



Enhancing the Role of Environmental
Public Interest Litigation to Advance
Environmental Rights in
Southeast Asia

Briefing Report

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COVER PHOTO:

A coal-fired plant in Jakarta, Indonesia.
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“Citizens are one of a nation’s greatest resources for enforcing environmental laws and regulations. They know the country’s land and natural attributes more intimately than a government ever will. Their number makes them more pervasive than the largest government agency. And because citizens work, play and travel in the environment, each has a personal stake in its beauty, health and permanence. Citizens are omnipresent, motivated and uniquely interested in environmental quality.”¹

¹Roberts and Dobbins 2019, p. 1.

I. Introduction

Environmental Public Interest Litigation

Many countries worldwide have been taking measures to enhance the implementation of environmental laws as a means to achieve balanced and sustainable development. These include a broad range of measures from strengthening environmental legal education, providing targeted training on environmental law to judges and prosecutors, creating green courts – and authorizing various forms of environmental public interest litigation. Governments have realized that citizens can play an integral role in protecting the environment and upholding the integrity of environmental laws. In many countries, governments are giving citizens and non-government organizations more power to bring environmental litigation against both the government and private parties to protect the public's interest in a healthy environment.

Across Southeast Asia, all countries have made considerable progress in adopting laws and policies to protect the environment and human health. However, this is only the first step toward achieving national priorities for sustainable development, and these laws and policies will remain meaningless if they are not implemented and enforced effectively. This briefing report focuses on environmental public interest litigation as a potentially transformative mechanism that can empower communities across Southeast Asia to play a significant role in ensuring that environmental laws are complied with, and that the precious ecosystems of the region and the communities that depend on them are protected. The report will provide an overview of the various forms of environmental public interest litigation, including an overview of some of the recent progress on burgeoning environmental public interest litigation systems in Southeast Asia. Finally, the report will review some of the prospects and ongoing challenges concerning strengthening environmental public interest litigation in the region.

As described in this report, a functioning system of environmental public interest litigation could achieve many benefits for communities across Southeast Asia. On a broad level, environmental

public interest litigation would help to reinforce the right to a healthy environment, as recognized in the landmark resolution on environmental rights adopted by the United Nations General Assembly in July 2022. It would also help to reinforce widely recognized environmental rights principles related to the right to a healthy environment such as those found in Principle 10 of the 1992 Rio Declaration on Environment and Development: access to information, public participation in environmental management, and access to justice (United Nations General Assembly [UNGA] 1992). Additionally, environmental public interest litigation would help reinforce and support efforts across Southeast Asia to give effect to the “polluter pays principle.” The principle holds that those who produce pollution should be the ones to bear the cost of managing it and minimizing its impacts on the public, rather than forcing society at large to bear those costs (Myanmar 2019b; Cambodia 2017). Finally, stronger recognition of environmental public interest litigation could promote the environmental rule of law across Southeast Asia by empowering communities to support government efforts to strengthen enforcement and compliance with environmental laws and regulations (International Union for the Conservation of Nature [IUCN] 2016).

Methodology

This briefing report was produced using a combination of desk research, reviews, and interviews with public interest environmental lawyers and legal advocates from around the region. The initial draft was produced primarily through conducting desk research, after which several reviewers provided feedback and input. A second draft was then produced and shared with public interest environmental lawyers from Southeast Asia. Additionally, EarthRights International and UNEP organized and hosted a series of Focus Group Discussions with lawyers and legal advocates from the region. Approximately 42 lawyers and legal advocates offered their time and joined these discussions. The information, experiences, case studies, and other insights gained through these Focus Group Discussions were synthesized and incorporated in the final draft of this briefing report.

II. Context

Environmental laws, like any laws, are useless unless they are implemented and enforced effectively. The United Nations Environment Programme (UNEP) observed in its first global report on Environmental Rule of Law that “there is a growing recognition that a considerable implementation gap has opened – in developed and developing nations alike – between the requirements of environmental laws and their implementation and enforcement” (UNEP 2019, p. 1). Moreover, the rule of law generally is deteriorating across the Southeast Asia region. According to the World Justice Project’s 2021 World Rule of Law Index, all of the countries of Southeast Asia saw an overall decline in their rule of law scores compared with 2020, with Cambodia ranking second to last among 139 countries (World Justice Project 2021).

The ongoing challenges across Southeast Asia with regard to implementing and enforcing environmental laws and regulations are well-recognized and well documented (Nemesio 2015, p. 322). For example, a decade ago, participants of the Asian Development Bank-sponsored “Asian Judges Symposium on Environmental Decision Making, the Rule of Law and Environmental Justice” all agreed on the need to “strengthen the complete chain of environmental enforcement” across Asia (Asian Development Bank [ADB] 2010,

p. v). More recently, Cambodia’s National Strategic Development Plan 2019-2023 and the National Environment Strategy and Action Plan 2016-2023 highlight the need for stronger enforcement of environmental laws (Cambodia 2019, p. 40; Cambodia 2017, p. 1). In Viet Nam, it has been observed that government agencies cannot effectively monitor and enforce the terms of environmental impact assessments and that “regulatory authorities often lack the political will and technical resources to effectively establish and monitor emissions standards” (Gillespie et al., p. 9-10). In Thailand, several communities have had to overcome significant challenges to file civil tort-based lawsuits against polluting enterprises after the relevant government agencies failed to pursue any enforcement action after years and years of complaints (Ecological Alert and Recovery – Thailand [EARTH] (2021); EARTH (2020)).

All countries across Southeast Asia are achieving rapid economic growth and are becoming more heavily urbanized and industrialized (Myanmar 2019b, p. 31-32; Gillespie et al., p. 3). They are strengthening their manufacturing bases, bringing new energy projects online, building large-scale agricultural operations, and expanding related infrastructure. As a result, the region’s electricity demand has “steeply increased” by around 6% per year (IQAir, p. 17). Moreover, the region “mostly relies on fossil fuels for energy, with oil as the leading and coal as

the fastest-growing source” (IQAir, p. 17).

Some would argue that stricter enforcement of environmental laws would hinder the region’s economic development. However, while this economic growth has indeed “lifted millions out of poverty,” it has also “significantly increased and diversified pollution and related risks” (Asian Development Bank [ADB] 2018, p.1). For example, Cambodia’s National Environment and Strategy Action Plan 2016-2030 observed that in Cambodia, “there is an increasing trend of air pollution due to emissions from electric generators, boilers, power plants, cement production plants...and emissions from mobile sources” (Cambodia 2017, p. 14). According to IQAir’s 2020 World Air Quality Report, only 10.8% of regional cities in Southeast Asia met the World Health Organization’s PM2.5 target in 2020 (IQAir, p. 17). Other studies have shown that water quality across the Lower Mekong Basin has become more and more degraded since the early 2000s as a result of “rapid hydropower development, deforestation, intensive agriculture, plastic pollution, and urbanization” (Sor et al., p. 1555). The accumulation of pollution and other development-related pressures will take a heavy toll on the region’s sustainability and continued economic growth if governments do not take more robust measures to address them. For example, a study performed in West

Java, Indonesia, revealed that the economic costs of industrial pollution in the area of study amounted to nearly USD \$1 billion between 2004 and 2015 (Birry 2016). In Viet Nam, official government data show that the country loses USD \$10.8-\$13.2 billion every year due to air pollution – which is equivalent to 5% of its gross domestic product (GDP) (Nguyen 2021).

Simply put, rather than being a hindrance to development, stricter enforcement of environmental laws is necessary to allow for continued economic development. As countries across Southeast Asia continue to develop rapidly, the need for stronger mechanisms to enforce environmental laws becomes all the more urgent. China learned this lesson the hard way when its outdated environmental laws proved insufficient to deal with its “burgeoning pollution problems” as its economy grew (Tuholske and Lin 2015a). If governments in Southeast Asia are serious about pursuing sustainable development paths, environmental public interest litigation is a powerful tool that can empower communities to help realize that goal.

III. Defining “Environmental Public Interest Litigation”

a. What is “Environmental Public Interest Litigation”?

At the outset, it is essential to note that there is no single standard definition of Environmental Public Interest Litigation (EPIL) (also sometimes referred to as “citizen suits”), and people may be referring to different specific types of litigation when they use the term. While this list is not exhaustive, very broadly speaking, there are generally four different types of litigation listed below that may be referred to as environmental public interest litigation. This briefing paper will primarily focus on administrative litigation and citizen enforcement actions.

- Government enforcement – in some jurisdictions, such as China and Indonesia, government prosecutors enforce environmental laws using provisions related to environmental public interest litigation (Indonesia 2009, Art. 90);
- Class action lawsuits – when a group of individuals come together as a “class” and jointly pursue remedies for environmental harms. Although this type of litigation generally seeks private compensation, it sometimes also achieves cleanup and restoration;
- Administrative litigation – citizen or organizational plaintiffs seeking judicial review of government agency actions or inactions;
- Citizen enforcement litigation (or sometimes called “citizen suits”) – when a citizen or an organization “steps into the shoes” of the government and files a lawsuit against a defendant to enforce environmental laws or seek remedies for environmental damages in the public interest.

Administrative Environmental Public Interest Litigation: Review of Government Actions

Typically speaking, administrative litigation is a type of lawsuit brought by a citizen or organization to ask a court to review whether

a government agency’s actions (or inactions) complied with the law. This may include actions such as an agency’s approval of an environmental impact assessment report, a decision to grant a permit, issuing a rule or regulation – or an agency’s failure to take an action required under the law. Administrative litigation is increasingly becoming recognized across the region and in countries including Thailand, the Philippines, and Indonesia, and communities and lawyers have used it to achieve positive results.

For example, in 2013, the Supreme Administrative Court of Thailand issued a groundbreaking judgment in a case in which a group of villagers from Klity Creek, Kanchanaburi province, sought review of the Pollution Control Department’s failure to take adequate actions to remediate toxic pollution in the creek. The villagers were represented by lawyers from EnLaw Thai Foundation, who raised an “innovative argument” that “broad statutory language and seldom used regulations not only gave the PCD authority but also created a duty to order the polluter to Enhancing the Role of Environmental Public Interest Litigation to Advance Environmental Rights in Southeast Asia 9 undertake rehabilitation” (Munger et al. 2019, p. 159). The court held that the Department was negligent and ordered the PCD to pay compensation to the villagers and develop a rehabilitation plan for the company that caused the pollution (Munger et al., 2019, p. 159).”

It was the first time that a court in Thailand ordered a government agency to clean up a toxic site. While lauded as a victory at the time, Klity Creek has still not been cleaned up and rehabilitated to this day – demonstrating the ongoing challenges with regard to enforcing court orders to government agencies. In 2019 a Kanchanaburi court ruled that the company responsible for the pollution should pay for all of the PCD’s expenses related to the cleanup (The Nation 2019). However, the company went bankrupt shortly after the pollution in the creek was originally reported in 1998. As of March 2021, it was reported that the PCD had spent 450 million baht in taxpayer money to fund the first phase of the cleanup and was getting ready to spend another 217 million baht on the second phase, also with taxpayer money (Thano 2021). Administrative litigation has therefore been a strong tool for lawyers

and communities in Thailand to use, but the Klity Creek case shows that achieving a win in the courtroom is sometimes only the first step.

More recently, environmental lawyers and NGOs in Thailand have been turning to the Administrative Court to ask it to review the government's actions with regard to the air pollution crisis in Thailand. In 2021, a Chiang Mai resident filed a lawsuit in the Chiang Mai Administrative Court over Chiang Mai and northern Thailand's seasonal air pollution. The lawsuit alleged that the National Environment Board had violated Article 59 of the *Enhancement and Conservation of National Environmental Quality Act* (NEQA) by failing to use its authority to declare Chiang Mai, Chiang Rai, Mae Hong Son, and Lamphun provinces as pollution control areas to "control, reduce and eliminate pollution." The NEB raised several defenses, including an argument that the NEB's authority under Article 59 is discretionary and a list of actions that had already been taken to address the region's air pollution problems. After hearing evidence and statements, including statements from the relevant provincial governors and provincial public health departments, in April 2021 the Administrative Court rejected the NEB's defenses and ordered the NEB to declare Chiang Mai, Chiang Rai, Mae Hong Son, and Lamphun provinces as pollution control areas to address the region's persistent air pollution problems (City News 2021). The NEB has signaled that it will appeal the decision.

A separate administrative lawsuit aimed at tackling northern Thailand's air pollution crisis was filed in the Administrative Court by 1,700 plaintiffs in April 2023 (Cowan 2023). In this case, the plaintiffs alleged that the Prime Minister failed to exercise his duty under Article 9 of NEQA to declare an emergency in northern Thailand and adopt effective measures to address the seasonal haze pollution. The plaintiffs also named the NEB as a defendant for its failure to adequately exercise its authority under Article 13 of NEQA and implement Thailand's National Action Plan on Haze. Additionally, the plaintiffs brought a novel claim against the Securities and Exchange Commission of Thailand, essentially asking the court to order the SEC to use its authority to issue regulations to require

listed companies to disclose in their 56-1 Report the human rights risks related to the burning of agricultural products in their supply chains, both domestically and internationally. This claim was dismissed by the court, but the plaintiffs filed an appeal that is still pending as of August 2023.

The Philippines Supreme Court issued the Rules of Procedure for Environmental Cases in 2010, which officially codified the writ of continuing mandamus. This writ essentially allows plaintiffs to request the court to review whether a government agency has neglected to perform a required duty or has otherwise done something to violate the plaintiff's right to a healthy environment, and gives the court the authority to retain jurisdiction over the case after its decision to ensure compliance with the court's order (Philippines, Supreme Court 2010a, Rule 8). The Supreme Court first applied the concept of the writ of continuing mandamus in a well-known case concerning Manila Bay, which the Court described in its opinion as "a place with a proud historic past, once brimming with marine life and, for so many decades in the past, a spot for different contact recreation activities, but now a dirty and slowly dying expanse mainly because of the abject official indifference of people and institutions that could have otherwise made a difference" (Philippines, Supreme Court 2008). A group called the Concerned Citizens of Manila Bay filed a complaint in the Regional Trial Court alleging that "the water quality of the Manila Bay had fallen way below the allowable standards set by law, specifically Presidential Decree No. (PD) 1152 or the Philippine Environment Code" as a result of the "reckless, wholesale, accumulated and ongoing acts of omission or commission resulting in the clear and present danger to public health and in the depletion and contamination of the marine life of Manila Bay..." (Philippines, Supreme Court 2008). The case eventually made its way to the Supreme Court, which in 2018 issued a decision that ordered the defendant government agencies to develop and implement a plan to rehabilitate the Manila Bay and restore its water quality. Additionally, in applying the writ of continuing mandamus, the court ordered the defendant government agencies to submit periodic reports to the

court on the implementation of the plan. In September 2023, the Supreme Court ordered the defendant government agencies to submit a report including information on actions taken to implement the Court's ruling, current government strategies to clean up the Bay, and the government's "realistic" cleanup targets for the next five years (Santos 2023).

However, it is important to note that a party requesting the court to apply the writ of continuing mandamus must demonstrate a personal and direct interest in the case (Philippines, Supreme Court 2010b, Rule 8). In March 2017 the Supreme Court dismissed a case brought by a loosely connected group of "careless people" against the Philippines Climate Change Commission that sought the application of a writ of continuing mandamus to require the Commission to take a series of actions to reduce automobile transportation (Philippines, Supreme Court 2017). The dismissal was partly due to the group's failure to establish a direct and personal interest in the case.

Indonesia's Environmental Protection and Management Act authorizes "everybody" to file administrative lawsuits in limited circumstances - to review a government agency's decision on the issuance of an environmental permit (or the issuance of an activity permit without an accompanying environmental permit) (Indonesia 2009, Art. 93). In 2015, Greenpeace Indonesia, Friends of the Earth Indonesia and Legal Aid Bandung filed a lawsuit challenging the government's decision to continue issuing wastewater discharge permits to 3 large textile companies. The evidence presented by the plaintiffs in the case "revealed that permits were given without consideration of the supporting and carrying capacity of the river and no study was conducted to establish if the discharges would impact aquaculture, animals and plants, quality of soil and groundwater...There was no monitoring and evaluation before issuing permits" (Birry 2019). The court agreed with the plaintiffs and issued a decision to revoke the permits (Birry 2019).

In addition to the Environmental Protection and Management Act, in 2013 the Supreme Court of Indonesia issued guidelines for handling environmental cases, which recognized "citizen lawsuits" (Indonesia, Supreme Court 2013).

These "citizen lawsuits" have not been codified under Indonesian law, but citizens have been able to use them with encouraging results. It is important to note that only individuals, and not organizations, may file a citizen lawsuit under these guidelines. In July 2019, 32 citizens filed a case in the Central Jakarta District Court alleging that the President, the Ministers of the Health, Home Affairs, and Environment and Forestry Ministries, and several other named government officials had violated their right to healthy air (Nicholas 2021). In what was hailed as a "landmark" decision, the Court ruled in the plaintiffs' favor, concluding that the President and other named defendants had, in fact, violated the law as a result of their failure to address the air pollution problem. However, the court stopped short of declaring that the defendants' violation of the law constituted an infringement on the plaintiffs' constitutional right to a healthy environment, as the plaintiffs had requested (The Star 2021). The Court ordered the defendants to take specific actions, including updating national air quality standards, developing plans to address the air quality in Jakarta specifically, and enhancing air quality monitoring in the transboundary context (Nicholas 2021). On September 29, 2021, the President and the environment, health, and home affairs ministries filed an appeal of the case (The Star 2021). The Jakarta High Court rejected the appeal in October 2022 (Aqil 2022), and President Jokowi and the government ministries filed a subsequent appeal that was still pending as of August 2023.

Finally, in March 2021, Laos issued a Presidential Decree on the process for administrative review cases (Laos 2021). The Decree appears to give public organizations, international organizations, and citizens the ability to bring cases to the court seeking review of government actions, including issuing licenses, orders, agreements about land, and unreasonably delaying actions resulting in impacts to the state and people. The only requirement for individuals to bring cases is that they are at least 18 years old or have obtained permission from their parents. Notably, the Decree also states that in cases involving the public interest, the court may consider additional evidence outside of the evidence presented by the plaintiff and defendant. This Decree is still very new in Laos,

and it remains to be seen whether it will prove a useful tool for communities to contribute to strengthening environmental enforcement and the rule of law.

China, however, has still not moved in this direction. Although China amended its Environmental Protection Law in 2014 to explicitly authorize non-government organizations to file environmental public interest litigation for the first time, China does not allow NGOs to file administrative review cases. In 2017 the Beijing-based NGO Friends of Nature filed two test cases in Yunnan province alleging that a local Environmental Protection Bureau had violated the Environmental Protection Law in its approval of an environmental assessment impact (EIA) report for a chemical manufacturing plant in the remote and extremely biodiverse Nujiang region (Schulte and Li 2017). The court rejected the cases, concluding that neither the Environmental Protection Law nor the Administrative Litigation Law authorized NGOs to bring environmental suits against the government in the public interest. Whether an individual or an organization, any plaintiff must demonstrate a direct interest in the case for the court to accept it.

Citizen Enforcement Litigation

Citizen enforcement, on the other hand, is a type of litigation that, depending on the relevant laws, may empower individuals, non-government organizations, and/or civil society groups to “step into the shoes” of the government and bring actions directly against polluters in court for violating environmental laws or otherwise violating the public’s protected right to a healthy environment. Citizen enforcement is therefore meant to protect the public’s interest in preserving a healthy environment by ensuring that environmental laws and standards are complied with, rather than seeking compensation for personal or property damages. Thus, citizen enforcement litigation can be a potent tool to hold polluters accountable and foster a culture of compliance with environmental protection laws.

The United States was the first country to authorize citizen enforcement lawsuits (referred to as “citizen suits” in the US). In 1970 the United States Congress “experimented by

providing citizens the remarkable authority to file federal lawsuits as ‘private attorneys general’ to enforce the Clean Air Act” (May 2003, p. 1). Since then, citizen suits have been authorized under several other federal laws, including the Clean Water Act and the Resource Conservation and Recovery Act. Generally speaking, these laws permit “any person” (subject to some limitations under Article III of the US Constitution and subsequent case law concerning organizational standing) to bring a lawsuit against any other person alleged to have violated any environmental protection prohibition or requirement set by the law (May 2003, p. 1). The remedies available to plaintiffs in the US are determined by the law and usually include injunctive relief and hefty civil penalties, in addition to requiring the defendant to pay the plaintiff’s attorneys’ fees if the plaintiff wins. It was an experiment to give citizens the power to bring lawsuits to hold polluters accountable in the public interest for violation the law, and the experiment worked:

“Citizen suits have secured compliance by...thousands of polluting facilities, diminished pounds of pollution produced by the billions, and protected hundreds of rare species and thousands of acres of ecologically important land. The foregone monetary value of citizen enforcement has conserved innumerable agency resources and saved taxpayers billions” (May 2003, p. 3-4)

Building upon the success of the citizen suit system in the US, other countries, including places as diverse as Nepal and Eastern European countries, have followed suit and adopted similar provisions to expand the ability of citizens, NGOs, and community organizations to bring citizen suit litigation against those that damage the environment (May 2003, p. 7). As described below, countries in the region, including China, the Philippines and Indonesia, have also adopted forms of citizen enforcement litigation.

However, it is important to note that the current context of the United States is vastly different from that of the countries in Southeast Asia. For the Southeast Asia region, China’s adoption of provisions authorizing environmental public interest litigation provides an illustrative

example. Around 2009, environmental NGOs in China such as Friends of Nature began filing test cases seeking damages for loss of natural resources and environmental restoration in the public interest, as opposed to seeking tort damages for individual compensation (Tuholske and Lin 2015a, p. 10857). Due to the lack of clarity under the law at the time for these types of cases, they achieved little success. In 2012 China amended its Civil Procedure Law to allow, for the first time, government agencies and “relevant organizations” to bring lawsuits for environmental damages on behalf of the “public interest” (Tuholske and Lin 2015a, p. 10857). However, despite this change, courts in China remained reluctant to accept “public interest” cases without a clear

Precautionary Principle

“When there is lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthy ecology shall be given the benefit of the doubt.”

Philippines, Rules of Procedure For Environmental Cases (2010), Rule 20(1).

definition of the term “relevant organizations” (Tuholske and Lin 2015a, p. 10857). To remedy this situation, in 2014 China’s National People’s Congress issued new amendments to China’s Environmental Protection Law that, for the first time, explicitly stated that social organizations such as NGOs could bring environmental public interest lawsuits so long as the organizations met certain criteria (China 2015, Art. 58). Around the same time, the Supreme People’s Court of China issued the Interpretation Regarding Certain Issues Related to Application of the Law in Environmental Civil Public Interest Litigation, which provided further clarity to the definition of “relevant organizations,” and also clarified that the revised Environmental Protection Law provided jurisdiction over claims of imminent future harm, in addition to past and ongoing harm (Tuholske and Lin 2015a, p. 10858). The Supreme People’s Court’s Interpretation

also included other provisions designed to clarify and streamline the court’s jurisdiction in environmental public interest cases, such as clarifying the types of remedies courts can issue (Tuholske and Lin 2015a, p. 10858). From 2015-2018, NGOs in China have filed approximately 53-68 EPIL cases each year, with the number slightly increasing each year (Lei and Lu 2021), and in March 2022 it was reported that courts in China were handling over two thousand EPIL cases every year (Lei and Lu 2022).

Within the Southeast Asia region, the Philippines provides another example. In 2010 the Supreme Court of the Philippines issued the Rules of Procedure for Environmental Cases in order to make it easier for communities to bring litigation to protect their rights under the Philippines Constitution and environmental laws (Philippines, Supreme Court 2010a). While “citizen suit” provisions had already existed under certain laws such as the Clean Air Act (Ramos, 2011, p. 186), the Rules of Procedure for Environmental Cases “provided for simplified and streamlined measures to speed up environmental litigation, and make it easier for the public to bring cases” (Bueta 2019). Among other things, the Philippines procedural rules liberalized the rules of standing to bring environmental public interest cases, introduced measures to ensure the speedy conclusion of cases, directed courts to apply the “precautionary principle” when there is a lack of full scientific certainty, and included an anti-SLAPP (strategic lawsuit against public participation) suit provision (Ramos 2011, p. 185-188). The Philippines procedural rules also included an innovative mechanism called the Writ of Kalikasan, which is a writ that may be issued by the court to implement speedy trial procedures in cases where alleged environmental damages are of such magnitude that it “prejudices the life, health or property of inhabitants in two or more cities or provinces” (Ramos 2011, p. 187).

Likewise, Indonesia has also given organizations the ability to file enforcement cases. Article 92 of Indonesia’s Environmental Protection and Management Act states that “environmental organizations shall reserve a right to file lawsuits in the interest of environmental function conservation.” Under Article 92, in order to have standing to bring

Myanmar: Tanintharyi Mining Case

In a rare landmark victory, on January 7, 2020, the Dawei District Court (Tanintharyi Region, Myanmar) issued judgments against two tin mining companies accused of destroying several local farmers' betel palm plantations. Areas downstream of the mining operations had been inundated with thick layers of sediment filled with harmful heavy metals and high salt levels. The court ordered the defendants to pay K114,800,000 (USD \$82,536) in damages.

Although the case represented a rare but encouraging victory, it also highlighted the ongoing challenges in countries like Myanmar regarding accessing legal representation and environmental enforcement generally.

such a case, an organization must: (1) be duly registered as a legal entity, (2) clearly state in their articles of association that the organization was established “in the interest of environmental conservation,” and (3) have a record of implementing “concrete” activities related to their articles of association for a minimum of two years (Indonesia 2009, Art. 92(3)). However, NGOs in Indonesia have reported challenges using this provision, including challenges related to meeting the strict standing requirements and the time and expense associated with filing lawsuits under this provision (Winani 2013).

While the particular form and function of environmental public interest litigation, or “citizen suits,” differs slightly in each jurisdiction in which it has been adopted, the basic idea remains the same – empowering communities and organizations to bring litigation in the public interest against those who are in violation of environmental laws or otherwise violating the public’s protected right to a healthy environment.

b. How does EPIL differ from environmental tort litigation?

Several significant differences between EPIL and more traditional environmental tort litigation often make EPIL more effective and accessible for impacted communities than traditional litigation –thereby strengthening their ability to supplement enforcement

efforts. With some exceptions, across Southeast Asia, most communities that suffer from environmental harms have been limited to seeking individual compensation through traditional environmental tort litigation – and in some cases, even the development of traditional environmental tort litigation is still in its infancy. While such cases can sometimes succeed in securing compensation for pollution victims, they also present many significant challenges for such victims that, in many cases, prevent them from achieving justice. For example, standing to bring litigation is usually more open and liberal in the case of environmental public interest litigation, which expands its availability to impacted communities. Another challenge for plaintiffs pursuing an environmental tort case is the often very high burden of proof that plaintiffs must meet to establish a causal link between a defendant’s alleged actions and the plaintiff’s injury – a burden that can be extremely difficult to overcome in cases involving complex environmental pollution problems. As seen below, some EPIL systems substantially reduce this burden on plaintiffs, while others still present significant challenges. Another major difference is in the types of remedies available – in traditional tort litigation, plaintiffs are normally limited to seeking individual damages, whereas plaintiffs in environmental public interest cases are normally prevented from recovering any kind of direct compensation. This helps to ensure that plaintiffs that pursue environmental public interest litigation cases are doing so in the public interest. Finally, another major difference is that in some systems, plaintiffs in environmental public interest litigation cases can request that the court impose significant penalties on defendants – the potential risk of which can incentivize a defendant to sit down at the negotiating table with the plaintiff. Each of these issues is addressed below.

More Liberal Standing Requirements

“Standing” refers to a plaintiff’s ability to bring a case to court. In other words, plaintiffs must demonstrate to the court that they have standing for the court to accept a case. Traditional environmental tort litigation requires a plaintiff to have a direct and personal interest in the case in order to have standing. For example, lawyers in Cambodia

expressed the challenges associated with the requirements for bringing a case under the Civil Code and stated that judges would reject cases if the plaintiff could not establish a direct and personal interest. In contrast, most environmental public interest litigation systems expand standing requirements in order to enable a wider array of plaintiffs to bring lawsuits to the court. They do this purposefully to enlist citizens in the effort to enforce environmental laws and achieve compliance.

The Philippines Supreme Court's Annotation to the Rules of Procedure in Environmental Cases states that the Rules expanded standing requirements "to further encourage the protection of the environment" (Philippines, Supreme Court 2010b, Rule 5, Section 2). The Supreme Court went on to state that the provision on citizen suits "liberalizes standing for all cases filed enforcing environmental laws and collapses the traditional rule on person and direct interest, on the principle that humans are stewards of nature" (Philippines, Supreme Court 2010b, Rule 5, Section 2). Likewise, the 2014 amendments to China's Environmental Protection Law also liberalized standing requirements to bring environmental public interest litigation cases "after two years of intense debate and scrutiny" (Tuholske and Lin 2015a, p. 10858). Under China's EPIL system, "social organizations" can bring environmental public interest litigation cases as long as they meet certain registration requirements, have specialized in environmental protection activities for at least five years, and have not violated any laws (China 2014, Art. 58). They do not need to demonstrate any direct interest in the case for a court to accept it. Similarly, Indonesia's 2009 Environmental Protection and Management Act does not require environmental organizations to demonstrate any kind of direct interest in a case. It authorizes environmental organizations to file environmental public interest lawsuits as long as they are a registered legal entity, specialize in environmental protection activities, and have worked on environmental protection issues for at least two years (Indonesia 2009,

Art. 92).

Burden of Proof

Generally, in a traditional lawsuit in which a plaintiff or group of plaintiffs seeks individual compensation for environmental harms, the plaintiff must demonstrate that the defendant has violated a standard of conduct and that the defendant's actions caused an injury to the plaintiff. However, in environmental pollution cases, it can often be very difficult to prove this causation element (Roberts and Dobbins 1992, p. 10). For example, in a case involving

"injury to health resulting from toxic pollution, a plaintiff may have to supply scientific evidence and analysis establishing a physical link between the particular polluting activity and the harm. The long latency period that may intervene between a release of toxic substances and the manifestation of a resulting injury contribute to the difficulty of proving this element" (Roberts and Dobbins 1992, p. 10).

The large burden of proving causation and injury has impacted communities across Southeast Asia seeking compensation for environmental harms. One scholar observed that "in the few environmental disputes that have progressed through Vietnamese courts, litigants have struggled to prove a causal link between industrial processes and environmental harms" (Gillespie et al. 2019, p. 10). After conducting case studies on three environmental disputes in Viet Nam, the scholar concluded that the communities in each of the three cases encountered significant challenges concerning "access to the technical advice required to demonstrate causal links between polluting industries and environmental harm" (Gillespie et al. 2019, p. 22). Furthermore, on top of the challenge of finding reliable technical advice is the scientific uncertainty itself in the environmental context. In other words, even with technical advice, sometimes the scientific uncertainty itself can effectively prevent a plaintiff from proving that

²Under US standing doctrine for environmental citizen suits, Plaintiffs must allege some injury as a result of Defendant's conduct, but the requirements for this are quite liberal. For example, damage to a person's recreational or aesthetic interests in an area can be enough to give the person standing to sue. In other words, in order to bring a case, the plaintiff can demonstrate that he or she "use[s] the affected area and [is a] person 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 183 (2000).

the defendant's conduct more likely than not caused the plaintiff's injury.

Depending on the exact form it takes, environmental public interest litigation can potentially relieve many of these burdens and make it easier for impacted communities to sue a polluter and bring them into compliance with the law. For example, in the United States, federal environmental laws allow citizens to act as "enforcers" of the law by "asking a court to prohibit behavior that violates the statute's terms" (Roberts and Dobbins 1992, p. 11). In these cases, "the citizen may need to prove only that certain statutory or regulatory controls or limitations are in force and that the defendant has failed to adhere to them" (Roberts and Dobbins 1992, p. 11). In other words, plaintiffs do not need to carry the burden of proving with scientific certainty that the defendant's conduct caused any specific injury to a plaintiff.² Because environmental laws are adopted to protect the environment in the first place, there is often a presumption that by violating the terms of the law, damage to the environment has, therefore, already occurred (Roberts and Dobbins 1992, p. 11).

Moreover, in many cases the defendant has already produced much of the evidence a plaintiff needs. This is because environmental pollution statutes generally require polluting facilities to submit periodic reports, in which the facility is required to disclose all of its pollutant emissions/discharges and the corresponding statutory or permit limits. Therefore, "proof might consist simply of the defendant's own reports" (Roberts and Dobbins 1992, p. 11). Under the Clean Air Act in the United States, facilities that emit air pollutants are required to submit periodic emissions reports, and such reports must be signed by a "responsible official," who must certify the "truth, accuracy, and completeness" of the report (United States, Environmental Protection Agency [EPA] 2009, Sec. 70.5(d)). The official may also be subject to fines and/or prison time for making false statements in emissions reports (United States 1990, Sec. 7413(c)(2)(A)). For this reason, the community's burden of establishing a defendant's liability will be much lower than in an environmental tort case because they do not carry the burden of proving with scientific certainty that the defendant's conduct caused

the plaintiff's injuries or any other damages to establish liability.

Some countries have made efforts to relieve this burden on plaintiffs. For example, in 2009 China issued a revised tort law that for the first time explicitly placed the burden of proof in environmental pollution cases on the defendant (Yang and Moser 2011, p. 10897). Article 66 of the 2009 Tort Law reads:

China Supreme People's Court: Judicial Interpretation on Environmental Public Interest Litigation, Article 23

"Where ecological restoration costs are difficult to determine or where the amount of the requisite appraisal costs are clearly excessive, the people's court may combine factors such as the scope and extent of environmental harm and ecological damage, the ecological scarcity, the difficulty of ecological restoration, the costs of operating equipment to prevent pollution, the benefits gained by the defendant due to their harmful acts, and their degree of fault; and may also consult sources such as opinions from departments with responsibility for environmental protection oversight and management, experts opinions, to make a reasonable determination."

"Where any dispute arises over an environmental pollution, the polluter shall assume the burden to prove that it should not be liable or its liability could be mitigated under certain circumstances as provided for by law or to prove that there is no causation between its conduct and the harm" (China 2006, Art. 66).

However, despite this shift in the burden of proof, judges in China had reported that plaintiffs still faced significant challenges. In practice, most courts would require plaintiffs to provide evidence "as to the harm, the source of harm, and even evidence of a causal link," and then also provide more evidence of

causality before shifting the burden of proof to the defendant” (Yang and Moser, p. 10897).

China’s EPIL system differs somewhat from the system in the United States in that it authorizes plaintiffs to bring claims based on damages to the environment rather than violations of environmental standards or prohibitions. Under Article 58 of China’s 2014 Environmental Protection Law, “social organizations” that meet certain criteria may bring a lawsuit “for an act polluting the environment or causing ecological damage in violation of the public interest” (China 2014, Art. 58). Chinese courts have begun using modeling methods to calculate these damages and restoration costs, rather than requiring actual damages assessments, in part to relieve the burden of doing so. However, there has still been some controversy over the use of these modeling methods. For example, in *All China Environment Federation vs. Zhenhua Ltd.*, China’s first environmental public interest litigation case involving air pollution, the plaintiffs had asked the court to calculate the defendant’s economic benefits of non-compliance in order to determine how much the defendant should be required to pay to compensate for the public interest damages. Although this approach would have been supported by Article 23 of the Supreme Peoples’ Court’s Judicial Interpretation, the court in this case rejected it and instead used a “treatment cost estimate” method, which according to the plaintiffs, is not appropriate for air pollution cases (Chun 2016).

The Philippines’s Rules of Procedure for Environmental Cases state that “[a]ny Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws” (Philippines, Supreme Court 2010a, Rule 2, Section 5). Under this provision, a citizen filing a case, whether an individual or an organization, does not need to show any proof of personal injury because the case is filed in the public interest (Philippines, Supreme Court 2010b, Rule 2, Section 5). Although this would appear to relieve the burden of proof on plaintiffs, lawyers from the Philippines report that, in practice, the burden with regard to proving causation and damages is still relatively high for plaintiffs.

Another novel feature of the Philippines’s Rules of Procedure for Environmental Cases that could potentially further relieve the burden of proof in certain cases is the provision on the precautionary principle. Section 1 of Rule 20 states:

“when there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt” (Philippines, Supreme Court 2010a, Rule 20, Section 1).

In the first application of the precautionary principle, in 2015 the Supreme Court granted a petition filed by Greenpeace and others and affirmed a lower court’s ruling to permanently ban the field testing of certain genetically modified crops (Philippines, Supreme Court 2015). The decision was lauded at the time as a groundbreaking step forward in applying the precautionary principle (Read and Dunham 2015). However, the Supreme Court issued a subsequent decision to reverse its earlier decision due to the dispute in the case becoming moot, and therefore the Court’s application of the precautionary principle in the previous case will not set a precedent (Philippines, Supreme Court 2016).

More recently, Viet Nam passed a revised Law on Environmental Protection in November 2020, which states that when environmental disputes are heard in court, “[t]he proof of the causal relationship between the act of violating the law on environment and the occurrence of the damage falls under the responsibility of the violating organization or individual causing pollution” (Viet Nam 2020, Article 133(2)). However, the law does not go into effect until January 1, 2022, so it remains to be seen what impact or benefit this might have for plaintiffs.

Generally speaking, citizen enforcement litigation can lift the heavy burden of proof that plaintiffs bear in traditional tort litigation – depending, of course, on how the citizen enforcement system is designed. In doing

so, citizen enforcement litigation makes the courts more accessible to communities working to protect themselves, supplement government enforcement efforts, and bring polluters into compliance with the law.

Public remedy vs. private remedy

In an environmental tort lawsuit, the plaintiff or plaintiffs seek a private remedy for harm or damage they experienced as individuals. In such cases, even if an individual plaintiff is able to sue a defendant and obtain damages successfully, this will only remedy the individual's harm but likely will not provide any relief or remedy to others that the defendant's conduct may have impacted. On the other hand, most environmental public interest litigation systems actually prevent the plaintiffs, whether they are individuals or organizations, from obtaining any direct compensation or damages.

Instead, they are focused on achieving remedies in the public interest, which is why the remedies that courts may issue in citizen enforcement cases are normally limited to some forms of injunctive relief and payment of the plaintiff's litigation costs. Under the environmental public interest litigation system in the United States, for example, "[b]ecause citizen suits under environmental statutes are designed to vindicate public rather than private rights, they do not allow plaintiffs to recover any personal damages for violations of environmental laws and regulations" (Roberts and Dobbins 1992, p. 10). China's system also prevents plaintiffs in environmental public interest suits from receiving direct compensation, and the Judicial Interpretation on Environmental Public Interest Litigation issued by China's Supreme Peoples' Court contains a provision stating that the courts can confiscate economic gains acquired by plaintiffs through environmental public interest litigation, and can even fine the plaintiffs if warranted (China 2014, Art. 58; China, Supreme People's Court 2015, Art. 34). The Judicial Interpretation requires anyone seeking compensation for personal injuries to file a separate lawsuit (China, Supreme People's Court 2015, 10). Similarly, the relief available to plaintiffs under the Philippines' environmental public interest system also does not include direct compensation to

Hoy Mai and Others v. Mitr Phol Co. Ltd.

In a landmark decision, in July 2020, a court in Bangkok granted class-action status to a group of 700 Cambodian, enabling them to move forward with a lawsuit against Mitr Phol seeking compensation for human rights abuses associated with Mitr Phol's operations in Cambodia. The case will be a "major test case for transboundary disputes."

"Class Action Lawsuit Against Sugar Giant Goes Ahead," Bangkok Post (August 1, 2020)

plaintiffs. Instead the courts have specified that any person seeking damages for actions on the part of a defendant that are also the subject of a public interest lawsuit must file a separate lawsuit to seek recovery for the personal injury (Philippines, Supreme Court 2010a, Rule 5, Section 1; Philippines, Supreme Court 2010b, Rule 2, Section 4). The reason for this is to ensure that environmental public interest lawsuits are, in fact, filed to protect the public's interest in a healthy environment, and not to compensate the plaintiffs.

"Class action" lawsuits, which allow a plaintiff or small group of plaintiffs to represent a larger "class" of plaintiffs that were impacted by the defendant's conduct, could change this dynamic somewhat because they can sometimes include "public" remedies such as clean up and restoration, but the class action concept is still not widely recognized in the Southeast Asia region. For example, while the Philippines and Indonesia have authorized class action lawsuits for some time now, Thailand is the first country in the Mekong region to authorize class action lawsuits as such, and its first class action lawsuit proceeded in 2018 (Le Marquer 2018). On top of this, class action lawsuits present the same challenges concerning the burden of proof and the uncertainty of compensation awards (see below) as traditional environmental tort lawsuits.

Leverage Through Penalties

One of the unique features of citizen enforcement litigation in the United States that does not exist in the region yet and that gives

plaintiffs significant leverage over defendants is the ability to request that the court impose penalties on the defendant in addition to injunctive relief. While the availability of punitive damages in traditional tort cases in some jurisdictions may also give the plaintiff significant bargaining leverage, tort cases “focus on a specific problem and proceed on a random, ad hoc basis, with varying results...the process is slow and the results are uncertain” (Tuholske and Lin 2015a, p. 10856). The ability to request a court to impose set penalties on a defendant for clear violations of environmental pollution standards or other requirements can add predictability to the process and provide plaintiffs with leverage to negotiate a mutually beneficial settlement.

To date, the developing citizen enforcement mechanisms in the Southeast Asia region limit plaintiffs to seeking various forms of injunctive relief, as well as attorneys’ fees and litigation costs. For example, China’s Judicial Interpretation states that:

Strengthening Citizen Power Through Penalties

When the United States Congress first authorized citizen enforcement suits under the Clean Air Act, injunctive relief and litigation costs were the only remedies available. As a result, citizen suits were far less effective than initially anticipated. Twenty years later, the US Congress realized it needed to strengthen citizen suits’ impact and deterrent effect. Therefore, in the 1990 Clean Air Act amendments, Congress added a provision that permitted courts to assess civil penalties in a citizen suit, in addition to injunctive relief and costs of litigation.

In April 2017, a US Federal Judge assessed nearly USD \$20 million in civil penalties against ExxonMobil in a citizen suit for violations of the Clean Air Act – this is believed to be the highest penalty amount awarded in an environmental citizen suit in the US. The penalty amount was later reduced to USD \$14.25 million.

“For acts of environmental pollution and ecological harm that have already harmed the public interest or have a great risk of harming the public interest, the plaintiff may demand that defendant have civil responsibilities

such as stopping the infringement, eliminating obstructions, removing dangers, restoring original conditions, paying compensation and making formal apologies”

(China, Supreme People’s Court 2015, Art. 18).

In *All-China Environment Federation v. Zhenhua*, the NGO plaintiff in the case requested that the court impose 7.8 million RMB in punitive damages on the defendant, but the court refused the request (Chun 2016).

In contrast, environmental laws in the United States such as the Clean Air Act and Clean Water Act permit plaintiffs to seek penalties in citizen enforcement actions. Notably, the original Clean Air Act citizen suit provision adopted in 1970 did not authorize plaintiffs to request the court to impose civil penalties – the only remedy available was injunctive relief, as well as awarding the costs of litigation (including reasonable attorney and expert witness fees) to the prevailing party (Greenbaum and Preston 2011, p. 102). The fact that civil penalties were not available to public interest litigants “as a deterrent against future violations weakened the citizen enforcement weapon” (Greenbaum and Preston 2011, p. 94). In 1990, the US Congress amended the Clean Air Act to, among other things, expressly authorize courts to award civil penalties in citizen suit cases as a way to strengthen the deterrent impact of citizen suits (Greenbaum and Preston 2011, p. 103).

The current maximum penalty amount that a US court can award in an environmental citizen suit is quite high – USD \$37,500 per day, per violation – although courts have the discretion to apply a number of factors to require a lesser penalty amount. In assessing penalties in environmental citizen suits, US courts will usually “aim to ensure recovery of the economic benefit the violator enjoyed by not taking steps to comply” (May 2003, p. 20). By authorizing plaintiffs to seek these penalties, the citizen suit provisions in the United States give the public “significant power over alleged violators” (Roberts and Dobbins 1992, p. 12). The ability to seek such penalties, and the corresponding risk to the defendant that the court may grant them, greatly improves

the plaintiff's bargaining position with the defendant. The plaintiffs can essentially use the threat of large penalties to incentivize the defendant to negotiate a mutually agreeable settlement rather than bring the case to a full trial.

c. The Benefits of Environmental Public Interest Litigation

There are many potential benefits that a functioning EPIL system can achieve with regard to environmental governance, the environmental rule of law, and relief for communities. Some of these benefits are described in this section.

EPIL supports environmental rule of law by filling enforcement gaps

The United Nations First Global Report on Environmental Rule of Law poses a crucial question: "Why should companies invest in pollution control technologies if there is little likelihood of enforcement, the penalties are too low and can be incorporated as the cost of doing business, and there is widespread non-compliance?" (UNEP 2019, p. 8). As noted above, most countries in Southeast Asia continue to exhibit significant shortcomings regarding the enforcement of their environmental laws, whether it is due to resource constraints, lack of political will, corruption, or other reasons. Allowing the public to sue to enforce environmental laws could be a very effective way to address these shortcomings. Environmental public interest litigation promotes the rule of law and helps to encourage compliance with environmental laws and objectives (May 2003, p. 5). By permitting the public to sue to enforce environmental laws, the governments of Southeast Asia could send a powerful message to the regulated community that environmental laws are to be followed (UNEP 2019, p. 3).

Environmental public interest litigation promotes compliance with environmental laws by "filling the gaps" in government enforcement efforts (Roberts and Dobbins 1992, p. 2). Environmental public interest litigation would enable the public to "monitor compliance throughout the nation and identify violations an understaffed investigative agency might miss" (Roberts and Dobbins

1992, p. 2). When speaking of citizen suits in the United States, one US Senator remarked: "Citizen resources are an important adjunct to governmental action to assure that these laws are adequately enforced. In a time of limited government resources, enforcement through court action prompted by citizen suits is a valuable dimension of environmental law" (May 2003, p. 5). Indeed, the legislative history of the US's first citizen suit provision shows that the US Congress passed the provision precisely to "provide a backup enforcement mechanism" if government agencies were failing to do so (Greenbaum and Preston 2011, p. 81).

As noted earlier, there is a significant enforcement gap with regard to environmental protection laws across Southeast Asia. As environmental burdens increase along with the region's rapid economic growth, one of most robust measures governments could adopt to address these burdens and close the environmental law enforcement gap is authorizing environmental public interest litigation, and specifically citizen enforcement litigation.

EPIL supports the achievement of national environmental objectives

Most of the countries of Southeast Asia have issued some form of national environmental policy priorities and objectives, and environmental public interest litigation can be a powerful tool to help meet these objectives. For example, environmental public interest litigation can help to contribute to implementing Myanmar's national environmental policies to protect and manage Myanmar's ecosystems "in a sustainable way in order to maintain their natural functions and resilience, and rich biodiversity," and to protect and manage Myanmar's natural resources "without diminishing their availability and quality for future generations" (Myanmar 2016, Par. 7(a)(5) and (6)). In Cambodia, the need for more consistent and strengthened environmental law enforcement to achieve Cambodia's sustainable development goals is highlighted throughout Cambodia's National Environment Strategy and Action Plan (2016-2030) (Cambodia 2017). Environmental public interest litigation could help fill that need.

Additionally, as countries across Southeast Asia continue to increase their recognition of and commitment to sustainable development, environmental public interest litigation can help overcome the traditional “systemic bias that favor[s] economic development over the environment” (Gillespie et al. 2019, p. 20). In Viet Nam, “for decades the government based its performance legitimacy on economic development” (Gillespie et al. 2019, p. 20). However, this changed in 2004 when the Politburo issued a resolution on prioritizing environmental protection, and since then, “the party-state increasingly portrays itself as the defender of the environment” (Gillespie et al. 2019, p. 20). By authorizing environmental public interest litigation, the governments of Viet Nam and other Southeast Asian countries could send a strong signal that it places a high value on protecting the environment for the benefit of its citizens.

EPIL can achieve more direct benefits for local communities

Because many environmental public interest lawsuits conclude with a settlement agreement between plaintiffs and defendants, such lawsuits can often achieve more direct benefits for communities than the traditional remedies that courts can impose. This is because the parties to a lawsuit can negotiate to end the suit on mutually agreeable terms, and as such, they have more flexibility in designing remedies than a court.

As mentioned above, an environmental public interest litigation system that allows plaintiffs to request that the court impose civil penalties on a defendant gives plaintiffs considerable leverage to negotiate a mutually agreeable settlement with the defendant. Although penalties awarded in environmental public interest lawsuits have high punitive value, they are often paid directly into government coffers. They do not directly translate to a beneficial outcome for the environment (other than deterring the defendant from committing violations in the future). Therefore, plaintiffs will often prefer to settle the case to achieve a better outcome for the environment and the public, in addition to avoiding time-consuming and expensive litigation. Environmental public interest litigation settlements typically include four main elements: “(1) ‘compliance’ by the defendant; (2) the defendant funding a

Case Study on EPIL Settlement: NRDC, et al. v. Illinois Power Resources Generating

In 2013, three prominent NGOs in the US filed a citizen suit against a coal-fired power plant, alleging that it had been violating its emissions limits for particulate matter and other pollutants for more than a decade (Natural Resources Defense Council [NRDC] 2021). After the judge issued a ruling that found that the plant had indeed violated its emissions limits on thousands of separate occasions in the preceding five years, the plaintiffs’ negotiating position was strengthened, and they were able to obtain a very positive result for the communities they were protecting. In November 2019, the court approved a settlement agreement between the parties that required the plant to close down within three years and required the plant owners to pay USD \$8.6 million to fund various projects in the area around the plant (NRDC 2021). This funding was divided into approximately USD \$1.7 million for a local job training program and USD \$6.8 million for environmental and public health projects, including funds to convert local public transportation to electric vehicles instead of diesel; funding to provide grants to local NGOs to implement energy efficiency initiatives; funding to provide grants to the local government and local public schools to install solar energy; and funding to support public health studies, and specifically studies focused on lung health in the area impacted by the plant (NRDC 2019).

supplemental environmental project (“SEP”) or “mitigation payment”; (3) the defendant “reimbursing” the citizen group for its attorneys’ fees and expenses of litigation; and (4) the defendant allowing periodic, future access to the defendant’s site for the citizen group to monitor compliance with the law and/or for the citizen group to review any on-site SEP performed by the defendant” (Thompson 2020).

A supplemental environmental project, or SEP, will generally involve a payment made by the defendant to a third party (i.e., not the plaintiff) to fund an environmental project or other kinds of environmental protection activity. They are often viewed as a “win-win” scenario. The settlement will often obtain a benefit for the environment by stopping the current violations and requiring the defendant to come into compliance with the law, allow

the defendant to “voluntarily” contribute to an environmentally beneficial project rather than being ordered to pay penalties, and allow the defendant to avoid admitting liability for violating the law (Thompson 2020).

EPIL can reduce social conflict

Another potential benefit of EPIL is that by providing communities and organizations with an avenue to pursue public interest claims to enforce environmental laws directly, EPIL can reduce social conflict. Additionally, by giving impacted communities a means to strengthen their negotiating position with local enterprises, EPIL can sometimes create an ongoing cooperative relationship between a project and the community it is located in. In Viet Nam for example, Vietnamese citizens that are “frustrated with regulatory inaction” have resorted to taking “direct action to protect their country’s natural environment,” and studies have shown that “environmental disputes are second only to land disputes as the most common source of social conflict” (Gillespie et al. 2019, p. 1). Because local communities in Viet Nam feel that they have no other recourse or options, they “are turning to confrontational strategies, such as public protests, to improve their bargaining position (Gillespie et al. 2019, p. 10). Environmental public interest litigation can serve as a sort of “release valve” for this increasing social tension by giving communities relatively accessible means to bring polluters to court to force compliance with the law, rather than having to depend on government agencies.

Similarly, in the years leading up to the 2014 amendments to China’s Environmental Protection Law, China saw a huge increase in the number and size of environmental protests as a result of the country’s rapidly developing environmental pollution problems (Liu 2016). For example, beginning around 2007, China began to see a series of large-scale protests opposing the construction of para-xylene (PX) manufacturing plants in several cities, including Xiamen (Lim 2007), Kunming (Kaiman 2013), and Shanghai (Qin 2015). According to the Chinese Society for Environmental Science, beginning in 1996, the number of environmental protests increased by about 29% per year, but this number saw a very rapid increase in the early 2010s, with a 120% increase in 2011 (Liu 2013). As the

Chinese government became “acutely aware of the huge cost that pollution [was] taking on the country, and the growing discontent among citizens that must bear this cost” (Tuholske and Lin 2015a, p. 10856), it realized it needed to take action to update its environmental legal and regulatory framework, and give Chinese citizens an avenue to raise their environmental concerns in the courts rather than resorting to social unrest (Lei and Lu 2021).

EPIL ensures accountability of enforcement agencies

Another potential benefit that can be achieved through environmental public interest litigation is that it can serve to highlight and bring attention to a government’s failure to enforce environmental protection laws effectively. In other words, environmental public interest lawsuits can push government agencies to publicly account for their own inaction (Roberts and Dobbins 1992, pg. 2). By bringing this inaction on the part of the government to light, environmental public interest lawsuits can also “motivate governmental agencies charged with the responsibility to bring enforcement and abatement [actions]” (May 2003, p. 6). The citizen suit provisions in the United States were adopted in part to specifically to “goad the responsible agencies into more vigorous enforcement” of environmental laws (Greenbaum and Preston 2011, p. 81). Put simply, “citizen suits catalyze environmental enforcement” (May 2003, p. 4).

IV. EPIL in the Southeast Asia Region

a. Prospects for EPIL in the Southeast Asia Region

There are some encouraging signs across Southeast Asia that governments are moving toward empowering the public to file lawsuits in the public interest to enforce environmental laws and stop environmental harm. As mentioned above, Indonesia's 2009 Environmental Protection and Management Act authorizes organizations to file environmental lawsuits in the public interest (Indonesia 2009, Art. 92), and the Indonesia Supreme Court's Guidelines for Handling Environmental Cases recognize "citizen lawsuits," or lawsuits brought by individual citizens to seek review of government actions (or inactions) (Indonesia, Supreme Court 2013). In 2010, the Supreme Court of the Philippines issued the Rules of Procedure for Environmental Cases to give effect to the citizen suit provisions contained in the Philippines's environmental laws and to streamline the procedures for such suits, as well as to codify the writ of continuing mandamus and the writ of Kalikasan (Philippines, Supreme Court 2010). In 2014, China adopted a revised Environmental Protection Law, and the Supreme People's Court issued a Judicial Interpretation that authorized environmental public interest litigation for the first time in China, providing a potential model for Southeast Asia countries to follow. And finally, in late 2020, Laos issued the Presidential Decree on Administrative Litigation Process, which appears to give organizations and individuals the ability to seek review of government actions (or inactions) by the courts.

Some other countries in the region also appear to be moving in this direction. For example, in November 2020, Viet Nam adopted a revised Law on Environmental Protection that, among other things, authorizes organizations and individuals that have suffered damage to human life, health, property from environmental pollution to claim compensation for such damages (Viet Nam 2020, Art. 131(3)). While it does not seem entirely clear from the language of the new law whether this compensation claim is limited to personal compensation or

whether it also includes claims made in the public interest, the law itself states that the government will develop detailed procedures and guidance on these issues at a later date (Viet Nam 2020, Art. 131(4)).

Beginning in 2015, Cambodia's Ministry of Environment led a national consultative process involving other government Ministries, international organizations, NGO's and community organizations, and the private sector to develop a sweeping new *Environment and Natural Resources Code*. On May 30, 2023, the National Assembly approved the Code by a vote of 98-0, and on June 13, 2023 the Senate also approved the Code by a unanimous vote of 60-0, thus enacting the new law after years of development (Orm 2023). In a press release, the Ministry of Environment stated that the Environment and Natural Resources Code is "a pioneering legislation that propels the country into a leadership position in regional environmental protection and climate action" (Ministry of Environment of Cambodia 2023). Among the many pioneering developments in the new law are several provisions that would appear to fully recognize and authorize EPIL in Cambodia for the first time. Book 9 of the Code concerns the settlement of environmental and natural resources disputes. Article 800 in Book 9 provides that the scope of disputes covered includes demands for compensation for damage to the environment, demands for rehabilitation of the environment, and demands for mitigation measures to prevent pollution and negative impacts to the environment and natural resources (Cambodia 2013, Art. 800). Moreover, the Code expressly includes associations and non-government organizations registered and recognized by the Ministry of Environment as parties that have standing to bring lawsuits involving environment and natural resource disputes (Cambodia 2023, Art. 800). The provision states that associations and non-government organizations can file lawsuits to prevent or stop activities damaging to the environment, demand compensation for environmental damages, or demand compensation for victims or affected communities (Cambodia 2023, Art. 802(c)). While there are still many other details that will need to be worked out - such as the burden of proof that plaintiffs must bear in seeking to stop a project or

demand compensation for environmental resource damages, or how such environmental damage compensation would be paid and administered, or whether defendants should pay the litigation costs of successful plaintiffs in order to encourage more organizations to file such public interest lawsuits – the fact that the Environment and Natural Resources Code includes these provisions expressly authorizing associations and NGOs to bring environmental public interest litigation is incredibly encouraging.

b. Challenges

Despite these encouraging signs, there are still many challenges that would need to be overcome in most countries in Southeast Asia for environmental public interest litigation to operate effectively. Some of these challenges are described below.

Implementation of environmental regulatory systems

While it was noted earlier that most countries across Southeast Asia have achieved considerable progress in adopting strong environmental protection laws, they still suffer from a significant implementation gap. As one commentator observed: “[M]any environmental agencies [in developing countries] are still far away from implementing and enforcing standards to reduce pollution and environmental degradation” (Nemesio 2015, p. 326). At a minimum, to establish a system that allows citizens to step into the government’s shoes and bring lawsuits to enforce environmental laws, there need to be clearly identifiable environmental pollution standards and an effective monitoring and reporting system (Roberts and Dobbins 1992, p. 11). All of this information, including project monitoring reports, should be available to the public. Additionally, a permitting system to clearly identify which standards apply to and are binding upon a given facility would also be a crucial element. This would help government agencies, the regulated community, and the public to understand exactly which requirements apply to what types of facilities or projects. For example, in 1990 the United States Congress significantly amended the Clean Air Act, in part by “establishing a permit system that requires sources to monitor and

Thailand PRTR

In March 2022 a group of NGOs led by EnLaw Thai Foundation and Ecological Alert and Recovery Thailand (EARTH) filed an administrative lawsuit against the Ministry of Industry, Ministry of Natural Resources and Environment, and National Environment Board requesting that the court, among other things, order the agencies to develop and implement a Pollutant Release and Transfer Registry (PRTR) in order to strengthen access to environmental pollution information in Thailand. The Administrative Court agreed, and on August 29, 2023 it ordered the Ministry of Industry to issue regulations establishing a PRTR within 60 days of the judgment.

report their emissions and thereby provide citizens with the information necessary to determine who is violating the [Act]” (Buente 1991). By design, Congress adopted these requirements to make enforcement actions easier and more accessible for communities.

However, most countries in Southeast Asia still have a long way to go to establish functioning systems of environmental standards, permitting, and reporting that would support environmental public interest litigation. To provide an example, in 2012, Myanmar issued its Environmental Conservation Law, which, among other things, directs Myanmar’s Ministry of Natural Resources and Environmental Conservation to develop environmental quality standards (i.e., emissions and discharge limits) and an environmental impact assessment system (Myanmar 2012, Sec. 7). In 2015, Myanmar issued the Environmental Impact Assessment Procedure and the Environmental Quality (Emissions) Guidelines. In short, the environmental quality standards contained in the Guidelines are supposed to be applied directly to facilities by issuing an “Environmental Compliance Certificate” at the conclusion of the EIA process (Schulte 2019, p. 78). The Environmental Compliance Certificate is “a document that has legal effect and that contains all of the legally binding requirements that apply to the project or activity for which the ECC is being issued” (Schulte 2019, p. 79). This would include monitoring and reporting requirements, in addition to pollutant emissions limits. However,

while the Ministry of Natural Resources and Environmental Conservation has made a lot of progress regarding implementing the EIA Procedure, the system is still not functioning fully. The first ECC was issued in January 2018 (Chau 2018), and as of June 2018, Myanmar had only issued approximately 10 ECC's in total (Schulte and Baird 2018, p. 24). As there are thousands upon thousands of polluting facilities in Myanmar, with the number constantly increasing, this represents a very small portion. If all polluting facilities had ECCs, and if those ECCs were available to the public, then it would be relatively easy for the public to review those ECCs and hold facilities accountable to the requirements contained therein.

Taking air pollution as an example - according to IQAir's 2020 World Air Quality Report, "[d]espite the region's high air pollution burden, governmental monitoring in Southeast Asia is generally sparse" (IQAir 2020, p. 17). Thailand has been steadily increasing efforts to monitor air pollutant emissions from factories. The Industry Ministry began implementing a mandatory requirement that all factories in the country continuously monitor their emissions (Apsitnaran 2021). The law had only required continuous monitoring from large industrial estates in some provinces (Apsitnaran 2021). However, in August 2023 a coalition of groups led by EnLaw Thai Foundation and Ecological Alert and Recover Thailand (EARTH) among others won a case in the Administrative Court in which the court ordered the Ministry of Industry to develop means to release information Pollutant Release and Transfer Registry system within 60 days of the judgement (Bangkok Post 2023). If the ECC system in Myanmar were functioning effectively and if the Ministry of Industry does actually follow through and release the factory emissions monitoring information in its PRTR database, this would go a long way toward supporting environmental public interest litigation, and in turn support government efforts to secure widespread compliance with the law.

Access to information

"For effective citizen participation in environmental enforcement, the public needs access to information about toxic release discharges or emissions, permit conditions,

Selected Provisions on Access to Information

Constitution of the Kingdom of Thailand (2017), Article 58

Viet Nam Decree No. 18/2015/ND-CP Prescribing Environmental Protection Master Plan, Strategic Environmental Assessment, Environmental Impact Assessment, and Environmental Protection Plan (2015), Art.12

Laos Decree No. 21 on Public Participation in the Environmental Impact Assessment Process (2019), Art. 27

Myanmar Environmental Impact Assessment Procedure (2015), Sec. 61

and regulatory standards to prove violations of environmental laws....many countries still limit access to information" (Nemesio 2015, p. 333). All of the countries in Southeast Asia have enacted some form of law or regulation designed to give the public access to this kind of information.

However, these are not well implemented. For example, the World Bank issued a diagnostic report on Myanmar's EIA system in 2019 that highlighted the ongoing challenges regarding environmental information disclosure in Myanmar (World Bank 2019, p. 35). In November 2020, the Cambodian government stopped even the very limited practice of sharing EIA reports with one local NGO, and before this, the reports "had already been increasingly hidden from public view despite laws and policy guidelines encouraging public participation" (Tran 2020). Indeed, one of the long-term challenges regarding access to information in Cambodia was that there was no clear penalty structure or enforcement mechanism to punish those that do not comply with information-sharing requirements. The newly adopted Environment and Natural Resources Code seeks to remedy this by imposing a clearer penalty structure in Book 10, but it will still take time for full implementation to be realized. A 2017 report produced by the World Resources Institute chronicles the ongoing challenges that communities in Thailand and Indonesia face regarding obtaining environmental pollution information

(World Resources Institute 2017). And scholars have noted that in Viet Nam, “reforms to the [Law on Environmental Protection] that promised social organizations rights to access information....remain unfulfilled” (Gillespie et al. 2019, p. 10). In Indonesia, lawyers reported that accessing information has become more difficult since the adoption of the Omnibus Law on Job Creation in 2020. For example, “it is becoming more difficult for the public to access environmental licensing and related documents because they are classified as exempted information [under the law]” (Widyaningsih, and Sembiring 2021, p. 101).

For the citizenry of the countries of Southeast Asia to protect themselves and support the government in forcing regulated facilities to comply with environmental requirements, they need access to environmental information.

Access to Lawyers and NGOs to support EPIL

One of the common challenges that lawyers reported in the region regarding pursuing environmental public interest litigation was the relatively low numbers of lawyers and NGOs that have the expertise and willingness to represent communities in such cases. For example, lawyers in the Philippines and Laos reported that there are very few licensed lawyers in general compared to the overall population, and even fewer have knowledge or expertise on environmental law. Another challenge is where lawyers and NGOs are concentrated. Lawyers in Indonesia reported that there are many strong NGOs in Jakarta, for example, but many other areas of the country are under-represented and have challenges accessing NGOs or lawyers to support them. Moreover, while it is gaining increasing recognition across the region, environmental legal education is still relatively new. For example, lawyers in the Philippines reported that legal education tends to be limited to subjects that appear on the bar exam for lawyer licensing, and environmental law is not a subject covered by the exam. Only recently have some progressive law schools begun offering environmental law as elective courses.

Nong Phawa, Thailand

“Environmental lawsuits still face significant obstacles that prevent the citizens from invoking their environmental rights. Throughout the process of launching an environmental suit, citizens are burdened with myriads of expenses, such as court fees. This is why despite the massive impact the pollution has had, not all of the locals joined the lawsuit. We would like authorities of the justice system to consider reducing expenses of these suits, in order to encourage more citizens to invoke their rights for environmental justice.”

Lawyer representing Nong Phawa villagers.
<https://www.earththailand.org/en/article/717>

Costs of Litigation Continue to Impede Access to Justice

In Cambodia, for example, lawyers reported that various court fees, including paying a percentage of the plaintiff’s claim to the court as a deposit and paying a fee to the court to provide service of the lawsuit on the defendant, continue to pose significant challenges for accessing the courts. Draft 11 of the Environment and Natural Resources Code did contain a provision that compensation for environmental harm shall include “[a]ll court costs, fees, and expenses incurred towards and in litigation” (Cambodia 2018, Art. 1024(12)). However, this unfortunately appears to have been removed from the final version of the Code. In Thailand, lawyers reported that NGOs tend to favor pursuing environmental matters in the administrative courts instead of the civil courts because the fees are much lower and present less of a barrier.

As noted earlier, when the United States first authorized citizen enforcement cases, it included provisions stating that the court may require a defendant to pay the plaintiff’s litigation costs, including attorney and expert witness fees. This was done specifically to encourage plaintiffs to file more citizen enforcement cases, and some scholars have argued that this is “the single most important factor in encouraging citizen suits” (Roberts and Dobbins 1992, p. 14). Likewise, in the Philippines, the Rules of Procedure for Environmental Cases provide that a court may award an environmental public interest plaintiff “the payment of attorney’s fees,

costs of suit and other litigation expenses” (Philippines, Supreme Court 2010a, Rule 5, Section 1). The Annotation to the Rules goes on to state that the term “litigation expenses” shall include “expenses for preparation of witnesses, witness fees and other fees which cannot be paid for under the present rules” (Philippines, Supreme Court 2010b, Rule 5, Section 1). The Philippines Rules of Procedure also allow plaintiffs to defer the payment of filing fees and other costs until after the judgment in the case, after which the fees will “serve as the first lien on the judgment award” (Philippines, Supreme Court 2010a, Rule 2, Section 12). China also adopted measures to reduce this burden on plaintiffs – the Supreme People’s Court’s Judicial Interpretation states that courts “may lawfully support” a plaintiff’s demand “that the defendant bear reasonable costs incurred for litigation such as for inspections and appraisals and reasonable lawyers fees” (China, Supreme People’s Court, Art. 22). In China’s first report environmental public interest case filed under the 2014 Environmental Protection Law amendments, the court awarded plaintiffs reasonable expert consultation fees for assessing damages, attorney fees, and litigation costs (Tuholske and Lin 2015b, p. 11102). Despite this, some Chinese NGOs have reported that in practice, the requirements to provide funds upfront for expert and attorney costs continue to pose a challenge and limit NGOs abilities to bring more cases (Chun 2016).

Challenges enforcing court orders

Several lawyers across the region reported that another major challenge for environmental litigation has to do with overall structural issues with the power of the courts to monitor and enforce compliance with court decisions. Simply put, in some instances, even hard-fought court victories may end up meaning little in the end when there is no reliable mechanism to enforce those victories. A case involving the construction of a cement manufacturing facility in Indonesia highlights this issue. After hearing an administrative challenge to the environmental permits for the facility, in October 2016, the Supreme Court issued a decision that the company had violated the law by beginning construction on the facility without conducting a thorough environmental review (Vice 2017). In January

2017, the Governor of Central Java canceled the company’s permits pursuant to the Supreme Court’s decision, which was lauded as a victory at the time” (Vice 2017). However, the Governor then subsequently issued new permits to the facility, which were challenged to no avail, and construction on the plant moved forward (Sulaiman 2018). In Thailand, lawyers reported that one challenge they have faced is companies dissolving or declaring bankruptcy after a judgment is awarded, rendering it nearly impossible to receive the awarded compensation. Moreover, they also reported that the court generally sees its job complete after issuing a judgment, and there is very little for plaintiffs to do to enforce it.

For environmental public interest litigation to be an effective tool for communities and for promoting sustainable development, the outcome of the litigation must itself be enforceable. In the United States, settlements of citizen enforcement actions are usually entered into as a Consent Decree under the supervision of the court so that the court will retain jurisdiction over the settlement and be able to supervise its implementation. If there is a dispute over the implementation of the settlement, the parties can go directly back to the same court and judge, rather than filing an entirely new action based on breach of contract. As noted above, in the Philippines, the courts can apply the writ of continuing mandamus to retain jurisdiction and supervise the implementation of its orders, as it did in the Manila Bay case (Philippines, Supreme Court 2008). Perhaps this could serve as a model for other countries in the region to follow.

Overall resistance to giving the public a more active role in environmental management and enforcement

One other potential major obstacle to adopting environmental public interest litigation systems across Southeast Asia is an apparent reticence to giving the public a more active role in environmental management and enforcement. One observer noted that “[i]n the context of environmental enforcement, citizens and government are presumed to share a goal – that of maximizing compliance for the good of all” (Roberts and Dobbins 1992, p. 2). However, it appears that governments across Southeast Asia continue to resist

providing citizens with the means to share in the realization of this goal.

In Viet Nam, for example, “[s]tate officials resist attempts to make members of the public active participants in managing the environment” (Gillespie et al. 2019, p. 10). In one case involving a sugar manufacturing facility in Nghe An Province that was damaging local air and water quality, local residents resorted to protesting publicly and blocking the main entrance to the facility after their complaints to local environmental officials went ignored for nearly four years (Gillespie et al. 2019, p. 13-14). The local officials “calmed the angry protestors by promising an investigation into the factory’s environmental impact” and eventually imposed a “token fine” of 155 million dong (approximately USD \$6,700) (Gillespie et al. 2019, p. 14). However, throughout the process, the local officials “consistently refused to negotiate with the residents” and “rejected attempts by citizens to participate in environmental management” (Gillespie et al. 2019, p. 14).

There may be a number of different reasons for this type of resistance on the part of the government. One reason could be that a given government may “fear that citizen involvement in environmental enforcement will disrupt its own enforcement efforts and will reduce its flexibility to tailor enforcement decisions to particular circumstances” (Roberts and Dobbins 1992, p. 2). Among socialist states in Southeast Asia, another reason could be a “historical reluctance” to “recognize any

interest outside the party-state” (Gillespie et al. 2019, p. 28). Moreover, there may be some concern that giving citizens more access to environmental rights may give them ideas about other, more strictly “political” rights. Perhaps more likely, governments may be hesitant to provide citizens a more active role in enforcing environmental laws in the public interest due to concern that it may highlight their own unwillingness or inability to do so themselves (Roberts and Dobbins 1992, p. 2). And finally, a more nefarious reason could be a fear that citizen enforcement could unveil corruption among government agencies and the entities they are supposed to regulate. Indeed, in one case study involving an industrial park in Dong Nai Province in Viet Nam, local communities suspected that environmental regulatory agencies were actually colluding with the industrial park to protect it, and therefore “could not be trusted to monitor [the industrial park’s] waste discharges” (Gillespie et al. 2019, p. 19). Allowing citizens to pursue enforcement actions against polluters instead of relying on regulatory agencies to do so can help uncover and prevent such cases of collusion.

V. Conclusion

As can be seen, there are many existing challenges to introducing and establishing environmental public interest litigation systems in Southeast Asia. The challenges described in this briefing paper are by no means exhaustive, and there are likely many more. However, the briefing paper also demonstrated some of the benefits that can be achieved through environmental public interest litigation. If the governments of Southeast Asia are serious about the commitments they have made to environmental protection, sustainable development, and the rule of law, then they should be open to the idea of allowing citizens to file public interest cases against those that violate environmental laws.

List of Recommendations for Strengthening Environmental Public Interest Litigation in Southeast Asia

To strengthen the recognition and practice of environmental public interest litigation in Southeast Asia, lawmakers and policymakers, civil servants, NGOs and citizens should, at a minimum, pursue the following actions:

- Strengthen the availability of, and access to, environmental information, including but not limited to:
 - Environmental pollution standards (including their applicability);
 - Environmental impact assessments and related documents (for example, environmental management plans), facility/project permits and/or licenses;
 - Environmental monitoring reports submitted by regulated entities;
 - Data on ambient water/air/soil environmental quality;
 - Data and information on government enforcement efforts.
- In countries that have not yet done so, explicitly authorize both administrative and civil environmental public interest litigation so that NGOs and citizens can support government efforts to achieve greater compliance and narrow the implementation gap.
- Adopt more permissive requirements for bringing cases (standing) in order to make courts more accessible to a wider array of NGOs and concerned citizens that want to file environmental public interest litigation cases.
- Strengthen the application of the precautionary principle and adopt other measures to reduce the burden of proof on plaintiffs.
- Strengthen fee-shifting and litigation cost recovery for successful environmental public interest litigation cases in order to make EPIL more accessible.
- Allow courts to impose civil penalties in environmental public interest litigation cases.
 - The costs of non-compliance should be higher than the costs of compliance.
- Adopt measures or procedures to give courts greater power to monitor and oversee the implementation of court orders.
- Strengthen environmental legal education, including in universities, graduate schools, and for legal professionals, including judges, prosecutors and practicing attorneys.

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