against governmental, public and private actors concerning the issues of climate change.

2.1. Policies and Plans

China is a state where the ruling communist party operates in a central planning mode, thus policies of the ruling party and central government exert a great influence on national affairs with a long historical tradition, which can be even more obviously illustrated in the issues of climate change.

In order to accelerate green and low carbon development, ensure the fulfillment of low-carbon development objectives and tasks set in the Outline of the 13th Five-Year Plan and promote China's carbon dioxide emissions to peak by around 2030 and strive to bring carbon emissions to the peak as soon as possible, the *Work Plan for the Control of Greenhouse Gas Emissions during the 13th Five-Year Period* was issued by the State Council on October 27, 2016,⁹ which is the most important policy guideline to address climate change in China during the 13th Five-Year Plan Period (2016–2020).

According to the plan, by 2020, the level of carbon dioxide emissions per unit of GDP will be 18 percent lower than in 2015. To do this, a low carbon energy revolution will be carried out across the nation. By 2020, carbon emissions will be restrained as total energy consumption will be kept within five billion tons of standard coal and energy consumption per unit of GDP will be 15% lower than in 2015.¹⁰

Another move is to promote energy conservation in industrial, construction, public transport sectors. On-fossil energy will also be developed, including nuclear power, wind power, solar power, geothermal power, and biomass power. Traditional fossil energy consumption will be optimized as total coal consumption in 2020 will be kept at 4.2 billion tons.¹¹

Efforts will also be made to create low carbon industries, and by 2020 carbon dioxide emissions per industrial added value will be 22% lower than in 2015. Initiatives such as zero use of chemical fertilizers will be carried out to promote low carbon agriculture. And to create more carbon sinks, efforts will be made in forestation so that the forest coverage rate across the nation will reach 23.04% by 2020. Urbanization featuring intelligent, green and low carbon development will be underway while the nation promotes a low carbon modern transportation system. Effective recycling and disposal of household wastes and the promotion of a low carbon lifestyle will also contribute to the nation's growing efforts in promoting low carbon green development.¹²

The nation will also witness the establishment and development of a carbon emission trading system which will cover eight industrial sectors such as petrochemical, steel, paper making, and aviation industries.¹³

China, in line with the Plan, will put more efforts on encouraging low carbon technology innovation, formulate related laws, regulations and standard systems, and carry out international cooperation.¹⁴

2.2. Laws

China does not currently have any climate-specific legislation; therefore, its enforcement models will require further development in order to address many of the critical elements of a climate

mitigation/adaptation enforcement regime. Perhaps more positively, the study revealed that, in many instances, China still has a strong foundation of existing environmental and energy law upon which climate-specific regimes may be established. And the current domestic environmental and energy regulatory frameworks such as planning approvals, pollution prevention and environmental impact assessment legislation may all offer a basis for addressing climate change.

During the last few decades, China has created a well-established framework of environmental legislation that takes the Constitution of the People's Republic of China as the foundation and the Environmental Protection Law of the People's Republic of China as the main body while incorporating two departmental branches of legislation: one to prevent and control pollution and the other to conserve nature and biodiversity.

2.2.1. Climate Change in the Constitution¹⁵

In China's legislation framework, the Constitution is the core. The present Constitution, on the basis of the 1954 Constitution, was adopted at the Fifth Session of the Fifth National People's Congress (NPC) in 1982 after public discussion. As the fundamental law of the state, the Constitution has supreme legal authority.

The concept of 'environmental protection' had been introduced earlier, but in the 1982 Constitution, environmental protection became the fundamental duty of the state with pollution prevention and natural resources protection becoming the main realms of environmental law. Article 26 clearly asserts: 'the state protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards'.¹⁶ Article 9 also states that 'the state ensures the rational use of natural resources and protects rare animals and plants; the appropriation or damage of natural resources by any organization or individual by whatever means is prohibited'.¹⁷ There is no doubt that climate is a very crucial element for the 'living environment and the ecological environment'. In this way, the Constitution clearly establishes the basic framework for addressing climate change, providing the top-level guidelines for the future climate legislation and a legal basis for current climate mitigation/adaptation.

2.2.2. Climate Change in Environmental Protection Law¹⁸

The overall framework for China's environmental legislation is stipulated in the Environmental Protection Law, which was passed provisionally in 1979, amended and enacted in an advanced form in 1989, and then passed in its latest final form in 2014. In order to cope with the challenges arising from increasingly severe pollution and environmental deterioration, a new round of discussions to amend the PRC Environmental Protection Law (1989) was begun in 2011 with the aim of incorporating the results into the current legislative plan. On 24 April 2014, after 3 years of waiting and several reviews, the Chinese authority approved the first amendment to the National Environmental Protection Law in 25 years. The new Environmental Protection Law, a significant milestone, has already been in effect since January 2015.

The Environmental Protection Law covers a broad spectrum of environmental issues, ranging from protection against pollutants and control of pollutants to the protection of wildlife, and provides basic principles for both preventive and rehabilitative measures. The regulatory measures of this law address water, air, solid waste and noise pollution, and establish a system for environmental management, monitoring, liability and enforcement. Specifically, this law established and improved legal systems by setting up general requirements for environmental impact assessment, synchronous

project design, construction and completion of safety and sanitation facilities, pollution discharge declaration and registration, a pollution discharge fee scheme, elimination or control of pollution within a prescribed period of time, control of levels of pollution and pollution discharge permission, and legal systems concerning the planning, ownership, permission, paid use and energy conservation assessment of natural resources (Law of PRC on Environmental Protection). At the same time, the law also stipulates the scope of the duties and obligations of environmental management authorities.¹⁹

Without doubt, the Environmental Protection Law of the People's Republic of China is the cardinal law for environmental protection in China, laying down the basic principles for the coordinated development of economic construction, social development and environmental protection, while stipulating that governments at all levels, all organizations and all individuals have the right and duty to protect the environment.

2.2.3. Climate Change in Pollution Prevention and Control Legislation²⁰

Since environmental pollution, especially related to air, causes more serious problems than China's other environmental challenges, the environmental legislation focuses more attention on pollution prevention. This is the focal point of the current environmental protection strategy, and the legislation seeks to control the environmental pollutions effectively and to prevent even worse problems from arising.

China has become the world's second-largest economy, but decades of breakneck economic growth have left many of its rivers polluted and its cities perennially shrouded in smog. Indeed, air pollution clearly manifest the effects of the last 30 years of industrialization in China. Of the many potentially dangerous pollutants, air pollution tends to trigger public crises, arousing great concern at both international and national levels. Various factors have contributed to China's pollution crises in this area, although perhaps most significant is the increasing consumption of fuel triggered by rapid economic development and out-of-date technologies. Thus, the guidelines within China's anti-pollution legislation regarding air pollution are undergoing major changes. The changes involve a number of shifts: from attempting to control only the resulting pollution to establishing control of the origin and the whole process of pollution as well; from regulating only the concentration of the pollutants to regulating both the concentration and total amount of pollutants; from controlling the source point of pollution to ensuring the comprehensive control of river valleys or entire regions, and from simply addressing the pollution problem of one corporation to adjusting the entire industrial structure by promoting clean production and developing a cyclical economy.

As a necessary requirement for these controls, climate change is strongly linked with air pollution prevention and control legislation. the *Air Pollution Prevention and Control Law (2000)*²¹ and *The Administration Regulations of Ozone Depleting Substances (2010)*²² have played a key role in limiting air pollution in China. Originally, the legislation focused on air pollution in workplaces, but over the years, laws have been passed that expand into many aspects of this field. For example, in 2015, after a lengthy period of waiting and debate, the Air Pollution Prevention and Control Law was amended by the NPC standing committee in order to address the new challenges arising from air pollution and to fight the serious smog affecting Chinese cities. However, according to current air pollution prevention and control legislation, Green House Gases are not regarded as pollutants, which is the biggest challenge for the air legislation to effectively regulate the issues of climate change.

2.2.4. Climate Change in Nature and Biodiversity Conservation Legislation²³

Apparently, climate change has a significant influence on biodiversity. China is one of the 12 countries with the richest biodiversity in the world. Due to its vast land area, China has various and complicated types of ecosystems, with abundant plant and animal resources. The number of higher plant species in China ranks third in the world, while the total number of vertebrate species in China accounts for 13.7% of the world's total. Nevertheless, China is also one of the countries facing serious threats to biodiversity. Biodiversity loss can lead to serious consequences, such as worsening health problems, higher food risks, increasing vulnerabilities and fewer development opportunities. Biodiversity conservation is therefore strategically important for China's long-term socioeconomic development, and the well-being of present and future generations as evidenced in the attempt to build an ecological civilization in China by implementing initiatives such as Beautiful China.

In recent years, the Chinese government has established a legal system for the conservation of nature and biodiversity by formulating or amending over 50 related laws and regulations. Related laws include *Island Conservation Law*,²⁴ *Forest Law*,²⁵ *Wild Fauna Protection Law*,²⁶ *Marine Environment Protection Law*,²⁷ *Fisheries Law*.²⁸ Related regulations include the *Regulation on Nature Reserves*,²⁹ *Regulation on Wild Plant Conservation*,³⁰ *Regulation on Protection of New Plant Varieties*,³¹ *Regulation on Administration of Import and Export of Endangered Wild Animals and Plants*,³² *Regulation on Scenic Spots and Historical Sites*.³³ These laws and regulations constitute the legal frameworks for nature conservation and the sustainable use of biodiversity in China.

2.3. Institutions

2.3.1. Administrative Institutions for Climate Change

National Development and Reform Commission (NDRC)³⁴ is a ministry under the supervision of State Council of the People's Republic of China (central government), which organizes the formulation of key strategies, plans and policies in addressing climate change, takes the lead with related ministries in attending international negotiations of climate change as well as undertakes relevant work in regard to the fulfillment of the United Nations Framework Convention on Climate Change at national level. And within the institutional structure of NDRC, its Department of Climate Change is responsible for comprehensively analyzing the impact of climate change on social-economic development; organizing and coordinating the formulation of key strategies, plans and policies dealing with climate change, taking the lead in the implementation of United Nations Framework of Climate Change Convention, and in collaborating with other relative parties in international climate change negotiations; coordinating and carrying out international cooperation in response to climate change and related capacity building; organizing and implementing the work relating to clean development mechanism (CDM); and undertaking concrete work assigned by the National Leading Group Dealing with Climate Change, Energy Conservation and Emission Reduction.

Recently, the National Leading Group to Address Climate Change changed its set up the Climate Change Department. The personnel composition of the National Climate Change Experts Committee has been further improved to expand its expertise area and coverage so that they can contribute wisdom and suggestions to the work on addressing climate change from various perspectives. In 2012, the NDRC established the National Center for Climate Change Strategy and International Cooperation (NCSC) to provide professional support for the policymaking on climate change. Professional research agencies for climate change and low-carbon development were successively established at the provincial level and hence gradually expanded the research team for climate change.

2.3.2. Judicial Institutions for Climate Change

The Constitution of the People's Republic of China provides that the courts are judicial organs of the State. The State sets up Supreme Court, local courts at different levels and special courts such as military courts. These courts adjudicate civil, criminal and administrative suits concerning climate change affairs in accordance with laws, and carry out judicial activities including the execution of civil and administrative decisions and state compensation.³⁵

The Supreme Court, as the highest judicial organ of the People's Republic of China, is responsible for adjudicating various cases, including climate change cases, that have material effects nationwide or are subject to its adjudication according to law, formulating judicial interpretations, supervising and guiding the judicial work of local courts at different levels and special courts, and managing certain judicial administration work of the courts nationwide within the scope of its functions and powers as per laws. A court at a higher level supervises the judicial work of the courts at the next lower level. In climate litigious activities, the courts adopt the systems of public trial, collegiate panel, challenge, assessors, defense, and judgment of the second instance as final, etc.³⁶

Local courts at different levels include primary courts, intermediate courts and higher courts. Special courts include military courts, maritime courts, IP courts, environmental courts etc. So far China still has not established special climate change courts yet.

3. Climate Litigation: Practice, Challenges and Future

3.1. China's NDCs, Individual and Challenges to National Climate Legislation

In 2015, the Chinese government submitted to the United Nations (UN) the *Enhanced Actions on Climate Change: China's Intended Nationally Determined Contributions*, in which it declared that China will achieve the peaking of carbon dioxide emissions around 2030 and making best efforts to peak early, and lower carbon dioxide emissions per unit of GDP by 60 to 65% from the 2005 level,³⁷ which provides a medium to long-term direction for China's work in combating climate change. But on the other hand, there is still no specific national climate legislation in China, which is currently the main barrier and challenge in China's legal system for an individual to bring a case against the government for allegedly not complying with its international climate change obligations. Therefore, there is no legal room for this kind of case to happen in China at current stage.

However, based on my observation, China still has a strong foundation of existing environmental and energy law upon which climate-specific regimes may be established step by step. In 2011, a leading group was established for the drafting of *Climate Change Law*, consisting of the Environment and Resources Protection Committee of the Standing Committee of the National People's Congress (NPC), the Legislative Affairs Commission of the Standing Committee of the NPC, the Legislative Affairs Office of the State Council and 17 ministries. The NDRC took the lead to conduct the researches and investigations on legislation and the drafting of law, and solicited opinions widely from stakeholders in this regard. The legislation process for *the Climate Change Law* and *the Regulation on the Management of Carbon Emission Trading* was accelerated. The governments of Shanxi, Qinghai, Shijiazhuang and Nanchang launched the legislation on climate change and low-carbon development at local level.³⁸ The new progress can be witnessed by Chinese government's actions that the *Climate Change Law* and *the Regulations on Carbon Emissions Trading Administration* were included in the "Research Projects" and "Preparatory Projects" of the *Annual*

Legislative Program of the State Council 2016. In line with the legislation plan and task allocation, the special study on climate change legislation was deepened, the laws drafted, and the views of all stakeholders solicited on the draft of the *Regulations on Carbon Emissions Trading Administration*. China strengthened international cooperation and exchanges and expand international influence in the field of climate change legislation through the bilateral cooperation mechanisms with Germany, France and Britain and the multilateral cooperation platforms with the United Nations and other organizations. Shijiazhuang City and Nanchang City respectively issued the *Regulations on Promotion of Low-Carbon Development* to accelerate the local legislation process for low-carbon development.³⁹

Furthermore, some local governments in China also enhances the relevant legislations on their respective local levels. Shijiazhuang in Hebei Province sought to promote low-carbon development through legislation. The *Regulations of Shijiazhuang City on Promotion of Low-carbon Development* was passed at the city people's congress in January 2016, approved by the provincial people's congress in May, and put into effect on July 1st, 2016. In Nanchang, Jiangxi Province, the *Regulations on the Promotion of Low-carbon Development* was examined and adopted at the city people's congress in April 2016 and took into effect on September 1st, 2016.⁴⁰

Anyhow, in a long run, acceleration of national climate legislation is required to meet the goals of China's Intended Nationally Determined Contributions. Legal and regulatory development on climate legislation will remain critical for an individual to bring a case against the government for allegedly not complying with its international climate change obligations in China in the future.

3.2. Human Rights: A Complicated Ground Between Individual and Climate Change

Currently China's legal system still does not allow an individual to bring a case against a public or private actor that allegedly does not comply with climate change obligations (national or international), on human rights grounds.

Climate Change has become the most serious human rights threat facing the mankind. Given that the least developed nations and the more vulnerable groups tend to be more sensitive to the harms of climate change, the question of equality, or climate change justice, is an important issue that must be dealt with in fighting against climate change. Against this background, there is an emerging trend to adopt both human rights and climate change perspectives to tackle the climate change-induced human rights crisis. It is hoped that this dual perspective approach may lead to a win-win result by both protecting human rights and providing innovative ways to tackle climate change.⁴¹ Although more and more attention is being paid to the human rights dimension of climate change, little is known as to how to achieve climate change justice for individuals on human rights grounds in China.

In China, environmental rights, including climate rights, is considered as an important element for human rights. But at current stage, environmental rights still have not been recognized by China's Constitution yet. In the opinion of some scholars, elevating environmental rights to the level of the Constitution has been a trend for environmental protection legislation in various countries.⁴²

However, contrary to this point of view, other scholars have argued that if environmental rights are considered to be a kind of human right, the 2004 amendment to the 1982 Constitution has already addressed the issue since this requires the state to respect and protect citizens' human rights. In this way, the Constitution need not expressly confirm the environmental rights.⁴³ The future constitutional role for environmental rights and this vigorous debate on whether environmental rights should be

regarded as constitutional rights will have a significant influence for an individual to bring a case against a public or private actor that allegedly does not comply with climate change obligations (national or international), on human rights grounds.

3.3. Environmental Public Litigation: A Mixed Mechanism for Climate Litigation, the Individual and Public/Private Actors (Mitigation/Adaptation)

As a concept developing gradually in various countries in recent years, ‘Climate litigation’ is not strictly a term in environmental judicial practice in China. However, the Supreme People’s Court in China takes climate change-related cases as one of the major types of environmental cases, so they are essentially the same as climate litigation. With the specialization of environmental judiciary in China, litigation in the field of climate change will receive more and more attentions. At current phase, the environmental public litigation is a mixed mechanism for an individual to bring a case against public/private actors whose actions contribute to a rise in greenhouse gas emissions or difficult adaptation to climate change in China.

The significant progress of environmental public litigation is a crucial condition for the potential climate litigation. To promote the establishment of the specialized judicial mechanism for environmental and resource cases, in June 2014, the Supreme People’s Court established the Environmental and Resource Tribunal, and instructed the courts in all regions to enhance the establishment of judicial organs for environmental and resource cases. As of the end of 2016, the people’s courts in all regions had established 558 tribunals, collegiate panels and circuit courts for environmental and resource cases in total. 15 higher people’s courts in Guizhou, Fujian, Hainan and other regions have established environmental and resource tribunals and Jiangsu, Chongqing and other regions have established three-level judicial system for environmental and resource cases. In April 2016, the Supreme People’s Court decided to designate the Environmental and Resource Tribunal to be responsible for the administrative cases of second instance and retrial of administrative cases against any environmental protection authorities and supervision and guidance in respect of such cases. The local courts also have been exploring the mode of specialized adjudication of environmental and resource cases, for example, the Jiangsu Higher People’s Court designated 31 grass-roots courts to exercise jurisdiction over trans-regional environmental and resource cases in a centralized manner, and the Hainan Higher People’s Court designated 8 courts to hear and adjudicate civil, administrative and criminal environmental and resource cases in a centralized manner.⁴⁴

The courts throughout the country tried and closed 18,900 criminal cases of environments and resources, 84,700 civil cases of environments and resources and 29,100 administrative cases of environments and resources in 2016. The procurator organs throughout the country prosecuted 29,173 persons for the offences of destroying environments and resources. The Supreme People’s Procuratorate carried out the activities of exercising supervision over filing special cases of destroying environments and resources, and suggested the transfer of 2016 cases of committing suspected offences. The Supreme People’s Procuratorate popularized the practices of Fujian, Guizhou, Jiangxi and Chongqing, and explored the ecological procuratorial model of “specialized legal supervision + restorative judicial practice + socialized comprehensive governance” to promote environment protection and ecological restoration. Since the newly revised Environmental Protection Law took effect on January 1, 2015, the courts accepted a total of 112 cases of environmental public interest cases of first instance and 54 cases of second instance, and closed 54 cases of first instance and ten cases of second instance. The court in Dezhou of Shandong Province tried and closed China’s first public interest litigation case of air pollution in the Beijing-Tianjin-Hebei region and their

surrounding areas since the new Environmental Protection Law took effect, and sentenced the defendant to a compensation of more than 21.98 million yuan for the restoration of the quality of the air environment in July.⁴⁵

Environmental public interest litigation has now gained stronger legal grounding. The revision of the Civil Procedure Law in 2013⁴⁶ and the Environmental Protection Law in 2014⁴⁷ granted environmental NGOs that have been registered and operating for over 5 years the ability to sue polluters in the public interest. They are supported by a detailed judicial interpretation on civil environmental public interest litigation, issued by China's Supreme People's Court in early 2015. So far lawsuits have mainly targeted polluting enterprises, but also some government departments.⁴⁸ While Chinese Non-Governmental Organisations (NGOs) continue to face challenges in filing public interest lawsuits, the capacity for them to take on more major emitters is growing.

However, challenges remain for both NGOs and prosecutors bringing environmental public interest cases. A relatively small number of the 700 NGOs in China which are qualified to file public interest environmental lawsuits have so far brought cases to the courts—only six NGOs have brought cases in 2016. And despite clear rules about who can bring cases, last year some NGOs still faced obstacles in having their cases filed in local courts. For example, in the Tengger desert case, the first instance court rejected China Biodiversity Conservation and Green Development Foundation (CBCGDF)'s ability to sue based on a controversial reading of their articles of association (a document which defines the responsibilities of an organisation or its directors), a judgement which was ultimately overruled by the Supreme People's Court. CBCGDF have since successfully filed eight lawsuits against the culpable polluters.⁴⁹ Also, for NGOs and prosecutors alike, establishing causation and estimating environmental damages can be difficult, particularly for air pollution cases or in cases where there are multiple polluters. In most cases the burden of proof falls on the plaintiff but in some cases the courts will commission their own assessment. In *All-China Environment Federation (ACEF) vs. Zhenhua*,⁵⁰ for instance, the plaintiff attempted to assess air pollution damages based on operating cost, as allowed by the judicial interpretation on environmental public interest litigation.⁵¹ However, the court rejected this, opting instead for a 'treatment cost estimate' approach, a method that is difficult to apply accurately to damages from climate change.

Especially as a milestone for the development of climate litigation in China, in April 2018, Yinchuan Intermediate People's Court in China, after one year and half waiting, finally accepted and arranged a pre-trial communication meeting⁵² for a climate change-related case that an environmental NGO sues State Grid Unit for refusing to purchase clean energy, which can be regarded as the first climate litigation in China. Friends of Nature, one of China's oldest environmental NGOs, filed the lawsuit at the Yinchuan Intermediate People's Court against the local unit of the State Grid Corp., the stated owned monopoly giant in power industry, for violating the Renewable Energy Law that forces grid firms to fully purchase renewable electricity from wind or solar generators. This environmental group also demands 310 million yuan (\$49 million) from the regional power grid companies as compensation that would be used to address pollution produced from the use of coal and hydropower. To cope with climate change, Renewable Energy Law is a crucial pillar in the legal framework of climate change in China, which was revised and enacted in 2010, compelling all power transmission companies to "fully acquire" all power generated by renewable sources that meet grid connection standards.⁵³ The law was designed to prevent grid firms from prioritizing cheaper but polluting coal-fired power. But state-owned grid companies often flout such requirements and use fossil fuels or hydropower facilities instead, leaving power generated at wind and solar farms unused. Because of this negative action from the State Grid Corp., wind and solar companies have to cut back operations, as they are unable to sell electricity to the grid companies. According to China's National Energy

Administration (NEA), China wasted 41.9 billion kilowatt-hours (kWh) of wind power in 2017, down 16% annually but still 12% of total wind generation. Wasted solar amounted to 7.3 billion kWh last year, 6% of total generation. By Citing numbers from the NEA as well, Friends of Nature claims that 3.36 billion kilowatt-hours of solar power, or the equivalent of 1.1 million metric tons (1.21 tons) of standard coal, were wasted in Ningxia during an 18-month period leading up to July 2016.⁵⁴ Poor grid availability—known as “curtailment”—has been one of the biggest challenges facing China’s renewable sector, with regulators struggling to provide sufficient transmission capacity for the vast number of new wind, solar and hydro plants that have gone into operation across the country. Thus, this lawsuit filed by NGO is not on behalf of any specific wind or solar farm in the region, but rather to address harms that the country as a whole had suffered. But on the other side, state-owned grid companies contended that most of the wind and solar farms are located in remote areas, which are difficult to link up to the power grids, and the use of wind and solar power is also affected by seasonal fluctuations in supply, while grid companies can rely on more stable hydropower facilities and coal-burning power stations. Due to the complexity of this case, a trial date, so far, has not yet been set and it is still unclear whether they would be successful. But no matter what the final result would be, this case has already mobilized more people into paying attention to the issue of making full use of new energy resources. What is more important is that the regulator pledged to improve coordination and build large power storage stations to help remedy this problem, at least we could still see some hopeful light in the dark tunnel.

Recent years witness the largely successful experimentation of Environmental Public Litigation in China. And the impacts of environmental public interest litigation are expected to continue to grow. New legislation and policies are likely to lend further support to NGOs seeking to bring cases. Courts around China are encouraged by the Supreme People’s Court approach to climate change-related cases. NGOs continue to gain experience, as well as confidence, and technical and financial resources to bring to cases. In a long run, to improve the development of climate litigation, China is required to design a climate litigation system within the framework of Environmental Public Litigation, which is tailored specifically to climate change-related cases.

4. Conclusion

As a responsible member of the international community in the battle to address climate change, China formulated and submitted its Intended Nationally Determined Contributions (INDC) to the UNFCCC in 2015, becoming the first developing country to submit such a document. The NDCs provides a medium to long-term direction for China’s work in combating climate change. As a state where the ruling communist party operates in a central planning mode, the policies of the ruling party and central government exert a great influence on national affairs with a long historical tradition, which can be even more obviously illustrated in the issues of climate change. But on the other hand, there is still no specific national climate legislation in China, which is currently the main barrier and challenge in China’s legal system for an individual to bring a case against the government for allegedly not complying with its international climate change obligations. As a concept developing gradually in various countries in recent years, ‘Climate litigation’ is not strictly a term in environmental judicial practice in China. However, the Supreme People’s Court in China takes climate change-related cases as one of the major types of environmental cases, so they are essentially the same as climate litigation. At current phase, the environmental public litigation is a mixed mechanism for an individual to bring a case against public/private actors whose actions contribute to a rise in greenhouse gas emissions or difficult adaptation to climate change in China. In a long run, to improve the development of climate litigation, China is required to design a climate litigation system within the framework of Environmental Public Litigation, which is tailored specifically to climate

change-related cases. With the specialization of environmental judiciary in China, litigation in the field of climate change will receive more and more attentions and it will have a brilliant future in China.

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