

# Protection of environmental rights In China

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# Outline

- What are environmental rights?
- The interpretation of environmental rights in Chinese legal systems
- The protection of environmental rights in China





# Environmental rights

- Environmental rights mean any proclamation of a human right to environmental conditions of a specified quality: safe, healthy, ecologically sound, adequate for development, sound etc.
- the right to a healthy environment, right to a clean environment, the right to a balanced environment that shows due respect for health
- Human rights and environmental rights are intertwined.



# Environmental rights

## Substantive rights

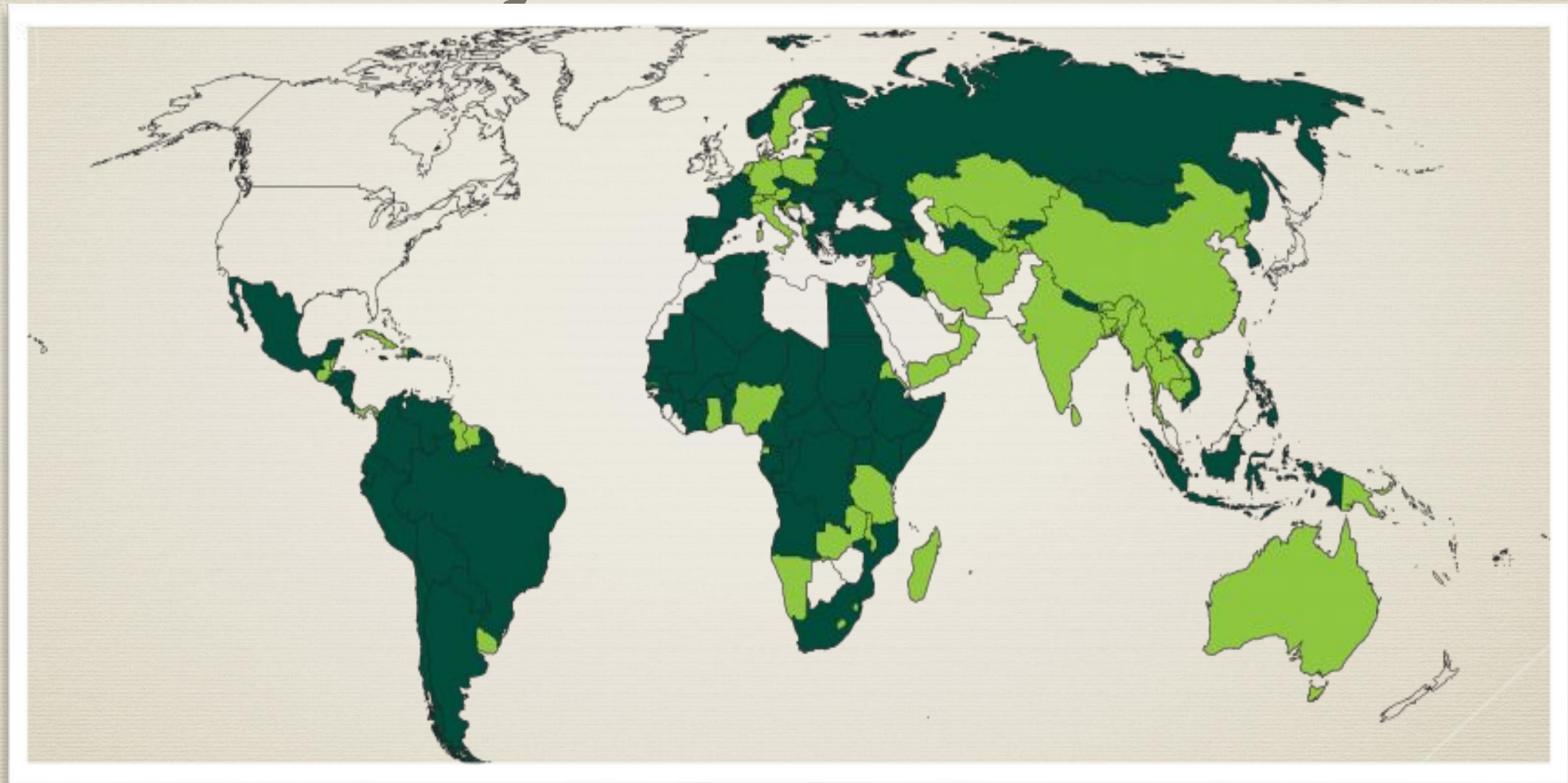
**Non-Discrimination** **Health**  
**Life** Women's Rights Children's Rights  
*Sovereignty over Natural Resources*  
**Water** Sanitation  
*Enjoyment of the Benefits of Scientific Progress  
and its Applications* **Self-Determination**  
**Indigenous Rights** **Dignity** **Food**  
**Housing**

## Procedural rights

**Access to Information**  
*Public Participation* **Access to Justice**  
**Free, Prior, & Informed Consent**  
*Mandatory Environmental Impact Assessments*  
**Effective Legal Remedies**  
**Freedom of Peaceful Assembly** **Free Expression**  
**Freedom of Association**



# Countries with a constitutional right to a healthy environment



- **Dark green:** countries with constitutionally protected right to a healthy environment
- **Light green:** countries with constitutionally provisions for a healthy environment



# National constitutions

- Environmental rights have been enshrined in more than 150 national constitutions, expressed in a variety of ways.
- **Individual right:**
- **Constitutional of South Africa (1996):** *everyone has a right to an environment that is not harmful to their health or well-being.*
- **Constitution of the Republic of Korea:** *all citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment.*



# International & regional treaties

- Human rights and the environment
- **European Convention on Human Rights (ECHR)**
- Article 2: the right to life and the environment
- Article 8: the right to respect for private and family life and home
- Urgenda Foundation vs. the Netherlands (2016~2019)



# How environmental rights are defined in China?

- **Constitution of People's Republic of China (2018)**
- **Article 26:** *the State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public nuisance.*
- A state duty, not an individual right
- Discussion on whether environmental rights should be enshrined in China's constitution law?



# Different approaches to environment protection

## **Regulatory-based approach**

- Environment protection as a state duty
- Environmental laws and regulations set forth certain standards and prohibitions.
- An implementation gap remains between government obligations and environmental results.

## **Right-based approach**

- An individual right to a healthy environment
- provide a strong impetus and means for implementing and enforcing environmental protections.
- Provide an important safety net where there are gaps in existing legislation.
- Provide important norms and forums for addressing environmental issues, especially in instances when a country has yet to act.



# Ecological Civilization

- **Constitution of People's Republic of China (2018)**
- **Preamble:** *...promote the coordinated development of material, political, spiritual, social, and ecological civilization to build China into a great modern socialist country...*
- Guiding ideology of China's green development and environmental protection



# Ecologization of Law

- China's vision to prioritize ecological civilization and green development in a wide range of laws, regulations and policies.
- **Article 9, General Provision of Civil Law (2017):**  
*private parties shall conduct activities contributing to the conservation for natural resources and environmental protection.*
- Revisions on environmental laws, regulations and policies.



# Substantive environmental rights in China

- **Civil rights:** the right to life, the right to health, property rights and interest.
- **Tort Law:** Chapter 8 Liability for Environmental Pollution
- **Article 65:** *when any harm is caused by environmental pollution, the polluter shall assume the tort liability.*
- Private damage/harm
- Strict liability
- Ex-post remedy



# Substantive environmental rights in China

- **Public rights:** the right to challenge the substantive and procedural legality of any administrative decision, act or omission.
- Any natural person, legal person or organization with a substantial interest in administrative action have the right to file a complaint against public authorities.



# Procedural environmental rights in China

- **Public participation** as one of the fundamental principles in China's policy framework
- Environmental Protection Law 2015
- Access to environmental information
- Public participation in decision-making
- Access to justice



# Access to environment information

- **Article 53, EPL 2015:** *citizens, legal persons and other organizations shall, according to the law, have the rights to obtain environmental information.*
- Information disclosure by public authorities
- Information disclosure by private entities



# Public participation in decision making

- Public participation in Environmental Impact Assessment (EIA)
- **Article 56, EPL 2015:** *for a construction project for which an environmental impact assessment is required by the law, when preparing such a EIA report, the construction entity shall fully inform the public and solicit their opinions.*
- If the public concerned is not informed, the competent public authorities shall require the construction entity to fulfil this obligation.
- Public hearing or inquiry



# Access to justice

- Private damage vs. Public nuisance
- Widespread nature of environmental damage
- No individual victim
- Public interest litigation
- Citizen suit in U.S. in 1970s



# The legislative development of PIL in China

- Civil Procedural Law 2014/2017
- Environmental Protection Law 2015
- Administrative Procedure Law 2017
- Ecological Environmental Damage Compensation Reform 2017



Ecological damage  
compensation

Public  
authorities

Polluters

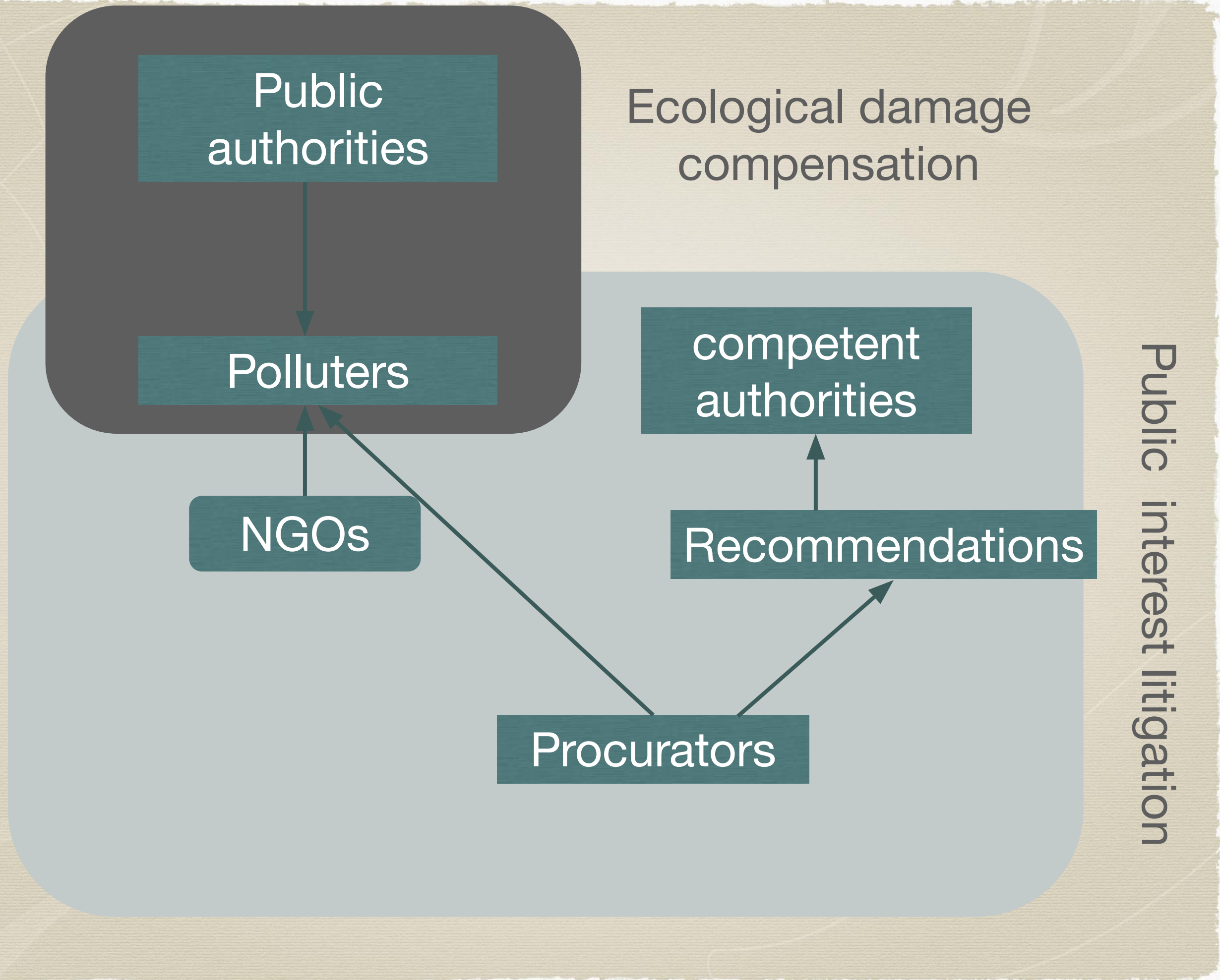
NGOs

competent  
authorities

Recommendations

Procurators

Public interest litigation





# NGOs

- The standing conditions of NGOs: Article 58, EPL 2014
- Legally registered under the civil affairs department at or above the level of a districted city;
- Focusing on environmental protection for more than five consecutive years and without any record of violations.
- NGOs should not seek for any economic benefit from bringing PIL.
- NGOs could claim for monetary compensation in EIL.



# Procurators

- **Civil Public Interest Litigation**
- **Article 55, Civil Procedural Law 2017**
- Procuratorate may file a lawsuit against polluters when NGOs do not bring a PIL.
- Procurators play a supplementary role.
- **Administrative Public Interest Litigation**
- **Article 25, Administrative Procedural Law**
- Procuratorate could file a suite against public authorities for failing to perform duties.
- Procuratorial recommendations should be issued before bring the lawsuit to the court.



# Competent authorities

- Ecological damage compensation system (2017)
- The competent authorities could sue the polluters for the environmental pollution and ecological damage caused by their activities
- The coordination between PIL and ecological damage compensation
- The coordination between enforcement authority and the right to compensation



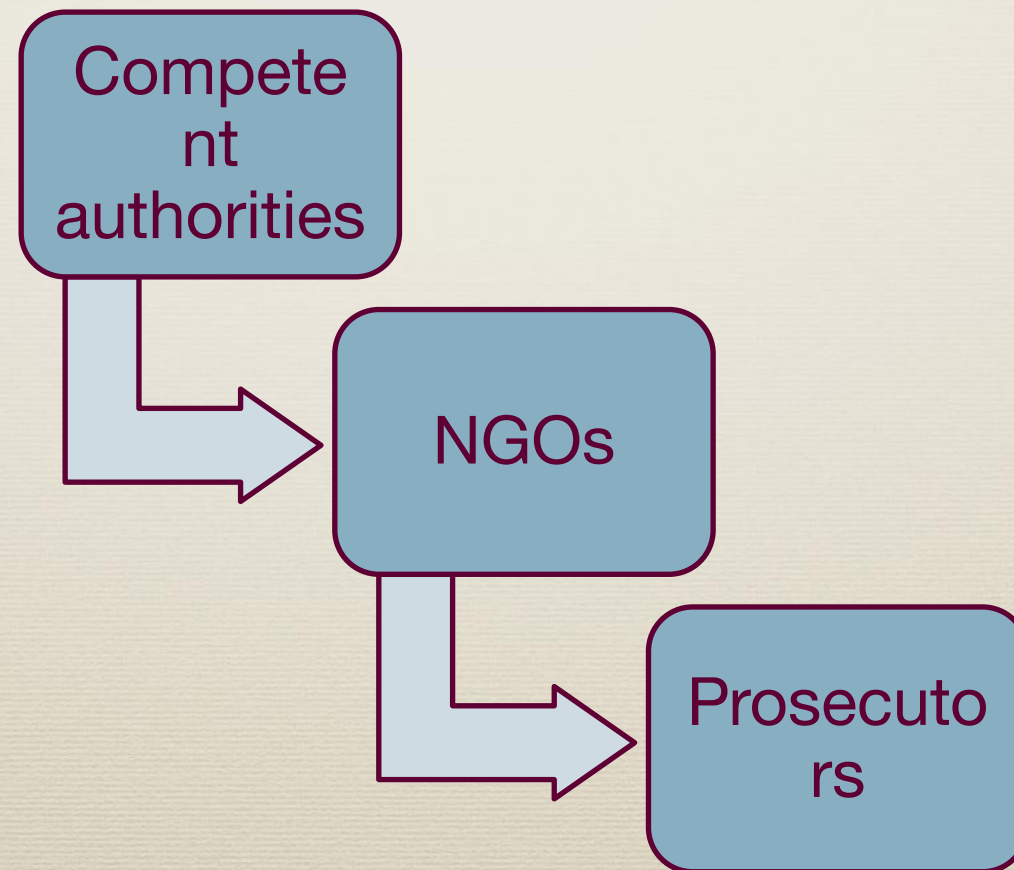
# Challenges for PIL in China

- The multiple approaches for the protection of environmental rights
- To encourage various actors to participate in environmental matters.
- To provide comprehensive safeguard to environmental rights and interests



# Challenges for PIL in China

- The conflicts of interests between different actors
- The division between administrative and judicial branch
- The rise and fall of NGOs in environmental protection





**Thanks for you  
attention!**

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